

STRENGTH IN DIVERSITY ACT OF 2021

NOVEMBER 23, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 729]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 729) to establish the Strength in Diversity Program, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Strength in Diversity Act of 2021”.

SEC. 2. PURPOSE.

The purpose of this Act is to support the development, implementation, and evaluation of comprehensive strategies to address the effects of racial isolation or concentrated poverty by increasing diversity, including racial diversity and socioeconomic diversity, in covered schools.

SEC. 3. RESERVATION FOR NATIONAL AND STATE ACTIVITIES.

(a) NATIONAL ACTIVITIES.—The Secretary may reserve not more than 5 percent of the amounts made available under section 9 for a fiscal year to carry out activities of national significance relating to this Act, which may include—

- (1) research, development, data collection, monitoring, technical assistance, evaluation, or dissemination activities; and
- (2) the development and maintenance of best practices for recipients of grants under section 4 and other experts in the field of school diversity.

(b) STATE ACTIVITIES.—The Secretary may reserve not more than 10 percent of the amounts made available under section 9 for a fiscal year for planning grants and implementation grants made to State educational agencies under section 4.

SEC. 4. GRANT PROGRAM AUTHORIZED.

(a) AUTHORIZATION.—

(1) IN GENERAL.—From the amounts made available under section 9 and not reserved under section 3 for a fiscal year, the Secretary shall award grants in accordance with subsection (b) to eligible entities to develop or implement plans to improve diversity and reduce or eliminate racial or socioeconomic isolation in covered schools.

(2) TYPES OF GRANTS.—The Secretary may, in any fiscal year, award—

- (A) planning grants to carry out the activities described in section 6(a);
- (B) implementation grants to carry out the activities described in section 6(b); or

(C) both such planning grants and implementation grants.

(b) AWARD BASIS.—

(1) CRITERIA FOR EVALUATING APPLICATIONS.—The Secretary shall award grants under this section on a competitive basis, based on—

(A) the quality of the application submitted by an eligible entity under section 5;

(B) the likelihood, as determined by the Secretary, that the eligible entity will use the grant to improve student outcomes or outcomes on other performance measures described in section 7; and

(C) the likelihood that the grant will lead to a meaningful reduction in racial and economic isolation for children in covered schools.

(2) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to the following eligible entities:

(A) First, to an eligible entity that submitted an application for a grant under the Opening Doors, Expanding Opportunities program described in the notice published by the Department of Education in the Federal Register on December 14, 2016 (81 Fed. Reg. 90343 et seq.).

(B) Second, to an eligible entity that proposes, in an application submitted under section 5, to use the grant to support a program that addresses racial isolation.

(C) Third, to an eligible entity that proposes, in an application submitted under section 5, to use the grant to support a program that extends beyond one local educational agency, such as an inter-district or regional program.

(D) Fourth, to an eligible entity that demonstrates meaningful coordination with local housing agencies to increase access to schools that have a disproportionately low number of low-income students.

(c) DURATION OF GRANTS.—

(1) PLANNING GRANT.—A planning grant awarded under this section shall be for a period of not more than 1 year.

(2) IMPLEMENTATION GRANT.—An implementation grant awarded under this section shall be for a period of not more than 3 years, except that the Secretary may extend an implementation grant for an additional 2-year period if the eligible entity receiving the grant demonstrates to the Secretary that the eligible entity is making significant progress, as determined by the Secretary, on the program performance measures described in section 7.

SEC. 5. APPLICATIONS.

In order to receive a grant under section 4, an eligible entity shall submit an application to the Secretary at such time and in such manner as the Secretary may require. Such application shall include—

(1) a description of the program for which the eligible entity is seeking a grant, including—

(A) how the eligible entity proposes to use the grant to improve the academic and life outcomes of students in racial or socioeconomic isolation in covered schools by supporting interventions that increase diversity for students in such covered schools;

(B) in the case of an implementation grant, the implementation grant plan described in section 6(b)(1); and

(C) evidence, or if such evidence is not available, a rationale based on current research, regarding how the program will increase diversity;

(2) in the case of an eligible entity proposing to use any of the grant to benefit covered schools that are racially isolated, a description of how the eligible entity will identify and define racial isolation;

(3) in the case of an eligible entity proposing to use any portion of the grant to benefit high-poverty covered schools, a description of how the eligible entity will identify and define income level and socioeconomic status;

(4) a description of the plan of the eligible entity for continuing the program after the grant period ends;

(5) a description of how the eligible entity will assess, monitor, and evaluate the impact of the activities funded under the grant on student achievement and student enrollment diversity, and teacher diversity;

(6) an assurance that the eligible entity has conducted, or will conduct, robust parent and community engagement, while planning for and implementing the program, such as through—

(A) consultation with appropriate officials from Indian Tribes or Tribal organizations approved by the Tribes located in the area served by the eligible entity;

(B) consultation with other community entities, including local housing or transportation authorities;

(C) public hearings or other open forums to inform the development of any formal strategy to increase diversity; and

(D) outreach to parents and students, in a language that parents and students can understand, and consultation with students and families in the targeted district or region that is designed to ensure participation in the planning and development of any formal strategy to increase diversity;

(7) an estimate of the number of students that the eligible entity plans to serve under the program and the number of students to be served through additional expansion of the program after the grant period ends;

(8) an assurance that the eligible entity will—

(A) cooperate with the Secretary in evaluating the program, including any evaluation that might require data and information from multiple recipients of grants under section 4; and

(B) engage in the best practices developed under section 3(a)(2);

(9) an assurance that, to the extent possible, the eligible entity has considered the potential implications of the grant activities on the demographics and student enrollment of nearby covered schools not included in the activities of the grant;

(10) in the case of an eligible entity applying for an implementation grant, a description of how the eligible entity will—

(A) implement, replicate, or expand a strategy based on a strong or moderate level of evidence (as described in subclause (I) or (II) of section 8101(21)(A)(i) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(21)(A)(i))); or

(B) test a promising strategy to increase diversity in covered schools;

(11) in the case of an application by a consortium of local educational agencies, a specification of which agency is the lead applicant, and how the grant funds will be divided among the school districts served by such consortium; and

(12) in the case of an application by a State educational agency, a demonstration that the agency has procedures in place—

(A) to assess and prevent the redrawing of school district lines in a manner that increases racial or socioeconomic isolation;

(B) to assess the segregation impacts of new school construction proposals and to prioritize school construction funding that will foreseeably increase racial and economic integration; and

(C) to include progress toward reduction of racial and economic isolation as a factor in its State plan under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311).

SEC. 6. USES OF FUNDS.

(a) **PLANNING GRANTS.**—Each eligible entity that receives a planning grant under section 4 shall use the grant to support students in covered schools through the following activities:

(1) Completing a comprehensive assessment of, with respect to the geographic area served by such eligible entity—

(A) the educational outcomes and racial and socioeconomic stratification of children attending covered schools;

(B) an analysis of the location and capacity of program and school facilities and the adequacy of local or regional transportation infrastructure; and

(C) teacher diversity in covered schools, and plans for expanding teacher diversity.

(2) Developing and implementing a robust family, student, and community engagement plan, including, where feasible, public hearings or other open forums that would precede and inform the development of a formal strategy to improve diversity in covered schools.

(3) Developing options, including timelines and cost estimates, for improving diversity in covered schools, such as weighted lotteries, revised feeder patterns, school boundary redesign, or regional coordination.

(4) Developing an implementation plan based on community preferences among the options developed under paragraph (3).

(5) Building the capacity to collect and analyze data that provide information for transparency, continuous improvement, and evaluation.

(6) Developing an implementation plan to comply with a court-ordered school desegregation plan.

(7) Engaging in best practices developed under section 3(a)(2).

(8) If applicable, developing an implementation plan to replace entrance exams or other competitive application procedures with methods of student assignment to promote racial and socioeconomic diversity.

(b) **IMPLEMENTATION GRANTS.**—

(1) **IMPLEMENTATION GRANT PLAN.**—Each eligible entity that receives an implementation grant under section 4 shall implement a high-quality plan to support students in covered schools that includes—

(A) a comprehensive set of strategies designed to improve academic outcomes for all students, particularly students of color and low-income students, by increasing diversity in covered schools;

(B) evidence of strong family and community support for such strategies, including evidence that the eligible entity has engaged in meaningful family and community outreach activities;

(C) goals to increase diversity, including teacher diversity, in covered schools over the course of the grant period;

(D) collection and analysis of data to provide transparency and support continuous improvement throughout the grant period; and

(E) a rigorous method of evaluation of the effectiveness of the program.

(2) **IMPLEMENTATION GRANT ACTIVITIES.**—Each eligible entity that receives an implementation grant under section 4 may use the grant to carry out one or more of the following activities:

(A) Recruiting, hiring, or training additional teachers, administrators, school counselors, and other instructional and support staff in new, expanded, or restructured covered schools, or other professional development activities for staff and administrators.

(B) Investing in specialized academic programs or facilities designed to encourage inter-district school attendance patterns.

(C) Developing or initiating a transportation plan for bringing students to and from covered schools, if such transportation is sustainable beyond the grant period and does not represent a significant portion of the grant received by an eligible entity under section 4.

(D) Developing innovative and equitable school assignment plans.

(E) Carrying out innovative activities designed to increase racial and socioeconomic school diversity and engagement between children from different racial, economic, and cultural backgrounds.

(F) Creating or improving systems and partnerships to create a one-stop enrollment process for students with multiple public school options, including making school information and data more accessible and easy to under-

stand, in order to ensure access to low poverty or high-performing schools for low-income children and to promote racial and socioeconomic diversity.
(G) Increasing teacher diversity in covered schools.

SEC. 7. PERFORMANCE MEASURES.

The Secretary shall establish performance measures for the programs and activities carried out through a grant under section 4. These measures, at a minimum, shall track the progress of each eligible entity in—

- (1) improving academic and other developmental or noncognitive outcomes for each subgroup described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)) that is served by the eligible entity on measures, including, as applicable, by—
 - (A) increasing school readiness;
 - (B) increasing student achievement and decreasing achievement gaps;
 - (C) increasing high school graduation rates;
 - (D) increasing readiness for postsecondary education and careers;
 - (E) improving access to mental health and social-emotional learning;
 - (F) reducing school discipline rates; and
 - (G) any other indicator the Secretary or eligible entity may identify; and
- (2) increasing diversity and decreasing racial or socioeconomic isolation in covered schools.

SEC. 8. ANNUAL REPORTS.

An eligible entity that receives a grant under section 4 shall submit to the Secretary, at such time and in such manner as the Secretary may require, an annual report that includes—

- (1) a description of the efforts of the eligible entity to increase inclusivity;
- (2) information on the progress of the eligible entity with respect to the performance measures described in section 7;
- (3) the data supporting such progress;
- (4) a description of how the eligible entity will continue to make improvements toward increasing diversity and decreasing racial or socioeconomic isolation in covered schools and sustaining inclusion; and
- (5) information on the progress of regional programs on reducing racial and socioeconomic isolation in covered schools, if applicable.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act such sums as may be necessary for fiscal year 2022 and each of the 5 succeeding fiscal years.

SEC. 10. DEFINITIONS.

In this Act:

- (1) COVERED SCHOOL.—The term “covered school” means—
 - (A) a publicly-funded early childhood education program;
 - (B) a public elementary school; or
 - (C) a public secondary school.
- (2) ELIGIBLE ENTITY.—The term “eligible entity” means a State educational agency, a local educational agency, a consortium of such agencies, an educational service agency, or a regional educational agency that at the time of the application of such eligible entity has significant achievement gaps and socioeconomic or racial segregation within or between the school districts served by such entity.
- (3) ESEA TERMS.—The terms “educational service agency”, “elementary school”, “local educational agency”, “secondary school”, “Secretary”, and “State educational agency” have the meanings given such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).
- (4) PUBLICLY-FUNDED EARLY CHILDHOOD EDUCATION PROGRAM.—The term “publicly-funded early childhood education program” means an early childhood education program (as defined in section 103(8) of the Higher Education Act of 1965 (20 U.S.C. 1003(8)) that receives State or Federal funds.

SEC. 11. PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION.

No provision of this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.

PURPOSE AND SUMMARY

H.R. 729, the *Strength in Diversity Act of 2021*, introduced by Chairman Bobby Scott and Congressman Mondaire Jones, if

passed, would authorize the first new investment in school integration since the federal government began providing funding for magnet schools for the purposes of school desegregation in the *Emergency School Aid Act of 1972*.¹ This legislation supports local educational agencies (LEAs) in realizing the promise of *Brown v. Board of Education*, that separate is inherently unequal and that educational opportunity is a “right which must be made available to all on equal terms.”² The bill is consistent with U.S. Supreme Court precedent which holds that public schools may use race-conscious measures to ensure equal educational opportunity.³

Our nation has never come close to achieving full racial integration of its public education system. But there is now a growing prevalence of racial segregation and, in certain regions of the country, re-segregation in public schools. These trends undermine the meaningful progress made toward racial integration in the decades following the *Brown* decision and deny millions of students of color high-quality public education. According to recent reports, public schools are now more segregated by race and class than any time since the 1960s.⁴ Federal intervention is needed to confront this persistent, pervasive injustice, yet the federal government has continually retreated from its role in promoting school integration.

