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The Key to Equality: Why We Must Prioritize Summer Learning to Narrow the Socioeconomic Achievement Gap

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THE KEY TO EQUALITY: WHY WE MUST PRIORITIZE SUMMER LEARNING TO NARROW THE SOCIOECONOMIC ACHIEVEMENT GAP

I. INTRODUCTION

As a poor and precocious nine-year-old growing up in a neighborhood plagued by violence, Tony struggles to find productive ways to spend his down time during the summer. His mother is a single parent with two jobs, each necessary to provide the bare necessities for Tony and his three younger siblings, but insufficient for luxuries such as enrolling children in a summer program. Tony's mother, while lacking the economic wherewithal, is not devoid of wisdom. Each morning, before she heads to work, she issues an important decree that all must obey: stay inside. Each day, Tony abides by his mother's orders, and sees to it that his siblings do as well. Today, as his mother exits the apartment and issues her usual order, Tony acknowledges and promises to obey. This summer—like last summer and every other summer—will be 2000 hours inside a small apartment for the Tonys of America's poor neighborhoods.

Meanwhile, across town in a much more privileged neighborhood, nine-year-old Sammie prepares herself for another exciting day at summer camp. She remembers to pack J.K. Rowling's Harry Potter: The Sorcerer's Stone for the reading discussion that all the campers will have with their group leader. She has had an exciting three weeks participating in various enrichment activities, including playing sports, visiting museums, and playing scrabble and chess. Sammie can hardly wait to partake in today's activities. Her juvenile jubilation compels her to the front door, where she impatiently awaits her mother, who is currently booking hotel rooms for this year's family trip to colonial Williamsburg. This fun-filled, jam-packed, educationally enriching summer is typical for the Sammies of America's middle-class neighborhoods. These youths spend significant time learning and very few hours sitting at home idle and unsupervised.

Unfortunately, these stories exemplify the summer-time disparities that exist between the children from poor families and those with means. Because of their circumstances, socioeconomically disadvantaged students “lose ground” academically over the summer, as researchers

have documented for decades.¹ In 1982, researchers investigated the cause of this phenomenon in Baltimore, Maryland by conducting a study (the “BSS Study”) on elementary school students.² Students were randomly selected from twenty Baltimore elementary schools.³ During their first grade year, students completed standardized tests administered twice to all children within the city of Baltimore, once in the fall at the beginning of the school year, and once in the spring at the end of the school year.⁴ The results of these tests initially revealed two things. First, upon arrival in the first grade, children from a more advantaged socioeconomic background⁵ were more academically advanced than their lower income counterparts.⁶ Second, both rich and poor kids made similar progress during the school year.⁷

Then came summer. Low-income students regressed academically over the summer following their first grade year, while their better-off peers made academic gains.⁸ During their second grade year the cycle repeated: students from low-income and better-off backgrounds made similar gains during the school year.⁹ But then again, the socioeconomically disadvantaged students lost ground the following summer while the better-offs continued to make gains.¹⁰ This trend has been termed the ‘summer learning loss,’ and research has proven that it plagues poor students into their high school years, and each year the summer losses compound the gap between children from different socioeconomic classes.¹¹ By the age of twenty-two, 64 percent of the

¹ See generally Karl L. Alexander et al., *Summer Learning and its Implications: Insights from the Beginning School Study*, NEW DIRECTIONS FOR YOUTH DEV. 11, 16 (Ron Fairchild & Gil G. Noam eds., 2007) (explaining research results accumulated from 1982 to 2006).

² See *id.*

³ *Id.*

⁴ *Id.* The researchers notably recognized that they could only compute achievement gains on a seasonal basis if they administered two tests per year, an issue that is addressed in this paper as a change to be made to education policy and practice. *Id.*

⁵ According to the American Psychological Association, socioeconomic status is “measured as a combination of [three factors:] education, income, and occupation.” *Economic & Socioeconomic Status*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/pi/ses/resources/publications/factsheet-education.aspx> (last visited Jan. 30, 2015.).