The purpose of H.R. 729 is to provide federal support for school integration. The bill authorizes federal funding for states and LEAs to develop and implement evidence-based plans to tackle racial and socioeconomic segregation in public schools. Planning grants authorized by the bill will allow LEAs to study segregation in their schools, evaluate current policies to identify revisions necessary to achieve integration, and develop a robust family, student, and community engagement plan to carry out voluntary integration efforts. Implementation grants authorized by the bill provide resources to LEAs to implement an evidence-based integration plan and rigorously evaluate the effectiveness of the plan. Implementation grants may also be used to recruit, hire, and train teachers to improve diversity in the teaching profession, support activities in a district under a court-ordered desegregation plan, and fund other innovative activities designed to increase racial and socioeconomic diversity in schools, prioritizing funding for school districts that address racial isolation in their schools. H.R. 729 also strengthens other federal efforts to promote integration, including providing dedicated research funding.

¹ Pub. L. No. 92-318, 86 Stat. 235, June 23, 1972.

² *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

³ *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 797-98 (2007) (“This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children. A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue . . . The decision today should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds.”) (Kennedy, J., concurring).

⁴ Erica Frankenberg, et al. *Harming Our Common Future: America’s Segregated Schools 65 Years after Brown*, 10 May 2019, www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown/Brown-65-050919v4-final.pdf; see Nikole Hannah-Jones, *Segregation Now*, PROPUBLICA, Apr. 16, 2014, available at <https://www.propublica.org/article/segregation-now-full-text>; see also U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-16-345, K-12 EDUCATION: BETTER USE OF INFORMATION COULD HELP AGENCIES IDENTIFY DISPARITIES AND ADDRESS RACIAL DISCRIMINATION (2016) (documenting the growth in school districts with high concentrations of low-income Black and Hispanic students, and recognizing the inequitable conditions many of them share).

As of the filing of this report, H.R. 729 is supported by the following organizations: American Federation of Teachers (AFT); Association of University Centers on Disabilities (AUCD); Augustus F. Hawkins Foundation; Center on Law, Inequality, and Metropolitan Equity—Rutgers Law School; Center for Educational Equity, Teachers College, Columbia University; Civil Rights Project/Proyecto Derechos Civiles at UCLA; Charles Hamilton Houston Institute for Race and Justice—Harvard Law School; Children’s Defense Fund; Institute for Social Progress at Wayne County Community College District; Intercultural Development Research Association (IDRA); Magnet Schools of America; National Alliance for Partnerships in Equity (NAPE); National Association of Elementary School Principals (NAESP); National Association of Secondary School Principals (NASSP); National Coalition on School Diversity (NCSD); National Education Association (NEA); National Women’s Law Center (NWLC); New York Appleseed; NC Justice Center; New York Appleseed; Poverty & Race Research Action Council; Public Advocacy for Kids; The School Superintendents Association (AASA); The Bell; NAACP Legal Defense Fund; UnidosUS; IntegrateNYC; and the Voluntary Interdistrict Choice Corporation.

COMMITTEE ACTION

101ST CONGRESS

On November 28, 1989, the Committee held a hearing titled “*Hearing on the Federal Enforcement of Equal Education Opportunity Laws*” to assess the Department of Education’s Office for Civil Rights’ (OCR’s) enforcement of laws prohibiting discrimination in federally-funded education programs on the basis of race, sex, or disability. This oversight hearing included an examination of OCR’s lack of enforcement of civil rights, with a specific focus on racial discrimination and school desegregation orders, the resegregation of public schools, racial tensions on college campuses and concern that the policies of the George H.W. Bush Administration regarding school choice would entrench existing segregation and allow for more resegregation in public education. Testifying before the Committee were William L. Smith, Acting Assistant Secretary, Office for Civil Rights, Department of Education; James P. Turner, Acting Assistant Attorney General, Civil Rights Division, Department of Justice; Phyllis McClure, Director, Division of Policy and Information, NAACP Legal Defense and Educational Fund; Elliott C. Lichtman, Attorney; Ethel Simon-McWilliams, Director, Desegregation Assistance Center, Northwest Regional Educational Laboratory; Gary Orfield, Director, Metropolitan Opportunity Project, University of Chicago; David F. Chavkin, Senior Program Analyst, National Center for Clinical Infant Programs; Ellen J. Vargyas, Chair, National Coalition for Women and Girls in Education, National Women’s Law Center; Pamela M. Young, Legislative Counsel, D.C. Bureau, NAACP; Norma V. Cantu, Director, Elementary and Secondary Programs, Mexican American Legal Defense and Educational Fund; Elliot M. Mincberg, Legal Director, People for the American Way, Citizens Commission on Civil Rights; and James J. Lyons, National Association for Bilingual Education.

114TH CONGRESS

On February 11, 2015, the Committee marked up and ordered to be reported the bill H.R. 5, the *Student Success Act* to the House by a vote of 21–16. The bill was passed by the House on July 8, 2015 by a vote of 218–213. The Senate Committee on Health, Education, Labor, and Pensions reported the bill S. 1177, the *Every Child Achieves Act* to the Senate on April 30, 2015. The bill passed the Senate by a vote of 79–18 on July 16, 2015. Subsequently, both chambers agreed to a conference to resolve the differences between the two bills. The conference report on S. 1177, retitled the *Every Student Succeeds Act* (ESSA), was filed November 30, 2015. On December 2, 2015, the House agreed to the conference report on ESSA by a vote of 359–64. The Senate agreed to the conference report on December 9, 2015 by a vote of 85–12. ESSA was signed into law on December 10, 2015.

Among the provisions included in ESSA was the reauthorization of the Magnet Schools Assistance Program (MSAP). MSAP provides support to local educational agencies to establish and operate magnet schools for the purposes of implementing a court-ordered desegregation plan or a voluntary federally approved desegregation plan. ESSA exempted MSAP from GEPA section 426, allowing funds under the program to be used to provide transportation for students to and from magnet schools. ESSA also included provisions to support states and LEAs in using racial integration to support school improvement strategies required under Title I–A and support diversity in the Charter School Program.⁵

115TH CONGRESS

First Session, Other Legislative Action

The Committee worked with the Committee on Appropriations to develop a provision for inclusion in H.R. 3358, the *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2018*. The provision revised one of two long-standing prohibitions on funds appropriated under the bill from being used for the transportation of students or staff to comply with title VI of the *Civil Rights Act of 1964* (Title VI). The new language exempted the establishment of a magnet school from the relevant long-standing prohibition. As modified, the language was eventually included in section 302 of H.R. 1625, the *Consolidated Appropriations Act, 2018* (FY18 Omnibus), which was signed into law on March 23, 2018. In an explanatory statement in the Congressional Record, Rep. Rodney Frelinghuysen, Chairman of the House Committee on Appropriations commented, “[t]he agreement includes a new general provision to exempt the Magnet Schools program from one long-standing general provision on transporting students. ESSA reauthorized the Magnet School program in 2015

⁵See 20 U.S.C. § 6311(d)(1)(B), (2)(C) (requiring the identification of resource inequities at schools identified by the State for a comprehensive support and improvement plan and also requiring that same identification in the case of schools where a subgroup of students would on their own lead to identification for comprehensive support and improvement); 20 U.S.C. § 7221d(b)(5)(A) (“In awarding grants under this section, the Secretary shall give priority to eligible entities that plan to operate or manage high-quality charter schools with racially and socioeconomically diverse student bodies”); see generally GAO–16–345, *supra* note 4, at 10–15 (“The Percentage of High-Poverty Schools with Mostly Black or Hispanic Students Increased over Time, and Such Schools Tend to Have Fewer Resources”).

and allowed funds to be used for transportation and this agreement should not impede the Magnet School program from doing so. The agreement notes that the Committees on Appropriations of the House of Representatives and the Senate should consider a longer-term solution to this issue during the fiscal year 2019 appropriations process.”⁶

Second Session, Other Legislative Action

The Committee again worked with the Committee on Appropriations on longstanding anti-integration riders during the Fiscal Year 2019 (FY19) appropriations process. As a result, H.R. 6470, the *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019*, advanced without the rider prohibiting funds from being used for the transportation of students or teachers in order to overcome racial imbalances or to carry out a plan of racial desegregation. The bill also advanced without the rider prohibiting funds from being used to require the transportation of any student to a school other than the school which is nearest the student’s home in order to comply with Title VI. Both riders were absent from H.R. 6157, the *Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019* (FY19 Omnibus), which was signed into law on September 28, 2019. Enactment of H.R. 6157 (115th) marked the first annual appropriations law since 1974 to be enacted without these anti-integration provisions.

116TH CONGRESS

On April 30, 2019, the Committee held a legislative hearing on school integration and civil rights enforcement. A review of Committee archives suggests this is the first hearing focused on school segregation since the 101st Congress, nearly 30 years ago. The hearing, titled “*Brown v. Board of Education at 65: A Promise Unfulfilled*,” was used to inform the development of H.R. 2639. The Committee heard testimony on the following issues: the federal role in fulfilling the promise of *Brown*, the importance of the federal government in supporting local efforts to combat persistent segregation and discrimination in K–12 education, the rescission of Title VI sub-regulatory guidance documents by the Trump Administration, and the Trump Administration’s enforcement of civil rights laws. The Committee heard testimony from: Mr. John C. Brittain, Professor of Law, University of the District of Columbia Law School, Washington, DC; Dr. Linda Darling-Hammond, Ed.D., President and CEO, Learning Policy Institute, Palo Alto, CA; Ms. Maritza White, Parent Advocate, Washington DC; Mr. Daniel J. Losen, M.Ed., J.D., Director, Center for Civil Rights Remedies at the Civil Rights Project at UCLA, Lexington, MA; Mr. Dion J. Pierre, Research Associate, National Association of Scholars, Ridgewood, NY; and Mr. Richard A. Carranza, Chancellor, New York City Schools, New York, NY.

On May 9, 2019, Rep. Marcia Fudge (D–OH) introduced H.R. 2639, the *Strength in Diversity Act of 2019*, with Chairman Bobby Scott (D–VA) and Rep. Gregorio Sablan (D–MP), Chairman of the

⁶ 164 Cong. Rec. H2697, 2707 (daily ed. Mar. 22, 2018) (statement of Rep. Frelinghuysen).

Subcommittee on Early Childhood, Elementary, and Secondary Education, as original co-sponsors. On May 16, 2019, the Committee considered H.R. 2639 in a legislative session and ordered it reported favorably, as amended, to the House of Representatives by a vote of 26–20. The Committee considered and adopted the following amendments to H.R. 2639:

Rep. Fudge offered an Amendment in the Nature of a Substitute (ANS) that made numerous changes to H.R. 2639. The ANS improved provisions under section 5 of the bill to ensure outreach to parents and students is produced in commonly understandable language. It also ensured consultation with students and families in the district or region targeted for diversity improvement efforts. Under section 6, the ANS expanded planning grant activities to include the development of a robust family, student, and community engagement plan. It also explicitly stated that funds can be used to support school districts under a court-ordered school desegregation plan. The ANS expanded implementation grants activities to include the development of innovative and equitable school assignment plans and other innovative activities to increase racial and socioeconomic diversity. Under section 7, the ANS added reducing school discipline rates as a measure of a school integration plan's success. Under section 8, the ANS expanded the annual reporting requirement to include a description of the entity's efforts to increase inclusivity in schools. Finally, the ANS added a new section to specify that GEPA section 426 does not apply to funds authorized by the bill.

During the legislative session the Committee considered one amendment to the ANS:

Rep. Rick Allen (R-GA) offered an amendment to the ANS that proposed to strike the authorization of the new federal grant program created in H.R. 2639 to support voluntary community-driven efforts to increase diversity in schools. The amendment instead amended section 4106 of the *Elementary and Secondary Education Act of 1965*⁷ to allow school districts to use funds authorized by such act to develop or implement strategies to improve diversity and reduce or eliminate racial or socioeconomic isolation in schools. The amendment also permitted LEAs to use funds received under section 4106 to cover fees associated with accelerated learning examinations given to low-income students. Lastly, the amendment exempted funds used pursuant to the authorized uses from the requirements of GEPA section 426. Because the amendment proposed to amend the *Elementary and Secondary Education Act of 1965*, a law not amended by the underlying bill, the amendment expanded the scope of the bill and was ruled out of order by the Chairman.

On September 15, 2020, pursuant to the provisions of H. Res. 1107, the House debated H.R. 2639, and on the question of passage it passed by a recorded vote of 248–167. The Senate did not take further action on H.R. 2639 in the 116th Congress.

Second Session, Other Legislative Action

The Committee again worked with the Committee on Appropriations on longstanding anti-integration riders during the Fiscal Year 2021 (FY21) appropriations process. As a result, Division H of H.R.

⁷ 20 U.S.C. § 7116 (2018).

133, the *Consolidated Appropriations Act, 2021* (FY21 Omnibus) included a provision striking GEPA section 426 from law entirely. Division H of H.R. 133 passed the House December 21, 2020 by a vote of 359–53. H.R. 133 passed the Senate by a vote of 92–6 that same day and was signed into law by the President December 27, 2020.

117TH CONGRESS

On February 2, 2021, Chairman Scott introduced H.R. 729, the *Strength in Diversity Act of 2021*, with Rep. Mondaire Jones (D-NY) as an original co-sponsor.