⁶ See Alexander et al., *supra* note 1, at 19 (stating that low income students begin elementary school at a disadvantage).

⁷ See Alexander et al., *supra* note 1 at 18. While poor children were progressing at similar rates when compared to better-off children during the school year, they were not performing at the same level by the end of the year. *Id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.* at 17–22. Researchers also noted that some of the disparity in academic achievement is attributable to learning discrepancies between children of different income groups, even before entering elementary school. See *id.* at 19. These “gaps” will not be discussed in great detail in this Comment, but it is important to note that the same socioeconomic factors operating on children of school age were also present in years prior.

low-income students in the BSS Study earned a high school degree while 97 percent of the better-offs did.¹² Similarly, only 7 percent of the low-income students had attended a four-year college by the age of twenty-two while 59 percent of their wealthier peers had done so.¹³

These statistics are compelling and disturbing, and several studies have made it clear summer learning loss is widespread in all parts of the country and has a compounding effect over time.¹⁴ However virtually nothing has been done to counteract the summer learning loss phenomenon as a legal or public funding matter.¹⁵ Instead, the contemporary and predominant focus on education has centered on policies tailored to the traditional school year.¹⁶ Although educational reform targeted at improving schools during the academic school year is certainly important, these remedial measures will not effectively resolve achievement disparities without confronting the extraordinary effect of summer learning loss. As a nation, we have implemented educational programs for the school year that allow rich kids and poor kids to learn at approximately the same rate during their school years.¹⁷ These reforms are to be lauded, but school-year educational equity is not the primary source of academic disparity—summer is the problem. It is the summer that determines children’s academic achievement, and it is the cumulative effect of summer learning loss, more than any other factor, that creates such an extraordinary disparity between kids with means and

¹² *Id.* at 22.

¹³ *Id.*

¹⁴ Jeff Smink, *This is Your Brain on Summer*, N.Y. TIMES (July 27, 2011), available at http://www.nytimes.com/2011/07/28/opinion/28smink.html?_r=0. See Geoffrey D. Borman & N. Maritza Dowling, *Longitudinal Achievement Effects of Multiyear Summer School: Evidence From the Teach Baltimore Randomized Field Trial*, 28 EDUC. EVALUATION & POL’Y ANALYSIS 25, 45 (2006) (“[T]he accumulation of summer learning losses may be the principal reason that [disadvantaged student] achievement levels lag farther and farther behind as the students proceed through school.”); see also MCCALL ET AL., *ACHIEVEMENT GAPS: AN EXAMINATION OF DIFFERENCE IN STUDENT ACHIEVEMENT AND GROWTH*, NORTHWEST EVALUATION ASSOCIATION, 43 (2006) (finding that disparities in academic gains over the summer can lead to an aggregate achievement gap that is substantial in size).

¹⁵ Congress has overlooked attempts to remedy the summer learning loss problem. For example, the Summer Term Education Programs for Upward Performance Act of 2005 and the Summer Term Education Programs for Upward Performance Act of 2007 both sought to mitigate summer learning loss among economically disadvantaged students, but neither made it to the Senate floor for debate. S. 2149, 109th Cong. (2005); S. 116, 110th Cong. (2007).

¹⁶ See generally *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013) (concerning the constitutionality of public university affirmative action policies); *Schuetz v. Coal. to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equal. By Any Means Necessary*, 134 S. Ct. 1623 (2014) (discussing the constitutionality of enacting a state constitutional amendment banning affirmative action).