On March 25, 2021, the Subcommittee on Early Childhood, Elementary, and Secondary Education held a hearing entitled “*Lessons Learned: Charting the Path to Educational Equity Post-COVID–19.*” The hearing examined the impact of the COVID–19 pandemic on public schools and aided in the development of H.R. 729. Witnesses discussed strategies for safely reopening classrooms and addressing educational disparities present in our public education system. The Committee heard testimony from Mr. Marc H. Morial, President and CEO of the National Urban League; Mrs. Jennifer Dale, a parent from Lake Oswego, OR; Ms. Selene A. Almazan, Legal Director for the Council of Parent Attorneys and Advocates, Inc.; and Mr. Alberto M. Carvalho, Superintendent of Schools for Miami-Dade County Public Schools.

On April 28, 2021, the Committee held a hearing entitled “*Building Back Better: Investing in Improving Schools, Creating Jobs, and Strengthening Families and Our Economy.*” The hearing included an examination of investments in school infrastructure to address historical inequity in our nation’s schools and disparities in financing school construction; the hearing aided in the development of H.R. 729. The Committee heard testimony from Mr. Rasheed Malik, Senior Policy Analyst at the Early Childhood Policy Center for American Progress; Dr. Neal McCluskey, Director of the Center for Educational Freedom at the Cato Institute; Mr. Mark Mitsui, College President at Portland Community College; Ms. Mary W. Filardo, Founder and Executive Director at the 21st Century School Fund; Mr. Bob Lanter, Executive Director for the California Workforce Association; and Mr. Brian Riedl, Senior Fellow in Budget, Tax, and Economics at the Manhattan Institute.

On July 16, 2021, the Committee considered H.R. 729 in a legislative session and ordered it reported favorably, as amended, to the House of Representatives by a vote of 27–19. The Committee considered and adopted the following amendments to H.R. 729:

Chairman Scott offered an Amendment in the Nature of a Substitute (ANS) that made numerous changes to H.R. 729. Aside from technical revisions to the bill, Sections 3 and 4 of the ANS updated the references to section 10 to align with authorization provisions under section 9. The ANS also expanded the application requirements and implementation grant uses to include activities impacting teacher diversity. The Committee adopted the ANS by voice vote.

Rep. Joe Courtney (D-CT) offered an amendment to the ANS that explicitly prevented all provisions in the bill from authorizing any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the cur-

riculum, program of instruction, administration, or personnel of any educational institution, school, or school system. The Committee adopted the Courtney amendment by voice vote.

During the legislative session, the Committee also considered the following amendments:

Rep. Bob Good (R–VA) offered an amendment to the ANS that proposed to prohibit the Department of Education (ED) from conditioning receipt of grant funds on school districts’ adoption of curriculum that violates Title VI, including by separating students or teachers based on race, color, or national origin or assigning characteristics or assumptions to individuals based on race, color, or national origin. The amendment also expressed a “Sense of Congress” that critical race theory (CRT) will harm efforts to increase diversity in schools based on the claim CRT separates students or teachers based on race, color, or national origin, assigns characteristics or assumptions to individuals based on race, color, or national origin, or states or implies that the U.S. is inherently racist. The amendment was defeated on a recorded vote of 19–26.

Rep. Lisa McClain (R–MI) offered an amendment to the ANS that proposed adding school choice and the availability of “high-quality charter schools” in several places throughout the bill as a means to decrease racial or socioeconomic isolation, increase racial diversity, and increase the availability of public-school options for students. The amendment was defeated on a recorded vote of 19–26.

Rep. Burgess Owens (R–UT) offered a substitute amendment that would allow school districts receiving funds under the Student Support and Academic Enrichment Grants program (Title IV, Part A of the *Every Student Succeeds Act*) to use those funds to develop, implement, and evaluate comprehensive strategies to increased diversity or reduce racial and socioeconomic isolation in public schools. The amendment would also prohibit the Department of Education from conditioning receipt of grant funds on school districts’ adoption of content or pedagogy that violates Title VI and also includes the Sense of Congress language regarding CRT included in the amendment offered by Rep. Good. The amendment was defeated on a recorded vote of 19–26.

First Session, Other Legislative Action

Building on the repeal of GEPA section 426 in the FY21 Omnibus, the Committee continued to work with the House Committee on Appropriations to advance policies to increase school diversity via the FY22 appropriations process. As a result, H.R. 4502 the *Labor, Health and Human Services, Education, Agriculture, Rural Development, Energy and Water Development, Financial Services and General Government, Interior, Environment, Military Construction, Veterans Affairs, Transportation, and Housing and Urban Development Appropriations Act, 2022* (FY22 Minibus) contained several provisions pertinent to the Committee’s work on increasing school diversity. These include:

- An allocation of \$100,000,000 for competitive grants to LEA’s and state educational agencies to reduce racial and socioeconomic segregation across and within school districts;
- A directive to ED to provide technical assistance to school districts regarding the use of school improvement funds under

ESEA Title I, Part A for transportation to support voluntary school integration efforts;

- A directive to ED to provide technical assistance to school districts on how specific funds appropriated under Title I can be used to support socioeconomic and racial integration in schools as an evidence-based strategy to improve schools identified for improvement under the *Elementary and Secondary Education Act* (ESEA);

- A request of ED to use the two percent set-aside for technical assistance and capacity building under the Student Support and Academic Enrichment State Grants Program for capacity-building grants to LEAs and state educational agencies to reduce racial and socioeconomic segregation across and within school districts;

- A request of ED to give priority to applicants to the Charter School Program that plan to use program funds to operate or manage charter schools intentionally designed to be racially and socioeconomically diverse;

- A directive to ED to establish a priority within the Magnet Schools Assistance Program to include a priority for applicants seeking to establish new inter-district magnet schools;

- A request of ED, in consultation with the Department of Justice to issue a report describing the scope of the issue of school district secession and its impact on school segregation;

- A directive to ED to submit a report to the Committee on Appropriations that examines levels of racial and economic segregation within the U.S. education system; and

- A request of ED to make a report publicly available on their website detailing a comprehensive list of all existing federal desegregation orders in the U.S., their principle requirements, and the status of the affected districts' compliance with these orders.

On July 29, H.R. 4502 passed the House by a vote of 219–208. As of the filing of this report, the Senate has yet to take action on H.R. 4502.

COMMITTEE VIEWS

H.R. 729, the *Strength in Diversity Act of 2021*, authorizes federal support for school districts seeking to improve racial and socioeconomic diversity through integration of public schools. The bill was first introduced in May 2019, the 65th anniversary of *Brown v. Board of Education*, a time of natural reflection on the legacy of the unanimous decision declaring racially segregated schooling unconstitutional.

The state of racial segregation and isolation in our nation's elementary and secondary schools has little changed in the last two years. Despite meaningful progress in the decades following the *Brown* ruling due to robust federal enforcement of civil rights laws, 67 years later there is a growing prevalence of racial segregation and, in certain regions of the country, re-segregation in public schools that undermines the decades of progress. In 2014, Ranking Member George Miller, House Committee on the Judiciary Ranking Member John Conyers, and now-Chairman Scott commissioned a Government Accountability Office (GAO) report on racial isolation in public schools and the impact of such segregation on educational

equity. Released in 2016, the GAO found high-poverty schools where 75–100 percent of the students were low-income and Black or Latino increased from 9 percent in 2000–2001 to 16 percent in 2013–2014.⁸ The report also found that these schools had fewer resources and disproportionately high rates of exclusionary school discipline.⁹ Other reports and articles have all suggested that segregation in many public school settings is reaching levels unseen since the 1960s.¹⁰

On its face, the *Brown* decision is not profound. The conclusion that the opportunity of an education, “where the state has undertaken to provide it, is a right which must be made available to all on equal terms,”¹¹ is a logical one based upon the most cursory interpretation of the foundational documents of the United States.¹² It receives monumental status based largely on the 335 years of history and jurisprudence that precede it: a record of systemic racial subjugation of African-Americans, first as enslaved people, later as second-class citizens. The revolutionary impact of *Brown* demands regular examination of the federal government’s role in realizing or hindering full integration of public education. Without recognizing the legally and socially enforced American racial caste system that existed in the 335 years before *Brown*, it is hard to understand how revolutionary the decision truly was. Considering *Brown* merely as the end of the effort to integrate schools and not the beginning minimizes both the decades of local recalcitrance to the decision and the federal intervention necessary to enforce it. And, perhaps most importantly for the Committee’s consideration of H.R. 729, ignoring the concerted efforts to dismantle *Brown* and the subsequent retrenchment of school segregation over the last 30 years threatens to leave us with a *Brown* decision that insists on school integration and a patchwork of state and federal policies that deftly undermine its mandate. This Committee has become part of that recent history with our markup of H.R. 729. Multiple amendments offered at that legislative meeting focused on hyper-partisan issues that are designed to further drive communities apart rather than bring them together. This is especially troubling since when this bill was last considered in 2019, the minority members expressed in their views that they supported “comprehensive strategies to address the effects of racial isolation or concentrated poverty . . .” but then decried the bill that simply provided new funding to do just that as “partisan”. The Committee believes H.R. 729 is a small, but meaningful step toward ensuring the promise of equal educational opportunity for all children, regardless of race, in fulfillment of *Brown* 67 years ago.

*African American Education, 1619–1955*¹³

Since their arrival in 1619, enslaved African Americans were systematically banned from education, and opportunities for those Af-

⁸ GAO–16–345 (2016) at 10.

⁹ *Id.* At 16.

¹⁰ See, e.g., Alvin Chang, *The data proves that school segregation is getting worse*, Vox, Mar. 5, 2018, available at <https://www.vox.com/2018/3/5/17080218/school-segregation-getting-worse-data>.

¹¹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

¹² THE DECLARATION OF INDEPENDENCE, para. 2 (U.S. 1776); U.S. CONST. amend. XIV § 1.

¹³ In the 116th Congress, the Committee views on the *Strength in Diversity Act* outlined a less abridged history of African American Education that this summary is based on. For a fuller version of this text, see H.R. REP. NO. 166–496, at 11–13 (2020).

rican Americans who were not enslaved to receive an education were substandard and sporadic for over 250 years. Postbellum Constitutional amendments and federal oversight opened a brief window for educational opportunities to flourish. This window closed emphatically with the end of Reconstruction and the entrenchment of Jim Crow’s “separate but equal” policies upheld by the Supreme Court in *Plessy v. Ferguson* in 1896.

Sixty years of incremental social change and legal activism culminated with *Brown v. Board of Education* in 1954. The *Brown* decision re-positioned the power of the federal government on the side of the discriminated, and enshrined public education as “a right which must be made available to all on equal terms”.

Federal Support for Integration after Brown Narrows the Achievement Gap

The Court’s historic ruling in *Brown* was not the end of school segregation, it was the beginning of a long and difficult struggle to fulfill the promise of equity in education. In 1955, in *Brown v. Board of Education (Brown II)*, the Court ordered states to desegregate “with all deliberate speed.” Since the decision did not include a definitive timeline, many states and localities saw this lack of specificity as an invitation to drag their feet to integrate their schools.¹⁴ Such efforts included the denial of state funding to integrated schools, the state-mandated closure of public schools that agreed to integrate, the firing of African American teachers, and the diversion of public dollars from public schools to establish private schools for white children.¹⁵ Ten years after *Brown*, the “Massive Resistance” to integration across the South left many students stuck in segregated schools, and in some cases, without access to any public education.¹⁶

Recognizing a constitutional duty to remedy inequality and inequity, President Lyndon Johnson and Congress crystallized the federal role in public education as an arbiter of equity, first with the *Civil Rights Act of 1964*,¹⁷ and subsequently with the *Elementary and Secondary Education Act of 1965* (ESEA).¹⁸ The *Civil Rights Act of 1964* gave the federal government the legal tools to realize the promise of *Brown*. The law prohibits racial discrimination in schools, employment, and places of public accommodation, and expands the authority of federal agencies to protect the civil rights of all students. *The Civil Rights Act of 1964* also gave the federal government the power to enforce desegregation plans in local school districts under threat of federal sanction and authorized grants in title IV to support desegregation in communities that took voluntary action.¹⁹ Congress appropriated to Southern and border states \$176 million for federal education funding in 1964

¹⁴ *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294 (1955).

¹⁵ See generally IRONS, supra note 14, at 172–209 (Chapters 10 and 11, ‘War Against the Constitution’ and ‘Too Much Deliberation, Not Enough Speed’ provide detail on the response to the *Brown* decision throughout the South.)

¹⁶ E.g., CHARLES OGLETREE, ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF BROWN V. BOARD OF EDUCATION Ch. 8 (“In fact, the southern segregated school system remained almost completely segregated for a full decade after *Brown*. By 1964, only one-fiftieth of all southern Black children attended integrated schools.”).

¹⁷ Pub. L. 88–352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000a et seq.(2018)).

¹⁸ Pub. L. 89–10, 79 Stat. 27 (codified as amended at 20 U.S.C. § 6301(2018)).

¹⁹ 42 U.S.C. § 2000c–4 (2018).

and almost \$590 million in 1966 under the new ESEA law.²⁰ Pursuant to title VI of the *Civil Rights Act of 1964*, these states risked losing out on receiving this federal funding if they continued to drag their feet on integration, which many historians suggest accelerated States' efforts to implement desegregation plans.²¹ As evidenced by current data on racial isolation in public schools, racial segregation remains a national crisis that demands a comprehensive federal response like we saw with ESEA. While in and of itself insufficient, enactment of H.R. 729 is central to such a response.

ESEA sought to close opportunity and achievement gaps in public education through grants which targeted resources and services to communities with high concentrations of poverty. This poverty too often resulted in low-quality schools due to inequitable public education financing systems,²² many of which persist today. Since most communities fund their public school systems via property taxes,²³ wealthier, typically whiter communities with higher property tax bases invariably can provide more resources for their educational facilities. Communities surrounding schools continue to be largely homogenized by wealth, or the significant lack thereof, due in large part to the impact of local, state, and federal housing policies intended to segregate white from nonwhite families. These policies continue to deny nonwhites access to asset accumulation and upward mobility and have corresponding effects on the quality of schools in these communities as well.²⁴

In 1966, Congress appropriated \$1 billion in education funding for ESEA title I, part A (ESEA Title I).²⁵ This was monumental because in targeting federal aid to areas of concentrated poverty, federal supports were improving equity of educational opportunity in regions of the country where *de facto* segregation resulted in racially segregated and economically inequitable public schools. And again, because public schools received federal funding under ESEA

²⁰Erica Frankenberg & Kendra Taylor, *ESEA and the Civil Rights Act: An Interbranch Approach to Furthering Desegregation*, 1 RUSSELL SAGE FOUND. J. OF THE SCI. 3, 37 (2015).

²¹*Id.* The concept behind title VI was first introduced by the former Chairman of the Committee, Rep. Adam Clayton Powell, Jr. (D-NY). In 1946, when "separate but equal" was still the law, Rep. Powell successfully attached an anti-discrimination provision to a school lunch program bill, stating "No funds made available pursuant to this title shall be paid or disbursed to any state or school if, in carrying out its functions under this title, it makes any discrimination because of race, creed, color or national origins of children or between types of schools, or with respect to a state that maintains separate schools for minority and majority races, it discriminates between such schools on this account." After *Brown*, Powell modified his amendment—it now prohibited funds from going to any school district that continued to segregate schools. The Powell amendment sank efforts to authorize federal education spending in both the Eisenhower and Kennedy administrations. See Joy Milligan, *Subsidizing Segregation*, 104 VA. L. REV. 847, 869–70, 891–94 (2018); Jeffrey Jenkins, *Building Toward Major Policy Change: Congressional Action on Civil Rights, 1941–1950*, 31 L. & HIST. REV. 139 (2013).

²²*E.g.*, Jeff Raikes & Linda Darling-Hammond, *Money Matters: Why Our Education Funding Systems Are Derailing the American Dream*, LPI BLOG (Feb. 18, 2019), <https://learningpolicyinstitute.org/blog/why-our-education-funding-systems-are-derailing-american-dream>.

²³Andrew Reschovsky, *The Future of U.S. Public School Revenue from the Property Tax 1* (LINCOLN INST. OF LAND POLICY, 2017) available at <https://www.lincolnst.edu/sites/default/files/pubfiles/future-us-public-school-revenue-policy-brief-0.pdf>.

²⁴Angela Hanks, et al., *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap*, CTR. FOR AM. PROGRESS (Feb. 21, 2018, 9:03 am), <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>; see generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (describing the legacy of local, state, and federal policy in creating segregated neighborhoods throughout the United States, including the systemic destruction of integrated neighborhoods, and the subsidization of suburbs which denied land sale to African-Americans through restrictive covenants).

²⁵REBECCA SKINNER & LEAH ROSENSTIEL, CON. RESEARCH SERV., R44898, *HISTORY OF THE ESEA TITLE I—A FORMULAS*, 13 (2017).

Title I, they were now responsible for complying with Title VI and could not discriminate on the basis of race.

Despite ever-present criticism, the federal efforts to promote integration and enforce the *Civil Rights Act of 1964* had long-lasting effects. Court-ordered desegregation not only substantially reduced racial segregation, it also led to a dramatic increase in per-pupil spending, an average increase of more than 20 percent per student.²⁶ In addition, test scores for African American students improved and the achievement gap narrowed. Specifically, at the height of school integration efforts in 1988, 44 percent of African American students nationwide attended integrated schools.²⁷ The achievement gap in reading on the National Assessment of Educational Progress had fallen from 39 points in 1971 to 18 points²⁸ and the mathematics achievement gap had fallen by 20 points over the same time period.²⁹

Simply put, in the two decades the federal government was most active in supporting and advancing school integration, the U.S. was able to cut the achievement gap nearly in half. Notably, a recent report on the achievement gap from the Hoover Institution, a conservative think tank, found school integration was the only federal reform that has successfully narrowed the achievement gap.³⁰ Enactment of H.R. 729 would support participating local educational agencies (LEAs) to not only integrate their schools, but also narrow racial achievement gaps, a mandate of the *Elementary and Secondary Education Act*, as amended by the *Every Student Succeeds Act*.³¹

Research has shown that diverse learning environments lead to numerous academic, cognitive, and social benefits for students, including improved student academic achievement and high school graduation rates, and preparation for diverse collegiate and work environments.³² School integration did not negatively impact white student achievement or educational attainment,³³ while the biases of white children increased in racially homogenous school environments.³⁴ In an amicus brief in support of the respondents in the *Parents Involved* case, a group of over 500 researchers concluded the following about segregated schools:

²⁶Rucker C. Johnson, *Long-run Impacts of School Desegregation & School Quality on Adult Attainments* 16–17 (Nat'l Bureau of Econ. Research, Working Paper No. 16664, 2005) available at https://gsppi.berkeley.edu/ruckerj/johnson_schooldesegregation_NBERw16664.pdf.

²⁷GARY ORFIELD ET AL., *BROWN AT 60: GREAT PROGRESS, A LONG RETREAT AND AN UNCERTAIN FUTURE* 10 (UCLA C.R. PROJECT, (2014)).

²⁸LINDA DARLING-HAMMOND, *LEARNING POLICY INSTITUTE, EDUCATION AND THE PATH TO ONE NATION, INDIVISIBLE, LEARNING POLICY INSTITUTE*, 4 (2018).

²⁹*Id.*

³⁰Press Release, Hoover Institution, Stanford University, No Change in Student Achievement Gap in Last 50 Years (Apr. 1, 2019) available at <https://www.hoover.org/news/no-change-student-achievement-gap-last-50-years> (“The only program that seems to have had national impacts over this period has been school desegregation . . . During the early period of our study, the gap narrowed, but this closing of the black-white achievement gap stopped a quarter of a century ago when the desegregation efforts slowed and stopped.”).

³¹20 U.S.C. § 6311(c)(4)(A)(III) (2018) (requiring statewide accountability systems to include “ambitious . . . long-term goals” with “measurements of interim progress” for subgroups of students who are behind on academic achievement and high school graduation rates toward the goal of the state making “significant progress in closing statewide proficiency and graduation rate gaps”).

³²Brief for American Educational Research Association as Amici Curiae Supporting Respondents at 11, 27–28, 34, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2006) (No. 05–908, 05–915), 2006 U.S. S. Ct. Briefs LEXIS 1038.

³³*Id.* at 36.

³⁴*Id.* at 15–17.

. . . [M]ore often than not, segregated minority schools offer profoundly unequal educational opportunities. This inequality is manifested in many ways, including fewer qualified, experienced teachers, greater instability caused by rapid turnover of faculty, fewer educational resources, and limited exposure to peers who can positively influence academic learning. No doubt as a result of these disparities, measures of educational outcomes, such as scores on standardized achievement tests and high school graduation rates, are lower in schools with high percentages of nonwhite students.³⁵

The positive effects of school integration also accrue over a lifetime. One of the most rigorous studies on the effects of court-ordered integration found a profound long-term impact on students born between 1945 and 1970 who attended integrated schools after the *Brown* decision.³⁶ The study found that high school graduation rates increased by nearly 2 percentage points *every year* for African American students who attended integrated schools,³⁷ while over time their wages increased by 15 percent, annual family income increased by 25 percent, annual earnings increased by 30 percent, and good health outcomes increased by 11 percent.³⁸ At the same time, their chances of falling into adult poverty declined by 11 percent, and the probability of adult incarceration decreased by 22 percent.³⁹

H.R. 729 is a remedy for federal policy that has retreated from integration

Despite the successes of school integration, public backlash to the Civil Rights Movement never fully abated. While integration efforts did continue, the 1968 election of Richard Nixon marked the beginning of a gradual retreat in federal support for school integration and enforcement of civil rights law that led to the current state of racial segregation in America's schools.⁴⁰ In Congress, resistance came both from a lack of a legislative agenda to build upon the *Civil Rights Act of 1964*, and a concentration instead on legislation limiting federal power to aid integration efforts. At the other end of Pennsylvania Avenue, successive Presidential administrations de-prioritized oversight of state and local school desegregation work, aided localities in evading that oversight in some cases, and nominated federal judges with ideologies antithetical to an expansive view of *Brown*. And over the last 50 years the federal judiciary has, without overturning *Brown*, severely limited federal enforce-

³⁵ Brief of 553 Social Scientists as Amici Curiae Supporting Respondents at 4–5, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2006) (No. 05–908, 05–915), 2006 U.S. S. Ct. Briefs LEXIS 1024.

³⁶ Johnson, *supra* note 43 at 2.

³⁷ *Id.* at 18–19 (“The results indicate that, for blacks, there is an immediate jump in the likelihood of graduating from high school with exposure to court-ordered desegregation, and each additional year of exposure leads to a 1.8 percentage-point increase in the likelihood of high school graduation with an additional jump for those exposed throughout their school-age years.”)

³⁸ *Id.* at 20–24.

³⁹ *Id.* at 21–22.

⁴⁰ See JANEL GEORGE & LINDA DARLING-HAMMOND, LEARNING POLICY INSTITUTE, THE FEDERAL ROLE AND SCHOOL INTEGRATION: BROWN’S PROMISE AND PRESENT CHALLENGES 7 (2019) available at https://learningpolicyinstitute.org/sites/default/files/product-files/Federal_Role_School_Integration_REPORT.pdf.

ment of its mandate and provided legal cover for localities to operate increasingly segregated schools.

As early as the late 1960s, federal support for desegregation begins to wane. Congress took many more (and longer sustained) actions to block how federal funds could be used to support school desegregation, especially when it came to the politically volatile subject of busing. This is despite a Supreme Court decision upholding busing as a remedy to achieve integration,⁴¹ and the application of that decision in both Southern communities with school systems segregated *de jure* and Northern communities segregated *de facto*.⁴² The use of busing to achieve desegregation and the groundswell of resistance to it in White neighborhoods across the country led the Democratically-controlled Congress to pass the *Education Amendments of 1972*, which included an amendment limiting the use of federal funds for busing to local, voluntary requests.⁴³ Northern liberals in both parties, who had seen desegregation as a problem cabined to the South, now found themselves voting often with pro-segregation representatives.⁴⁴ In 1974, Congress first attached riders to the annual appropriations bill for the Department of Health, Education, and Welfare (the agency handling education matters at the time) that prohibited federal funds from being used for transportation to support integration.⁴⁵ These riders continued to appear in Education appropriations bills until fiscal year 2019.⁴⁶ And as a final backstop to ensure federal funds would not support busing for desegregation purposes, the *Education Amendments of 1974* included a provision that prohibits school districts from using federal funds for transportation to promote racial integration. This provision was codified as GEPA section 426.⁴⁷

The opposition to school integration and efforts to reverse the promise of *Brown* legislatively culminated in 1979, when House members opposed to busing succeeded in bringing an anti-busing constitutional amendment to the House floor (H.J. Res. 74) via a discharge petition.⁴⁸ The amendment failed to win a simple majority of the House, much less the two-thirds majority needed to move the amendment on the Floor.⁴⁹

While the Democratically-led Congress was undermining integration efforts legislatively, successive Republican presidential administrations took steps to limit federal oversight of school desegrega-

⁴¹ *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 30–31 (1971).

⁴² IRONS, *supra* note 14, at 225 (“The distinction between de facto and de jure segregation struck many federal judges as artificial, and they issue a spate of busing orders in the months after the *Swann* decision. When the new school year began in September 1971, more than half a million students in dozens of cities were assigned to schools outside their neighborhoods . . .”).

⁴³ Pub. L. No. 92–318 86 Stat. 235, 371(codified as amended in scattered section of 20 U.S.C.) (1972); see JACK JENNINGS, PRESIDENTS, CONGRESS, AND THE PUBLIC SCHOOLS: THE POLITICS OF EDUCATION REFORM 126–27; IRONS, *supra* note 14, at 226–33.

⁴⁴ IRONS, *supra* note 14, at 226–33 (describing a liberal Democrat House Member who went from leading floor action against anti-busing amendments to assuring his constituents he would “do whatever is necessary by way of further legislation or a constitutional amendment to prevent implementation of [desegregation orders] by cross-district busing”, after parts of his congressional district were placed under desegregation orders.).

⁴⁵ Pub. L. No. 93–192, §§ 208–09, 87 Stat. 746, 761 (1973).

⁴⁶ See *supra*, Part COMMITTEE ACTION, 115th Congress, Second Session, Other Legislative Action.

⁴⁷ 20 U.S.C. § 1228 (2018).

⁴⁸ “House Rejects Anti-Busing Amendment.” *CQ Almanac 1979*, 35th ed., 482–84. Washington, DC: Congressional Quarterly, 1980.