¹⁷ See e.g., No Child Left Behind Act of 2001, Pub. L. 107-110, § 1001(4), 115 Stat. 1425, 1439–40 (2002) (“The purpose of this title is to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach . . . by holding schools . . . accountable for improving the academic achievement of students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students.”).

poor kids—a disparity so large that school-year education reforms, remedial learning programs and brilliant teachers combined cannot remedy.¹⁸

This Comment argues that policymakers should primarily seek to resolve the academic achievement gap by refocusing money, programs, and legal incentives towards mitigating summer learning loss. Part II explains the socioeconomic factors that are often credited with exacerbating the achievement gap, and then elaborates on how summer learning loss is tied to those factors. Part III introduces the summer learning loss phenomenon, examines its probable root causes and argues it should become the central focus for remedial action. Additionally, Part III examines some of the systemic failures that have perpetuated and exacerbated the summer learning loss disparity between the “haves” and the “have-nots.” Part IV introduces some practical solutions for eliminating the damage caused by summer learning loss, and argues that policymakers at the national, state, and local levels should adopt a year-round perspective to academic equity and enrichment. Part IV further argues that policymakers should collaborate on initiatives specifically targeted at eliminating the summer gap, then examines legislative and adjudicative mechanisms that could serve as a means to resolve the summer learning loss disparity.

II. SOCIOECONOMIC STATUS IS THE PRIMARY PREDICTOR OF ACADEMIC ACHIEVEMENT

“In 1966, the Coleman Report identified socioeconomic status as the predominant cause of disparities in students’ academic achievement and education outcomes.”¹⁹ After dispelling the notion that race was a predominant factor in determining educational achievement, the Coleman Report further found socioeconomically diverse student bodies were most correlated to better learning environments and higher academic performance for all students.²⁰

Although the Coleman Report was based on data and social and economic trends from a half-century ago, its ultimate conclusion remains applicable today. Consistent with the Coleman Report, low-income

¹⁸ See *Horizons National, Summer Learning*, YOUTUBE (Apr. 27, 2011), <https://www.youtube.com/watch?v=Ahhj3wxxkM> (last visited Feb. 27, 2015) (explaining that the gap between lower- and higher-income students may grow to 2.5–3 years in academic achievement by the end of 5th grade).

¹⁹ See Tiffany D. Curtis, *ESSAY: Equal Protection Via Equal Education: Why Congress Should Use Socioeconomic Integration As a Method of Education Reform*, 14 *LOY. J. PUB. INT. L.* 465, 471 (2013) (citations omitted).

²⁰ See *id.* at 471–72 (2013) (citing James S. Coleman et al., U.S. Dep’t of Health, Educ. & Welfare, *Equality of Educational Opportunity* (1966)).

students are still less likely to perform as well as their higher income peers in school.²¹ For example, in 2013, 51 percent of fourth grade students above the financial cutoff for free or reduced-price lunch scored at or above the proficiency threshold on the National Assessment of Educational Progress (NAEP) reading assessment.²² By contrast, for students below that financial cutoff, only 30 percent of students eligible for reduced-price lunch and only 18 percent of students eligible for free lunch were reading proficiently.²³ In other words, a fourth grader whose family income is above the limit for free or reduced price lunch was 1.5 to three times more likely to be a proficient reader than a student whose family income was below the limit.²⁴ While these figures represent just a snapshot in time, they are representative of achievement disparities that have only widened over the last fifty years.²⁵ Indeed, the achievement gap between students from high- and low-income families is estimated to be over 40 percent larger among children born in 2001 than among those born twenty-five years earlier.²⁶ Thus, just as it had in 1966, income continues to strongly predict academic success.

While wealth appears to be the primary determinant of academic success, research suggests that it may indeed be factors that are incident to income that cause those wealth-related educational outcomes. For example, parental influence may also impact student achievement levels; research indicates, “students perform better in schools where parents are actively involved.”²⁷ In this regard, as an example, middle-income parents tend to be more involved at their children’s schools than their low-income counterparts because low-income parents typically have to compensate for their lower hourly rate salaries by maintaining multiple

²¹ See Richard D. Kahlenberg, *High-Poverty Schooling in America: Lessons in Second-Class Citizenship: Reflections: Socioeconomic School Integration*, 85 N.C. L. REV. 1545, 1548 (2007) (“[L]ow-income schools are less likely to perform well, in part, because individual low-income students come from families that have less access to health care, adequate nutrition, a quiet place to work, and the like.”).