⁴⁹ 96th Cong. Roll Call Vote #374 (227–183), July 24, 1979.

tion. Additionally, federal judges and Supreme Court justices appointed by Republican administrations also significantly narrowed the application of remedies to integrate public schools. The retreat began in *Milliken v. Bradley* (1974) which held that school districts in the suburbs of Detroit were not obligated to participate in intra-district desegregation unless they committed a constitutional violation, effectively ending state-ordered regional desegregation across school district lines.⁵⁰ In the 1990s, Supreme Court rulings in three cases reduced judicial oversight of school desegregation orders, allowing school districts to escape oversight.⁵¹ According to research, 45 percent of school districts were released from court ordered desegregation orders between 1990-2009.⁵² And in 2007, in the *Parents Involved* case the Roberts Court found the use of racial balancing desegregation plans unconstitutional when used to achieve racial diversity where *de jure* segregation does not exist.⁵³ Two school systems had developed voluntary school desegregation plans, where race served as the basis of assigning students to a particular school, in an effort to achieve racial diversity.⁵⁴ The Court held that since in one district the schools were never legally segregated, and in the other county the court ordered segregation consent decree had been lifted, neither district had the compelling interest necessary to implement such a race-based scheme.⁵⁵ As such the plans failed the strict scrutiny test and the use of race violated the Equal Protection clause of the Fourteenth Amendment.⁵⁶

But *Parents Involved* did not completely foreclose on the use of race. Justice Kennedy broke with the four conservative judges to clarify in his concurrence, that it is constitutional for school districts to use race to promote school diversity, a stance informed by *Grutter*.⁵⁷ In his concurring opinion, Justice Kennedy stated that the plurality opinion was “profoundly mistaken” to suggest that states and school districts “must accept the status quo of racial isolation in schools.”⁵⁸ Justice Kennedy decreed school integration strategies such as drawing attendance zones and “allocating resources for special programs” such as magnet schools to promote diversity.⁵⁹ These are the types of strategies H.R. 729 aims to provide funding to support.

These are also the same types of strategies the Obama administration sought to promote with its “Opening Doors, Expanding Opportunities” program. Introduced in 2016, this \$12 million grant program was designed to help school districts increase diversity in their schools.⁶⁰ All school districts that received or were eligible for

⁵⁰ 418 U.S. 717, 721 (1974).

⁵¹ Board of Education of Oklahoma City v. Dowell, 498 U.S. 237 (1991); Freeman v. Pitts, 503 U.S. 467 (1992); Missouri v. Jenkins, 515 U.S. 79 (1995).

⁵² Sean F. Reardon, et al., “Brown Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools.” 31 J. OF POL’Y ANAL. & MGMT. 876 (2012).

⁵³ 551 U.S. 701 (2007).

⁵⁴ *Id.* at 710.

⁵⁵ *Id.* at 720–21.

⁵⁶ *Id.* at 730–33.

⁵⁷ *Id.* at 788 (Kennedy, J. concurring).

⁵⁸ *Id.*

⁵⁹ *Id.* at 789 (“ . . . recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race. These mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race . . .”).

⁶⁰ Press Release, Department of Education, U.S. Education Secretary Announces Grant Competitions to Encourage Diverse Schools, (Dec. 13, 2016), available at <https://www.ed.gov/news/press-releases/us-education-secretary-announces-grant-competitions-encourage-diverse-schools>.

ESEA School Improvement Grants⁶¹ were eligible to apply for the grant, which was designed to help school districts develop plans to improve socioeconomic diversity and complete pre-implementation diversity initiatives.⁶² Twenty-six school districts from 22 different states and the District of Columbia applied for the funds, demonstrating a nationwide desire and commitment to address segregation in schools.⁶³ Under the Trump Administration, the Department of Education discontinued this program in 2017.⁶⁴ Sadly although there was an outpouring of support from school districts to voluntarily take on the work of promoting integration in their schools, many were not able to do so without the possibility of federal funding.⁶⁵ The Committee was heartened to see that President Biden in his first budget request to Congress proposed \$100 million in new spending targeted at fostering diverse schools.⁶⁶ The FY22 Minibus included this proposed spending, and the Committee expects that H.R. 729 would provide the structure for a new federal program to encourage diverse schools. But as of this report's filing, the Senate has yet to take up the appropriations proposal and there is no program in place, in spite of the research we have showing the regrowth of segregated schools.

Research shows that the gains made on school integration in the 1960s and 1970s have reversed as schools have become increasingly segregated.⁶⁷ The share of racially segregated schools has tripled to nearly 20 percent since the 1980s.⁶⁸ This finding indicates that nearly one in five schools in America enroll 90–100% non-white students.⁶⁹ 40 percent of African American students and 41 percent of Latino students nationwide attend these intensely segregated schools where students of color makeup 90–100 percent of the student population.⁷⁰ The report also found that these schools had fewer resources, less access to math, science, and college preparatory courses, and disproportionately suspended, expelled, or held back students.

A 2019 report by EdBuild found that school district secessions to create wealthy white school districts are accelerating.⁷¹ According to the report, there have been at least 128 attempts by school districts to secede from their larger school district since 2000, with a total of 73 successful secessions. Historically, after the *Brown* decision, school district secessions were a mechanism for communities within county-based school districts to resist integration. Currently,

⁶¹ Every Student Succeeds Act § 1003(g), 20 U.S.C. § 6303(g) (2018).

⁶² Applications for New Awards; Opening Doors, Expanding Opportunities 81 Fed. Reg. 90343 (Dec. 14, 2016) available at <https://www.govinfo.gov/content/pkg/FR-2016-12-14/pdf/2016-29936.pdf>.

⁶³ List of Potential Applicants, Opening Doors, Expanding Opportunities—Intent to Apply, available at <https://www2.ed.gov/programs/odeo/odeolistofapp2017.pdf>.

⁶⁴ Emma Brown, “Trump’s Education department nixes Obama-era grant program for school diversity”, WASH. POST Mar. 2, 2017, available at <https://www.washingtonpost.com/news/education/wp/2017/03/29/trumps-education-department-nixes-obama-era-grant-program-for-school-diversity/>.

⁶⁵ Kalyn Belsha, “Dozens of school districts applied to an Obama-era integration program before Trump officials axed it. Since then, many plans have gone nowhere”, CHALKBEAT Dec. 2, 2019, available at <https://chalkbeat.org/posts/us/2019/12/02/what-happened-after-trump-administration-killed-obama-era-school-integration-program/>.

⁶⁶ DEPT. OF EDUC., FISCAL YEAR 2022 BUDGET SUMMARY 16 (2021).

⁶⁷ See Frankenberg, *supra* note 4, at 21–22.

⁶⁸ *Id.* at 21.

⁶⁹ *Id.*

⁷⁰ *Id.* at 25, 28.

⁷¹ EdBuild, *Fractured: The Accelerated Breakdown of America’s School Districts*, EDBUILD, Apr. 2019, available at <https://edbuild.org/content/fractured/fractured-full-report.pdf>.

30 states have laws permitting secession and there are states considering laws to permit secession. This action is deeply troubling as it undermines the *Brown* decision and exacerbates inequality and segregation, leaving high-poverty school districts behind with fewer resources since public education is largely funded using property tax revenue. Further, school districts cannot be compelled to work with other school districts to integrate. H.R. 729 addresses the problem of secession by allowing consortium of LEAs or regional education entities to be eligible entities for purposes of the grant. The goal is to ensure that where a secession has occurred, or one may occur, steps could be taken using funds from the bill to ensure racial diversity was maintained in these instances.

EdBuild produced another report that found a \$23 billion racial funding gap between school districts serving students of color and school districts serving predominantly white students.⁷² This data indicates that the relationship between integration and resources is often overlooked but cannot be overstated. Further, in 2017, the National Center on Education Statistics issued a report that found that most Black and Latino students in the 2014–2015 school year attended high-poverty schools.⁷³ Moreover, in 2018, Chairman Scott and Chairman Nadler released a GAO report that found that African American students, boys, and students with disabilities are disproportionately disciplined at high rates and African American students are subject to harsher discipline than their white counterparts in schools across the country.⁷⁴ This is alarming given the dramatic increase in segregation in public schools by race and poverty, especially as student of color are more likely to experience harsh discipline.

Sixty-seven years after the landmark *Brown v. Board of Education* decision, educational inequity remains pervasive and persistent in the U.S. Like the Jim Crow education system, children of color and low-income students are consigned to learning in segregated schools with crumbling infrastructure that offer demonstrably worse opportunity for a quality education. As a result, millions of children are robbed of their constitutionally guaranteed educational rights. As Dr. Rucker Johnson recently stated, “[s]egregation is not only the isolation of schoolchildren from one another; it is the hoarding of opportunity. Opportunity for smaller class sizes, access to high quality teachers supported by higher teacher salaries, teacher diversity, multicultural and college-preparatory curricular access all remain elusive for lower-income and minority children.”⁷⁵ A profound question and answer exchange during the 2019 Committee hearing on fulfilling the *Brown* decision took place between Rep. Mark Takano (CA–41) and then-New York City Schools Chancellor, Richard Carranza. Rep. Takano asked Chancellor Carranza, “[w]hat does it mean for children of color who suffer the repercussions of widening achievement and opportunity gaps?” Mr. Carranza stated, “[w]e are robbing the very future of this country of future talent.” This statement fully encaps-

⁷² EDBUILD, *\$23 Billion*, (last visited Dec. 6, 2019), <http://edbuild.org/content/23-billion>.

⁷³ NAT’L CTR. FOR EDUC. STATS., *THE CONDITION OF EDUCATION 2017*, 134 available at <https://nces.ed.gov/pubs2017/2017144.pdf>.

⁷⁴ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO–18–258, K–12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES (2018).

⁷⁵ Valerie Strauss, “*Why School Integration Works*”, WASH. POST, May 16 2019, available at <https://www.washingtonpost.com/education/2019/05/16/why-school-integration-works/>.

ulates the cost of school segregation and the lack of inaction by the federal government. The Committee believes it is the role of the federal government and the duty of Congress to address the segregation that exists in our public education system today to ensure that all children have access to an equal education regardless of their race, ethnicity, family wealth, or zip code.

Proposed Amendments to H.R. 729

Using the power of the federal government to root out entrenched segregation should not be a partisan issue. Minority members of the Committee have expressed desire to work towards a more diverse, integrated, school system.⁷⁶ The Committee takes these statements in the good faith it believes they were offered. However, this makes it all the more troubling that when the Committee marked up H.R. 729 this Congress, most of the consideration of the bill consisted of debate on hyper-partisan poison pill amendments offered by the minority that would do nothing to improve the bill.

Multiple amendments offered during the markup included provisions relating to critical race theory (CRT). For example, two amendments offered would condition receipt of grant funds on a review of a school’s local curriculum by the Department of Education, and expressed a Sense of Congress stating in part “diversity in schools is undermined by the teaching of critical race theory, which assign characteristics or assumptions to individuals based on race, color, or national origin . . .”.⁷⁷ These amendments cannot be separated from the wave of protests seen at local school boards over the last year around CRT. In fact, they were referenced during the debate of these amendments. Unfortunately, these amendments were flawed and logically inconsistent attempts to score political points, not good faith efforts to improve the bill.

First, these provisions, regardless of their subject matter, infringe on academic freedom and local control—two concepts minority members have long histories of supporting.⁷⁸ More incredibly, they do so in the name of protecting student rights under Title VI. This flies in the face of unanimous minority opposition to the other education bill marked up in the same legislative hearing as H.R. 729, H.R. 730, *the Equity and Inclusion Enforcement Act*. The minority seems to hold local control of educational curricula as sacrosanct up until the point the local school wants to teach something they disagree with.⁷⁹ Thankfully, the Committee adopted the

⁷⁶H.R. REP. NO. 116-496, AT 30 (2020) (“We know that too many students attend racially and economically isolated schools and that better integrated schools have academic benefits for all students.”).

⁷⁷See discussion *supra* of Good and Burgess amendments in Committee Activity—117th Congress.

⁷⁸See, e.g., 161 CONG. REC. H1121 (Feb. 25, 2015) (statement of Rep. Virginia Foxx) (“The week, the House will consider the student Success Act, which empowers the people closest to students with the authority to make education choices in their respective States and communities. Local control always delivers programs and services more efficiently and effectively. By scaling back Washington’s one-size-fits-all micromanagement of classrooms, this legislation takes positive steps toward ensuring local educators have the flexibility required to meet the diverse needs of their students”).

⁷⁹See also Letter from Reps. Virginia Foxx and Gregory Murphy to Dr. Kevin M. Guskiewicz, Ph.D., Chancellor, University of North Carolina at Chapel Hill (May 5, 2021) (expressing concern with the academic qualifications of Pulitzer Prize-winning reporter Nikole Hannah-Jones) (“The appropriate pursuit of free speech on UNC’s campus is of paramount importance to us.