²² *What Proportions of Student Groups are Reading Proficient*, THE NATION’S REPORT CARD, http://nationsreportcard.gov/reading_math_2013/#/student-groups (last visited Feb. 27, 2015) (scroll to the third drop-down field entitled “Subject/Grade”; select Reading 4th Grade; select “NSLP Eligibility” from the fourth drop-down menu entitled “Student Group”).

²³ *Id.*

²⁴ *See id.*

²⁵ Sean F. Reardon, *The Widening Academic Achievement Gap between the Rich and the Poor: New Evidence and Possible Explanations*, HARVARD KENNEDY SCHOOL, <http://www.hks.harvard.edu/inequality/Seminar/Papers/Reardon11.pdf> (last visited Jan. 30, 2015).

²⁶ *Id.* at 10.

²⁷ See Kahlenberg, *supra* note 21, at 1550; see also BETH M. MILLER, THE LEARNING SEASON: THE UNTAPPED POWER OF SUMMER TO ADVANCE STUDENT ACHIEVEMENT 18 (2007), <https://www.nmfoundation.org/getmedia/54cf9a81-a689-4017-a826-a165d1c2f1c5/Learning-Season-FULL06> (last visited Jan 30, 2015) (“Research on education and youth development as well as resiliency research, all point to the key role played by young people’s relationships with . . . parents.”) (citations omitted).

jobs.²⁸ In fact, “[p]arents of students in middle class schools are four times more likely than those in low-income schools to be members of parent-teacher organizations,”²⁹ which are essential for student enrichment.

Like parental influence on student learning, teacher influence is economically correlated. Studies show that the best teachers prefer and are more likely to work at middle class schools.³⁰ This strongly determines student opportunity to excel in academic environments for a few reasons. First, teachers who choose to instruct at middle class schools “are more likely to be licensed to teach in their field of expertise.”³¹ Second, these teachers are more likely to be experienced instructors.³² Third, teachers who choose to instruct at a middle class school are more likely to have greater formal education.³³ These factors entitle teachers to higher expectations of their students, which often translate to better student achievement.³⁴

Beyond their parents and their teachers, student achievement may also correlate with peer influence, which is also socio-economically correlated.³⁵ Unfavorable learning tendencies such as skipping class or watching television are more prevalent among lower-income students than their higher-income counterparts.³⁶ Additionally, lower-income students in economically disadvantaged school settings do not have the benefit of learning as much from their peers. Research suggests that middle class students arrive at elementary school with a more expansive vocabulary than low-income children.³⁷ Lower-income students also

²⁸ See Kahlenberg, *supra* note 21, at 1550; see also MILLER, *supra* note 27, at 12 (indicating that low income parents have to delegate child rearing responsibilities to their older children because of their work hours).

²⁹ See *id.* at 1550.

³⁰ See *id.* These teachers are also more likely to have high teacher test scores. *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* But see Charles T. Clotfelter et al., *How and Why Do Teachers Credentials Matter for Student Achievement?* 39 (Nat’l Ctr. for Analysis of Longitudinal Data in Educ. Research, Working Paper No. 2), available at <http://files.eric.ed.gov/fulltext/ED509655.pdf> (“[E]ven highly credentialed teachers are not likely to offset the effects of educationally impoverished family backgrounds on student achievement in reading.”).

³⁵ See Kahlenberg, *supra* note 21, at 1549.

³⁶ *Id.* The number of hours a child watches television may have a lasting detrimental impact on his academic future. See MILLER, *supra* note 27, at 13 (“[C]hildren who watch[] more television during childhood and adolescence [are] more likely to drop out of school and less likely to attain a college degree, even after controlling for IQ and gender.”).