Courtney amendment that re-affirmed state and local control over curriculum pursuant to section 438 of the *General Education Provisions Act*, which prohibits federal control over curriculum.⁸⁰

Second, the Committee takes note of the continued, intentional mischaracterization of critical race theory, a legal theory commonly discussed in law school classes, not elementary school classes. Republicans, including Members of this Committee, continue to lead efforts attacking CRT that amount to a national disinformation campaign that wrongly ascribes CRT as an ideology based on hate and division.⁸¹ According to Manhattan Institute fellow and conservative activist Christopher F. Rufo, “[conservatives] have successfully frozen their brand—‘critical race theory’—into the public conversation and are steadily driving up negative perceptions. We will eventually turn it toxic, as we put all of the various cultural insanities under that brand category.”⁸² Accordingly, CRT is being employed seeking to censor conversations about race, diversity, inclusion, and equity. For example, at least 27 states have introduced legislation to prohibit the teaching of CRT or to restrict how teachers discuss racism.⁸³ Republicans have erroneously asserted that any curricula that seeks to uplift students’ cultural knowledge and experiences, that teaches the truth about United States history, and that examines systems and structures of power as divisive, racist, and dangerous.⁸⁴ Further, Republicans have wrongly stated that CRT teaches children to “judge a person by the color of their skin, and not the content of their character.”⁸⁵ As researchers at Brookings Institution explained:

CRT does not attribute racism to white people as individuals or even to entire groups of people. Simply put, critical race theory states that U.S. social institutions (e.g., the criminal justice system, education system, labor market, housing market, and healthcare system) are laced with racism embedded in laws, regulations, rules, and procedures that lead to differential outcomes by race.⁸⁶

A college professor who teaches CRT described the current attacks on CRT as a conundrum.⁸⁷ He stated that “Teachers in K–12 schools are not actually teaching CRT. But teachers are trying

Faculty freedom is critical but crossing the line into political grandstanding—and worse, inaccurate political grandstanding—is unacceptable.”)

⁸⁰ REBECCA R. SKINNER & JODY FEDER, CONG. RSCH. SERV., R41119, GENERAL EDUCATION PROVISIONS ACT (GEPA): OVERVIEW AND ISSUES 8 (2010).

⁸¹ E.g., Houston Keene, *Reps. Cawthorn, Foxx introduce bill to prevent federal funds from being used to push critical race theory*, FOXNEWS (May 11, 2021) <https://www.foxnews.com/politics/critical-race-theory-ban-schools-cawthorn-foxx>.

⁸² @realchrisrufo, TWITTER, (Mar. 15, 2021, 3:14 PM), <https://twitter.com/realchrisrufo/status/1371540368714428416?lang=en>.

⁸³ Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDWEEK June 11, 2021 (updated Nov. 4, 2021) <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06>. 128 Stephen Kearse, *GOP Lawmakers Intensify Effort to Ban Critical Race Theory in Schools*, PEW STATELINE, June 14, 2021 <https://www.pewtrusts.org/en/research-and-analysis/blots/stateline/2021/06/14/gop-lawmakers-intensify-effort-to-ban-critical-race-theory-in-schools>.

⁸⁴ @MarshaBlackburn, TWITTER, (June 23, 2021, 11:38 AM) <https://twitter.com/MarshaBlackburn/status/1407724772973334528>.

⁸⁵ Rashawn Ray and Alexandra Gibbons, *Why are states banning critical race theory?* Brookings FixGov (Aug. 13, 2021) <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/>.

⁸⁷ *Id.*

to respond to students asking them why people are protesting and why Black people are more likely to be killed by the police.”⁸⁸

And, most insidiously, recent reports suggest that the wave of CRT hysteria that has plagued school board public meetings over the last year had more to do with the increased diversification of student bodies than curriculum or pedagogy.⁸⁹ School districts that are becoming racially diverse quicker than the national average are disproportionately the school districts where discussing diversity becomes a problem that must be solved either via protest or federal oversight. NBC News, analyzing Department of Education data over the last 26 years, found that exposure of white students to students of color in schools has increased on average by 11.2% nationally from 1994 to 2020—as the country gets more diverse, classrooms are as well.⁹⁰ But in two-thirds of the districts that saw pitched battles over CRT, the exposure level of white students to students of color increased at a rate higher than the national average.⁹¹ Loudoun County, Virginia, mentioned by name in the markup debate, has experienced an increase of white student exposure to students of color *nearly three times the national average*.⁹² The honest teaching of history is central to achieving racial equality in the U.S. Amendments that purport to support teaching that honest history but mischaracterize what is actually being taught are unproductive and were rightfully defeated. The Committee wholly expects to continue to hear straw man arguments from the minority on CRT in Committee proceedings, on the House floor, and in public debate over the next 12 months. As those fallacies continue to be repeated, the Committee would ask members to heed the words of its Ranking Member when discussing this issue, “political grandstanding—and worse, inaccurate political grandstanding—is unacceptable”.⁹³

Another amendment offered by the minority elevated school choice and charter schools as potential remedies to entrenched segregation. This amendment wrongly assumes that school choice is *in itself* a remedy to segregation in public schools. Research shows that school choice policies must be carefully designed and implemented to address school segregation as they can either create racially and socioeconomically diverse schools or increase racial segregation and inequality in public schools.⁹⁴ According to a recent study from the Urban Institute, charter schools have increased racial segregation in public schools, albeit modestly.⁹⁵ For example, the report found that eliminating charter schools in the average school district would reduce segregation by five percent.⁹⁶ However, the report found that charter schools had a higher impact of seg-

⁸⁸ *Id.*

⁸⁹ Tyler Kingkade and Nigel Chiwaya, *Schools facing critical race theory battles are diversifying rapidly, analysis finds*, NBCNEWS (Sept. 13, 2021, 4:30 AM) <https://www.nbcnews.com/news/us-news/schools-facing-critical-race-theory-battles-are-diversifying-rapidly-analysis-n1278834>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Letter from Reps. Virginia Foxx and Gregory Murphy to Dr. Kevin M. Guskiewicz, Ph.D., Chancellor, University of North Carolina at Chapel Hill (May 5, 2021) (on file with Committee).

⁹⁴ Frankenberg, et al., *supra* note 4, at 10.

⁹⁵ Tomas Monarrez, et al., *Charter School Effects on School Segregation 2*, URBAN INST. (July 2019) https://www.urban.org/sites/default/files/publication/100689/charter_school_effects_on_school_segregation_0.pdf.

⁹⁶ *Id.*

regation in urban districts with high percentages of low-income students and Black and Latino students.⁹⁷ Similarly, the report found that charter schools increased segregation in suburban school districts with low percentages of low-income students and Black and Latino students.⁹⁸ The report also found that while charter schools reduced between-district segregation in metropolitan areas, it did not lead to improved integration.⁹⁹

In a recent report on school segregation, the UCLA Civil Rights Project indicated that “[s]chool choice plans without equity policies and strategies often end up with the best-educated and connected families getting the best choices, actually increasing inequality. All school choice programs need voluntary goals, policies, and practices that foster diversity and integration.”¹⁰⁰ Research shows that controlled choice in student assignment policies can reduce racial isolation in public schools and help achieve diversity goals. For example, research by the Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity at UC-Berkeley Law School and the UCLA Civil Right Project found that the use of the controlled choice student assignment plan by Berkeley Unified School District (BUSD) led to the integration of the district’s 11 elementary schools despite the community’s residential segregation.¹⁰¹ The goal of BUSD’s student assignment plan is to ensure that the student population reflects the diversity in each elementary school’s attendance zone.¹⁰² The plan involves three elementary schools, two middle schools and parental choice.¹⁰³ BUSD assigns a diversity score to each schools’ attendance zone based on the demographics of the residential neighborhood—race, household income, and parents’ education levels.¹⁰⁴ Students receive the same diversity score, which is used in the student assignment process.¹⁰⁵ Consequently, the UCLA Civil Rights Project report found that BUSD was successful at matching families with their choices.¹⁰⁶ Further, BUSD’s controlled choice policy has withstood legal challenges and was upheld by the California Supreme Court.¹⁰⁷ Accordingly, BUSD’s longstanding commitment to school integration using controlled choice can serve as a model for school districts across the country.

The *Strength in Diversity Act of 2021* supports controlled choice policies such as those implemented by BUSD to increase diversity in public schools. Moreover, the bill would provide States and LEAs the necessary resources to develop, implement, or expand school diversity initiatives that work best for each individual community. But a blanket endorsement of choice and charters as a solution to

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 3.

¹⁰⁰ Frankenberg, et al., *supra* note 4, at 37.

¹⁰¹ See Lisa Chavez & Erika Frankenberg, *Integration Defended: Berkeley Unified’s Strategy to Maintain School Diversity* 17 (Sept. 2009) (“Thus for the plan to be successful in creative diverse schools, an important feature of the zones is that the population is relatively evenly distributed across each of the zones—which was no small feat in a district like Berkeley’s with residential segregation”) <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/integration-defended-berkeley-unified2019s-strategy-to-maintain-school-diversity/Integration-Defended-corrected-9-16-09.pdf>

¹⁰² *Id.* at 14; Erica Frankenberg, *The Promise of choice: Berkeley’s innovative integration plan, in Educational Delusion? Why Choice Can Deepen Inequality and How to Make Schools Fair* 74 (Univ. of Cal. Press, 2013).

¹⁰³ See Frankenberg, *The Promise of Choice*, *supra* note 146, at 74.

¹⁰⁴ See Chavez and Frankenberg, *supra* note 145, at v–vi; *Id.* at 74.

¹⁰⁵ Chavez and Frankenberg, *supra* note 145, at 5–7.

¹⁰⁶ *Id.* at vi.

¹⁰⁷ *Id.* at v.

this problem is short sighted and without important guardrails, could do more harm than good.

Conclusion

As of December 27, 2020, GEPA 426 is no longer in federal law due to the Committee's efforts to successfully repeal the provision entirely in the FY21 Omnibus. This action sent a clear message to school districts that the important work of school desegregation brings us closer to finally fulfilling the promise of *Brown* and the federal government should support these efforts. But, Congress must do more to promote school integration. Approximately 200 school districts remain under court-desegregation orders.¹⁰⁸ But that number is hardly reflective of how pervasive racial segregation remains in public education. According to scholars at Pennsylvania State University, there are more than 100 school districts that have voluntary integration plans to promote diversity.¹⁰⁹ Their research shows that school districts are experiencing multiple challenges defining diversity and developing diversity and desegregation initiatives.¹¹⁰ H.R. 729, the Strength in Diversity Act of 2021 would provide much needed support to these school districts. Under the bill, there are mandatory application requirements to ensure funding is targeted to improve school diversity. But the plans funded under the bill could also include a comprehensive set of strategies to improve student outcomes, evidence of family and community engagement, goals to increase school diversity, development of innovative and equitable school assignment plans, and other strategies. The Secretary of Education is required to establish performance measures to assess the progress of outcomes and activities funded by the grants and may set aside funding for research development and technical assistance. The bill reinforces the notion that the federal government is committed to supporting efforts to desegregate our schools and level the educational playing field to ensure equal access to education for all students.

Accordingly, the *Strength in Diversity Act of 2021* would provide public school districts with the tools to support their voluntary community-driven strategies for promoting racial and socio-economic diversity in schools. During the 2019 hearing, then-Chancellor Carranza testified about the diversity efforts in School District 15 in Brooklyn, which is comprised of 50 schools serving over 30,000 students. The community engaged in a diversity planning process to address racial isolation by studying data and research, including racial housing segregation, school enrollment demographics, and student academic outcomes. This process resulted in a comprehensive plan to address school segregation that was approved by Mayor DeBlasio and Chancellor Carranza. The *Strength in Diversity Act of 2021* could provide support to school districts in New York City and across the country that are working to develop and implement school integration initiatives.

Congress must act to support communities that are committed to studying the scope of their challenges and tackling those challenges

¹⁰⁸ Jeremy Anderson & Erica Frankenberg, "Voluntary Integration in Uncertain Times", PHI DELTA KAPPAN, Jan. 21, 2019, available at <https://www.kappanonline.org/voluntary-integration-in-uncertain-times-anderson-frankenber/>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

with innovative, evidence-based plans to address racial isolation in schools. The *Strength in Diversity Act of 2021* is a small investment in the much larger fight to remedy decades of purposeful inaction—including inaction by the federal government—that intentionally segregated communities and schools to deny people of color equal opportunity. There was a federal role in the creation of school segregation, and there is certainly a federal role in eradicating its hold in public education.

Justice Kennedy provided a powerful goal for our country in his concurring opinion in the *2007 Parents Involved* decision:

Our Nation from the inception has sought to preserve and expand the promise of liberty and equality on which it was founded. Today we enjoy a society that is remarkable in its openness and opportunity. Yet our tradition is to go beyond present achievements, however significant, and to recognize and confront the flaws and injustices that remain. This is especially true when we seek assurance that opportunity is not denied on account of race. The enduring hope is that race should not matter; the reality is that too often it does.¹¹¹

Congress has the power and authority to challenge history and help change it. History shows that when Congress accepts its responsibility to desegregate schools, the closing of the racial achievement gap is tangible. It is time for Congress to recommit to investing in school integration to ensure the constitutionally guaranteed educational rights of children of color by passing the *Strength in Diversity Act of 2021*.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This Act is called the “The Strength in Diversity Act of 2021.”

Section 2. Purpose

This section provides that the purpose of the Strength in Diversity Act of 2021 is to support the development, implementation, and evaluation of strategies to address the effects of racial isolation or concentrated poverty by increasing racial and socioeconomic diversity in public schools.

Section 3. Reservation for national activities

This section allows the Secretary of Education to set aside no more than 5 percent of funding for national activities. The national activities include research, development, data collection, monitoring, technical assistance, evaluation, dissemination activities, and development and maintenance of best practices on school diversity.