³⁷ Kahlenberg, *supra* note 21, at 1549; see also Christopher Bergland, *Tackling the “Vocabulary Gap” Between Rich and Poor Children*, THE ATHLETE’S WAY (Feb. 16, 2014), available at <http://www.psychologytoday.com/blog/the-athletes-way/201402/tackling-the-vocabulary-gap-between-rich-and-poor-children> (“By age three, it is believed that children growing up in poor neighborhoods or from lower-income families may hear up to 30 million fewer words than their more privileged counterparts.”); .

have less expectation to attend college, which could translate into underachievement that may not only affect them, but their fellow students as well.³⁸

Research also shows that residential patterns may factor into academic achievement levels. Many public schools are socioeconomically segregated.³⁹ Because income and wealth are determinative of academic outcomes, many researchers have found that high-poverty schools present a “very difficult environment for student learning.”⁴⁰ In comparison, middle class schools provide nurturing environments, which cultivate and encourage academic growth and curiosity.⁴¹

Nevertheless, factors such as parental, teacher, and peer influence and residential patterns only tell part of the story. According to researchers, children experience the academic regression of “learning loss” during summer vacation.⁴² Summer learning loss is the phenomenon in which students lose academic knowledge gained in the school year during the summer months as a result of limited educational engagement.⁴³ Although summer learning loss affects all children, it does so disparately, creating an academic divide among disadvantaged students and their richer peers that cannot be accounted for by other factors.⁴⁴ As such, the achievement gap cannot be fully appreciated without a thorough understanding of the summer learning loss problem.

³⁸ See William Elliott III, *Children’s College Aspirations and Expectations: The Potential Role of Children’s Development Accounts (CDAs)*, 31 CHILDREN & YOUTH SERVICES REV. 274, 279 (2008); Kahlenberg, *supra* note 21, at 1549.

³⁹ Halley Potter, *Boosting Achievement by Pursuing Diversity*, 70 EDUC. LEADERSHIP 38, 40 (2013); see also Derek W. Black, *Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 B.C. L. REV. 373, 374 (2012).

⁴⁰ Kahlenberg, *supra* note 21, at 1547.

⁴¹ See Black, *supra* note 39, at 409 (“Although high-poverty schools can undermine students’ education, predominantly middle-income schools bring affirmative benefits to the learning environment.”).

⁴² See Brenda McLaughlin & Jeffrey Smink, *Summer Learning: Moving from the Periphery to the Core*, 10 EDUC. COMM’N OF THE STATES 3 (June 2009), available at <http://www.ecs.org/clearinghouse/80/99/8099.pdf> (“Since 1906, there have been 39 empirical studies that have found incontrovertible evidence of a pattern of ‘summer learning loss.’”); see also CATHERINE H. AUGUSTINE ET AL., GETTING TO WORK ON SUMMER LEARNING: RECOMMENDED PRACTICES FOR SUCCESS xi (2013); MILLER, *supra* note 27, at 4 (“The phenomenon of summer undoing school-year learning has come to be known as ‘summer learning loss.’”).

⁴³ See McLaughlin & Smink, *supra* note 42, at 1 (“Without ongoing opportunities to learn and practice essential skills, kids fall behind on measures of academic achievement over the summer months.”).

⁴⁴ See MILLER, *supra* note 27, at 7 (finding that all children experience math learning loss over the summer).

III. SUMMER READING LOSS DISPARATELY IMPACTS SOCIOECONOMICALLY DISADVANTAGED STUDENTS

A. “Summer Learning Loss” Defined

While this phenomenon has received minimal attention in the law and is virtually unknown by the public at large, it was actually first commented on in 1906⁴⁵ and addressed in greater depth starting in 1978 by Barbara Heyns.⁴⁶ Ironically, this phenomenon still remains undiscussed and unknown by the public and by most school boards in America, despite the fact that it has been well documented for more than a century by education researchers.⁴⁷

Researchers agree that summer learning loss is a common phenomenon with profound effects.⁴⁸ Studies have shown that all primary school children regress in reading and mathematics during summer vacation.⁴⁹ While rich and poor students lose approximately “two months of grade-level equivalency in mathematical computation skills over the summer,”⁵⁰ regressions in reading skills do not occur uniformly across socioeconomic boundaries.⁵¹ In a single summer, low-income youth can lose more than two months in reading achievement, while their higher income peers have the opposite experience and realize improvements in reading achievement during their summer vacation.⁵² Therefore, relative to each other, the net effect of these shifts is that there is a summer achievement “gap” that grows between the socioeconomic classes. This gap occurs for various reasons, as explained in Part B, but principally because poorer families, unlike middle and upper-class families, cannot make up for the lack of academically enriching