Section 4. Grant program authorized

This section provides detail on the two types of grants authorized under the bill (planning and implementation), criteria for evaluating applications, award priority, and duration of grants, (one

¹¹¹ *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 787 (2007) (Kennedy, J., concurring).

year for a planning grant and up to three years for an implementation grant). Implementation grants can be extended for an additional two years. Priority in awarding is given to eligible entities that address racial isolation in public schools.

Section 5. Applications

This section provides information for grant application submissions to the Secretary of Education. Application requirements include a description of the program, how the grant will be used, outreach to parents and students in a language that parents and students can understand, consultation with students and families in the district or region targeted for diversity improvement efforts, and how the eligible entity will identify and define racial isolation, income level, and socioeconomic status.

Section 6. Uses of funds

This section provides further detail on planning and implementation grant funds may be spent. Under the act, planning grants will be used to create a comprehensive assessment of the geographic area served and to develop a robust family, student, and community engagement plan. Implementation grants will apply the high-quality plan, which will include a comprehensive set of strategies to: improve student outcomes; evidence of family and community engagement, goals to increase school diversity, development of innovative and equitable school assignment plans, collection and analysis of data, and a rigorous method of evaluation of the effectiveness of the program. Implementation grant funding can be used to recruit, hire, and train teachers and other innovative activities designed to increase racial and socioeconomic diversity and engagement among students from different, racial, economic, and cultural backgrounds. Grant funding also supports school districts under a court-ordered school desegregation plan.

Section 7. Performance measures

This section provides information on performance measures for the programs and activities carried out through use of the grants. These performance measures include but are not limited to academic performance, school readiness, achievement gaps, graduation rates, reducing school discipline rates, and post-secondary career readiness.

Section 8. Annual reports

This section provides that entities that receive a grant will submit a report to the Secretary of Education with a description of the efforts to increase inclusivity and information on the progress of the grant in respect to performance measures and data to support said progress.

Section 9. Authorization of appropriations

This section provides that the program is to be funded for fiscal year 2022 and for five succeeding fiscal years.

Section 10. Definitions

Provides definitions found within the bill.

Section 11. Prohibition against Federal control of education

Reaffirms state and local control over school curricula and the prohibition on federal control over school curricula pursuant to section 438 of the *General Education Provisions Act*.

EXPLANATION OF AMENDMENTS

The ANS is explained in other descriptive portions of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

H.R. 729 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 729, as amended, prepared by the Director of the Congressional Budget Office.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 729 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 729.

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:1

Bill: H.R. 729

Amendment Number:2

Disposition: Defeated by a vote of 19-26

Sponsor/Amendment: Good/GOOD_050.XML

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|---------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mr. SCOTT (VA) (Chairman) | | X | | Mrs. FOXX (NC) (Ranking) | X | | |
| Mr. GRIJALVA (AZ) | | X | | Mr. WILSON (SC) | X | | |
| Mr. COURNTEY (CT) | | X | | Mr. THOMPSON (PA) | | | X |
| Mr. SABLAN (MP) | | X | | Mr. WALBERG (MI) | X | | |
| Ms. WILSON (FL) | | X | | Mr. GROTHMAN (WI) | | | X |
| Ms. BONAMICI (OR) | | X | | Ms. STEFANIK (NY) | X | | |
| Mr. TAKANO (CA) | | X | | Mr. ALLEN (GA) | X | | |
| Ms. ADAMS (NC) | | X | | Mr. BANKS (IN) | X | | |
| Mr. DESAULNIER (CA) | | X | | Mr. COMER (KY) | X | | |
| Mr. NORCROSS (NJ) | | X | | Mr. FULCHER (ID) | X | | |
| Ms. JAYAPAL (WA) | | X | | Mr. KELLER (PA) | X | | |
| Mr. MORELLE (NY) | | X | | Mr. MURPHY (NC) | X | | |
| Ms. WILD (PA) | | X | | Ms. MILLER-MEEKS (IA) | X | | |
| Mrs. MCBATH (GA) | | X | | Mr. OWENS (UT) | X | | |
| Mrs. HAYES (CT) | | X | | Mr. GOOD (VA) | X | | |
| Mr. LEVIN (MI) | | X | | Mrs. MCCLAIN (MI) | X | | |
| Ms. OMAR (MN) | | | X | Mrs. HARSHBARGER (TN) | X | | |
| Ms. STEVENS (MI) | | X | | Mrs. MILLER (IL) | X | | |
| Ms. LEGER FERNÁNDEZ (NM) | | X | | Mrs. SPARTZ (IN) | X | | |
| Mr. JONES (NY) | | X | | Mr. FITZGERALD (WI) | | | X |
| Ms. MANNING (NC) | | X | | Mr. CAWTHORN (NC) | | | X |
| Mr. MRVAN (IN) | | X | | Mrs. STEEL (CA) | X | | |
| Mr. BOWMAN (NY) | | X | | Ms. LETLOW (LA) | X | | |
| Mr. POCAN (WI) | | | X | <i>Vacancy</i> | | | |
| Mr. CASTRO (TX) | | X | | | | | |
| Ms. SHERRILL (NJ) | | X | | | | | |
| Mr. YARMUTH (KY) | | X | | | | | |
| Mr. ESPAILLAT (NY) | | X | | | | | |
| Mr. KWEISI MFUME (MD) | | | X | | | | |

TOTALS: Ayes: 19

Nos:26

Not Voting:7

Total: 53 / Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:2

Bill: H.R. 729

Amendment Number:4

Disposition: Defeated by a vote of 19-26

Sponsor/Amendment: McClain/MCCLAI_029.XML

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|---------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mr. SCOTT (VA) (Chairman) | | X | | Mrs. FOXX (NC) (Ranking) | X | | |
| Mr. GRIJALVA (AZ) | | X | | Mr. WILSON (SC) | X | | |
| Mr. COURNTEY (CT) | | X | | Mr. THOMPSON (PA) | | | X |
| Mr. SABLAN (MP) | | X | | Mr. WALBERG (MI) | X | | |
| Ms. WILSON (FL) | | X | | Mr. GROTHMAN (WI) | | | X |
| Ms. BONAMICI (OR) | | X | | Ms. STEFANIK (NY) | X | | |
| Mr. TAKANO (CA) | | X | | Mr. ALLEN (GA) | X | | |
| Ms. ADAMS (NC) | | X | | Mr. BANKS (IN) | X | | |
| Mr. DESAULNIER (CA) | | X | | Mr. COMER (KY) | X | | |
| Mr. NORCROSS (NJ) | | X | | Mr. FULCHER (ID) | X | | |
| Ms. JAYAPAL (WA) | | X | | Mr. KELLER (PA) | X | | |
| Mr. MORELLE (NY) | | X | | Mr. MURPHY (NC) | X | | |
| Ms. WILD (PA) | | X | | Ms. MILLER-MEEKS (IA) | X | | |
| Mrs. MCBATH (GA) | | X | | Mr. OWENS (UT) | X | | |
| Mrs. HAYES (CT) | | X | | Mr. GOOD (VA) | X | | |
| Mr. LEVIN (MI) | | X | | Mrs. MCCLAIN (MI) | X | | |
| Ms. OMAR (MN) | | | X | Mrs. HARSHBARGER (TN) | X | | |
| Ms. STEVENS (MI) | | X | | Mrs. MILLER (IL) | X | | |
| Ms. LEGER FERNÁNDEZ (NM) | | X | | Mrs. SPARTZ (IN) | X | | |
| Mr. JONES (NY) | | X | | Mr. FITZGERALD (WI) | | | X |
| Ms. MANNING (NC) | | X | | Mr. CAWTHORN (NC) | | | X |
| Mr. MRVAN (IN) | | X | | Mrs. STEEL (CA) | X | | |
| Mr. BOWMAN (NY) | | X | | Ms. LETLOW (LA) | X | | |
| Mr. POCAN (WI) | | | X | <i>Vacancy</i> | | | |
| Mr. CASTRO (TX) | | X | | | | | |
| Ms. SHERRILL (NJ) | | X | | | | | |
| Mr. YARMUTH (KY) | | X | | | | | |
| Mr. ESPAILLAT (NY) | | X | | | | | |
| Mr. KWEISI MFUME (MD) | | | X | | | | |

TOTALS: Ayes: 19

Nos:26

Not Voting: 7

Total: 53 / Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:3

Bill: H.R. 729

Amendment Number:5

Disposition: Defeated by a vote of 19-26

Sponsor/Amendment: Owens/OWENUT_011.XML

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|---------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mr. SCOTT (VA) (Chairman) | | X | | Mrs. FOXX (NC) (Ranking) | X | | |
| Mr. GRIJALVA (AZ) | | X | | Mr. WILSON (SC) | X | | |
| Mr. COURNTEY (CT) | | X | | Mr. THOMPSON (PA) | | | X |
| Mr. SABLAN (MP) | | X | | Mr. WALBERG (MI) | X | | |
| Ms. WILSON (FL) | | X | | Mr. GROTHMAN (WI) | | | X |
| Ms. BONAMICI (OR) | | X | | Ms. STEFANIK (NY) | X | | |
| Mr. TAKANO (CA) | | X | | Mr. ALLEN (GA) | X | | |
| Ms. ADAMS (NC) | | X | | Mr. BANKS (IN) | X | | |
| Mr. DESAULNIER (CA) | | X | | Mr. COMER (KY) | X | | |
| Mr. NORCROSS (NJ) | | X | | Mr. FULCHER (ID) | X | | |
| Ms. JAYAPAL (WA) | | X | | Mr. KELLER (PA) | X | | |
| Mr. MORELLE (NY) | | X | | Mr. MURPHY (NC) | X | | |
| Ms. WILD (PA) | | X | | Ms. MILLER-MEEKS (IA) | X | | |
| Mrs. MCBATH (GA) | | X | | Mr. OWENS (UT) | X | | |
| Mrs. HAYES (CT) | | X | | Mr. GOOD (VA) | X | | |
| Mr. LEVIN (MI) | | X | | Mrs. MCCLAIN (MI) | X | | |
| Ms. OMAR (MN) | | | X | Mrs. HARSHBARGER (TN) | X | | |
| Ms. STEVENS (MI) | | X | | Mrs. MILLER (IL) | X | | |
| Ms. LEGER FERNÁNDEZ (NM) | | X | | Mrs. SPARTZ (IN) | X | | |
| Mr. JONES (NY) | | X | | Mr. FITZGERALD (WI) | | | X |
| Ms. MANNING (NC) | | X | | Mr. CAWTHORN (NC) | | | X |
| Mr. MRVAN (IN) | | X | | Mrs. STEEL (CA) | X | | |
| Mr. BOWMAN (NY) | | X | | Ms. LETLOW (LA) | X | | |
| Mr. POCAN (WI) | | | X | <i>Vacancy</i> | | | |
| Mr. CASTRO (TX) | | X | | | | | |
| Ms. SHERRILL (NJ) | | X | | | | | |
| Mr. YARMUTH (KY) | | X | | | | | |
| Mr. ESPAILLAT (NY) | | X | | | | | |
| Mr. KWEISI MFUME (MD) | | | X | | | | |

TOTALS: Ayes: 19

Nos:26

Not Voting: 7

Total: 53 / Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 4

Bill: H.R. 729

Amendment Number: Motion

Disposition: Adopted by a Full Committee vote of 27 ayes; 19 noes

Sponsor/Amendment: Bowman/to report to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill as amended, do pass

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|---------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mr. SCOTT (VA) (Chairman) | X | | | Mrs. FOXX (NC) (Ranking) | | X | |
| Mr. GRIJALVA (AZ) | X | | | Mr. WILSON (SC) | | X | |
| Mr. COURNTEY (CT) | X | | | Mr. THOMPSON (PA) | | | X |
| Mr. SABLAN (MP) | X | | | Mr. WALBERG (MI) | | X | |
| Ms. WILSON (FL) | X | | | Mr. GROTHMAN (WI) | | | X |
| Ms. BONAMICI (OR) | X | | | Ms. STEFANIK (NY) | | X | |
| Mr. TAKANO (CA) | X | | | Mr. ALLEN (GA) | | X | |
| Ms. ADAMS (NC) | X | | | Mr. BANKS (IN) | | X | |
| Mr. DESAULNIER (CA) | X | | | Mr. COMER (KY) | | X | |
| Mr. NORCROSS (NJ) | X | | | Mr. FULCHER (ID) | | X | |
| Ms. JAYAPAL (WA) | X | | | Mr. KELLER (PA) | | X | |
| Mr. MORELLE (NY) | X | | | Mr. MURPHY (NC) | | X | |
| Ms. WILD (PA) | X | | | Ms. MILLER-MEEKS (IA) | | X | |
| Mrs. MCBATH (GA) | X | | | Mr. OWENS (UT) | | X | |
| Mrs. HAYES (CT) | X | | | Mr. GOOD (VA) | | X | |
| Mr. LEVIN (MI) | X | | | Mrs. MCCLAIN (MI) | | X | |
| Ms. OMAR (MN) | | | X | Mrs. HARSHBARGER (TN) | | X | |
| Ms. STEVENS (MI) | X | | | Mrs. MILLER (IL) | | X | |
| Ms. LEGER FERNANDEZ (NM) | X | | | Mrs. SPARTZ (IN) | | X | |
| Mr. JONES (NY) | X | | | Mr. FITZGERALD (WI) | | | X |
| Ms. MANNING (NC) | X | | | Mr. CAWTHORN (NC) | | | X |
| Mr. MRVAN (IN) | X | | | Mrs. STEEL (CA) | | X | |
| Mr. BOWMAN (NY) | X | | | Ms. LETLOW (LA) | | X | |
| Mr. POCAN (WI) | | | X | <i>Vacancy</i> | | | |
| Mr. CASTRO (TX) | X | | | | | | |
| Ms. SHERRILL (NJ) | X | | | | | | |
| Mr. YARMUTH (KY) | X | | | | | | |
| Mr. ESPAILLAT (NY) | X | | | | | | |
| Mr. KWEISI MFUME (MD) | X | | | | | | |

TOTALS: Ayes: 27

Nos: 19

Not Voting: 6

Total: 53 / Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 729 are to support the development, implementation, and evaluation of strategies to address the effects of racial isolation or concentrated poverty by increasing racial and socioeconomic diversity in public schools.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 729 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

HEARINGS

For the purposes of Section 2(r) of H. Res. 8 for the 117th Congress, the legislative hearings titled “*Lessons Learned: Charting the Path to Educational Equity Post-COVID–19*” held on March 25, 2021, and “*Building Back Better: Investing in Improving Schools, Creating Jobs, and Strengthening Families and Our Economy*” held on April 28, 2021 were used to inform the development of H.R. 729.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with Clause 3(c)(1) of rule XIII and Clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and Section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and Section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 729 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 2021.

Hon. ROBERT C. (BOBBY) SCOTT,
*Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 729, the Strength in Diversity Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leah Koestner.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

| H.R. 729, Strength in Diversity Act of 2021 | | | |
|--|------|-------------------------------------|---------------|
| As ordered reported by the House Committee on Education and Labor on July 15, 2021 | | | |
| By Fiscal Year, Millions of Dollars | 2022 | 2022-2026 | 2022-2031 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Increase or Decrease (-) in the Deficit | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | 3 | 48 | not estimated |
| Statutory pay-as-you-go procedures apply? | No | Mandate Effects | |
| Increases on-budget deficits in any of four consecutive 10-year periods beginning in 2032? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | No |

H.R. 729 would authorize the appropriation of whatever amounts are necessary through 2027 for the Department of Education to operate a grant program for eligible entities to develop or implement plans to improve diversity, and to reduce or eliminate racial or socioeconomic isolation in schools. That authorization would be extended through 2028 under the General Education Provisions Act.

In 2017, the Congress provided \$12 million for a grant program called Opening Doors, Expanding Opportunities. The program in this bill is similar to that program and CBO used that previously appropriated amount as the basis for estimating the authorization level in H.R. 729. After accounting for anticipated inflation, CBO estimates that the authorization would increase to \$13 million in 2026. Based on historical spending patterns of similar programs, and assuming appropriation of the estimated amounts, CBO estimates that implementing H.R. 729 would cost \$48million over the 2022–2026 period.

The costs of the legislation, detailed in Table 1, fall within budget function 500 (education, training, employment, and social services).

TABLE 1—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 729

| | By fiscal year, millions of dollars— | | | | | |
|-------------------------------|--------------------------------------|------|------|------|------|-----------|
| | 2022 | 2023 | 2024 | 2025 | 2026 | 2022–2026 |
| Estimated Authorization | 12 | 12 | 13 | 13 | 13 | 63 |
| Estimated Outlays | 3 | 8 | 11 | 13 | 13 | 48 |

The CBO staff contact for this estimate is Leah Koestner. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 729. However, Clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with Clause 3(e) of rule XIII of the Rules of the House of Representatives, in H.R. 729, as reported, makes no changes to existing law.

MINORITY VIEWS

INTRODUCTION

In 1954, Chief Justice Earl Warren wrote for the unanimous Supreme Court in *Brown v. Board of Education (Brown)* that “[Education], where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”¹ This was a long-overdue and welcomed acknowledgment that separate is not, and can never be, equal. Discrimination and segregation are inhumane, illegal, and immoral. Unfortunately, while segregation is gone from our laws, its lingering effects are not. We know that too many students attend racially and economically isolated schools² and that better integrated schools have academic benefits for all students.³ Unfortunately, Democrats have ignored opportunities for common ground in favor of a partisan bill that will do nothing to solve these lingering issues or expand educational options for students trapped in failing schools.

COMMITTEE CONSIDERATION OF H.R. 729—BIPARTISAN OPPORTUNITY LOST

On July 15, 2021, the House Committee on Education and Labor met to mark up H.R. 729. Because Republicans and Democrats largely agree on the importance of integrated schools, this topic afforded the Committee an opportunity to work across the aisle to find bipartisan compromise. Unfortunately, the majority took a different approach.

H.R. 729 authorizes a new grant program within the Department of Education (Department) for “the development, implementation, and evaluation of comprehensive strategies to address the effects of racial isolation or concentrated poverty . . .”⁴ Committee Republicans support this goal. Unfortunately, Democrats are pursuing it in a way sure to add to the federal government’s long list of broken promises.

In 1975, Congress enacted the predecessor to the *Individuals with Disabilities Education Act (IDEA)*. In that law, Congress promised a maximum grant to every state equal to 40 percent of the national average per-pupil expenditure (APPE). When Republicans took over the House in 1995 for the first time in more than 40 years, and nearly 20 years after IDEA was originally enacted, the federal government was funding IDEA at 8 percent of the na-

¹ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). Page 493.

² “Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination.” U.S. Government Accountability Office. May 17, 2016. <https://www.gao.gov/products/GAO-16-345>

³ Ayscue, Jennifer, et. al. Research Brief: The Complementary Benefits of Racial and Socio-economic Diversity in Schools. The National Coalition on School Diversity. March 2017. <https://school-diversity.org/pdf/DiversityResearchBriefNo10.pdf>

⁴ H.R. 729, the *Strength in Diversity Act of 2021*. Section 2.

tional APPE and Republicans more than doubled that contribution. When Democrats regained the majority in 2007, the federal government was funding IDEA at 17 percent of the national APPE. Unfortunately, the federal government's contribution has steadily declined since then. In fiscal year (FY) 2021 the federal government is funding IDEA at about 13 percent of the national APPE.

Funding progress on this core program has stalled because Democrats have pursued other agendas. For example, in FYs 2012 and 2013, Republicans controlled the House, but Democrats controlled the Senate and the White House. In FY 2012, IDEA was funded at \$11.578 billion. The Republican House proposal for FY 2013 was \$12.078 billion while President Obama proposed flat funding and Senate Democrats proposed a modest increase to \$11.678 billion. The President's level-funding proposal was enacted.

Where did funding increases for the Department go? Among other places, Democrats in Congress and the White House spent nearly \$6 billion on Race to the Top, a program used to coerce states into sweeping policy changes, but which provided actual funding to only a lucky few school districts nationwide. Republicans have consistently prioritized IDEA while Democrats have short-changed this core program to fund their own initiatives.

Now here we are again. The Democrats are advancing H.R. 729, yet another federal program sure to be underfunded while existing priorities continue to be ignored. Rep. Burgess Owens (R-UT) offered a better way to address the issue in Committee Republicans' substitute amendment to the bill. Rep. Owens's substitute would have expanded the Student Support and Academic Enrichment Grants (SSAEG) in the *Every Student Succeeds Act* to allow school districts to use funds to reduce or eliminate racial or socioeconomic isolation in schools. The SSAEG were authorized on a bipartisan basis to give school districts significant resources to address local needs and received \$1.22 billion in FY 2021 appropriated funding.

Committee Republicans offered Democrats an easy bipartisan victory. The Committee could have adopted Rep. Owens's substitute amendment to ensure that school districts have federal funds available for school diversity efforts. Instead, they opted to pass a partisan bill that will only add to the federal government's long list of broken promises.

ADVANCING THE RACIST AGENDA OF THE LEFT

During consideration of H.R. 729, Democrats also ignored an opportunity to stand for students of color and against Critical Race Theory (CRT) and CRT-inspired curriculum and pedagogy. Rep. Bob Good (R-VA) offered an amendment that would have prohibited the Department from conditioning receipt of grant funds on school districts' adoption of content or pedagogy that violates Title VI of the *Civil Rights Act*, including by separating students or teachers based on race, color, or national origin or assigning characteristics or assumptions to individuals based on race, color, or national origin. The amendment also expressed the Sense of Congress against Critical Race Theory. While Republican support for the amendment was unanimous, the amendment was defeated on a party line vote.

CRT has been defined in different ways, but at its essence it argues that American society is and always has been fundamentally racist and that an individual's race is determinative of his or her life outcomes. In seeking to divide Americans on racial grounds, CRT adherents share common cause with white supremacists in reducing the content of peoples' character to the color of their skin.

While debates about CRT can be abstract, a concrete example of CRT in action occurred earlier this year in Oregon. The Democrat-controlled legislature passed, and Democrat governor Kate Brown signed into law, SB 744.⁵ The bill suspends high school Essential Learning Skills assessments for graduation through the 2023–2024 school year and requires the Oregon Department of Education to conduct a review of state high school graduation requirements. The review must include recommendations for changes to the state's high school graduation requirements that will, among other things, ensure “that the processes and outcomes related to the requirements for high school diplomas are equitable, accessible and inclusive.”

Oregon is rightfully concerned that students of color graduate high school at lower rates than other students. However, rather than taking steps to improve its schools and expand educational freedom for students of color, the state has set in motion a process with clear intentions. The state plans to lower its high school graduation requirements so that more students will meet them. Former President George W. Bush famously referred to the sentiment among the public education establishment that schools are powerless to improve the educational outcomes of disadvantaged students as the soft bigotry of low expectations. Sadly, that bigotry is now Democrat Party orthodoxy.

FULFILLING THE PROMISE OF BROWN—EXPANDING OPPORTUNITY

While there is significant alignment between Committee Democrats' and Committee Republicans' goals with respect to H.R. 729, Committee Republicans also believe expanding opportunities for students should be a priority. School choice gives families the opportunity to break the cycle of poverty and enroll their children in challenging environments that better develop their skills and intellects, encouraging them to reach higher. Studies show that when students are given the freedom to attend school in a learning environment best suited to their abilities, they pursue and complete postsecondary opportunities at higher rates.⁶

In April 2019, the Committee held a hearing examining the legacy of Brown as its 65th anniversary approached. Virginia Walden Ford, a parent who advocates for more educational freedom for families wrote to the Committee and said:

The same schools that we fought hard to get into in the 1960's after the [Brown] decision have become the schools we must diligently find a way to get minority children out

⁵ <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB744/Enrolled>

⁶ Chingos, Matthew, et. al. “The Effects of the Florida Tax Credit Scholarship Program on College Enrollment and Graduation.” February 2019. https://www.urban.org/research/publication/effects-florida-tax-credit-scholarship-program-college-enrollment-and-graduation?utm_source=urban_EA&utm_medium=email&utm_campaign=florida_school_choice&utm_term=edu&utm_content=

of. These schools and programs that our children are now forced to attend are creating environments where our kids cannot get the education they deserve.⁷

Loisa Maritza White, another parent advocate, testified to the Committee about her family's use of the DC Opportunity Scholarship Program and the importance of school choice. She said:

Each family has the right to decide what education works best for their individual child(ren) . . . No, indeed, [the *Brown*] mandate has NOT been fulfilled in the last 65 years. But school choice is a step in the right direction in reaching the mandated outcome.⁸

Rep. Lisa McClain (R-MI) offered an amendment that would have ensured that the Department and local grantees could expand public school options, including to attend public charter schools, as a means of reducing racial and socioeconomic isolation. As before, Democrats defeated this opportunity to expand educational freedom to families on a party-line vote. Committee Republicans stand ready to work with our colleagues in the majority to expand educational opportunities to families. *Brown* prohibited the state from assigning students to schools based on race. We should take the next step and eliminate the right of the state to trap children in low-performing schools with no means of escape.

CONCLUSION

As outlined in these Minority Views, H.R. 729 is a lost opportunity. Bipartisan compromise was possible to advance the shared goals of addressing the effects of racial and socioeconomic isolation in education. Unfortunately, Committee Democrats chose a partisan path. Additionally, Democrats ignored the opportunity to stand up for students of color by denouncing the racist CRT ideology. Finally, Committee Republicans believe no effort to erase the evil legacy of segregation and discrimination can be complete without eliminating the state's ability to trap students in low-performing schools. We invite Democrats to listen to parents desperate for better educational options for their children.

VIRGINIA FOXX,
Ranking Member.
 JOE WILSON.
 GLENN "GT" THOMPSON.
 TIM WALBERG.
 GLENN GROTHMAN.
 ELISE M. STEFANIK.
 RICK W. ALLEN.
 JIM BANKS.
 JAMES COMER.
 RUSS FULCHER.
 FRED KELLER.
 GREGORY F. MURPHY, M.D.

⁷Ford, Virginia Walden. Letter to the Committee on Education and Labor. April 27, 2019.

⁸White, Loisa Maritza. Testimony Before the Committee on Education and Labor. April 30, 2019.

MARIANNETTE MILLER-MEEKS,
M.D.
BURGESS OWENS.
BOB GOOD.
LISA C. McCLAIN.
SCOTT FITZGERALD.
MADISON CAWTHORN.
JULIA LETLOW.