⁴⁵ At this time, William White, a professor of mathematics, tested seven students on math computation in June and then retested them in September. Harris Cooper et al., *The Effects of Summer Vacation on Achievement Test Scores: A Narrative and Meta-Analytic Review*, 66 REV. OF EDUC. RESEARCH 227, 233 (1996). White observed that students lagged in speed but not accuracy. *Id.*

⁴⁶ MILLER, *supra* note 27, at 4.

⁴⁷ *Id.* (“While summer learning loss has operated mostly under the radar, the effects of early childhood experiences on racial, ethnic, and class test-score achievement gaps have received a great deal of media and research attention.”) (internal quotation marks omitted).

⁴⁸ *Id.* at 1 (“Many researchers have arrived at a similar set of conclusions [regarding summer learning loss]: that children in all socioeconomic groups are learning at nearly the same rate . . . during the school year, and that differences in achievement between poor and middle-class children are rooted in inequities that young people experience outside the schoolhouse door . . . [T]he findings regarding summer learning loss are profound . . .”).

⁴⁹ *Id.* at 7 (“[Researchers] found that all children lose an average of 2.6 months of grade-level equivalency in math skills over the summer. In reading, . . . middle-class children gain on reading tests over the summer, while lower-income children lose ground.”) (italics omitted).

⁵⁰ McLaughlin & Smink, *supra* note 42, at 1.

⁵¹ See MILLER, *supra* note 27, at 7.

⁵² McLaughlin & Smink, *supra* note 42, at 1.

resources that are offered to their children by public schools during the school year. This disparity compounds each successive summer, creating a cumulative gap of one to two years in reading achievement between underprivileged students and their more advantaged classmates by the end of sixth grade.⁵³

This devastating cumulative loss has tremendous implications for poor students' progression and for their future academic achievement. First, because summer disparities cannot be fully made up for during the academic school year, those who lose ground early may fall increasingly behind in subsequent years. In the often-cited study on Baltimore Public School children, Karl Alexander and his colleagues found that the cumulative summer gap between upper-class and lower-class students accounted for nearly the entire achievement disparity by the end of fifth grade.⁵⁴ This finding is consistent with the conclusions of other educational experts, indicating that losses over the summer substantially exacerbate the achievement gap between students from different socioeconomic backgrounds.⁵⁵ Thus, socioeconomically disadvantaged students who do not participate in any summer enrichment or remedial programs in elementary school will enter middle school at a significant, and virtually insurmountable, academic disadvantage.

Tragically, the disparities continue and cumulate as students continue into middle and high school. Research has shown that early cumulative summer learning deficits significantly contribute to the achievement gap between disadvantaged high school students and their wealthy and middle-class peers.⁵⁶ The reading gap is especially dangerous because

⁵³ See SUSAN ROMAN & CAROLE D. FIORE, DO PUBLIC LIBRARY SUMMER READING PROGRAMS CLOSE THE ACHIEVEMENT GAP? 9 (2010) ("[Summer reading] loss accumulates each summer and may become a gap of eighteen months by the end of sixth grade, and two or more years by middle school."). One study estimated that the gap might be 2.5 years at the end of fifth grade. See MILLER, *supra* note 27, at 5–6.

⁵⁴ Alexander et al., *supra* note 1 at 19.

⁵⁵ See Borman et al. *Longitudinal Achievement Effects of Multiyear Summer School: Evidence from the Teach Baltimore Randomized Field Trial*, 28 EDUC. EVALUATION AND POL'Y ANALYSIS 25, 45 ("For disadvantaged students, though, the accumulation of summer learning losses may be the principal reason that their achievement levels lag farther and farther behind as the students proceed through school."); MCCALL ET AL., ACHIEVEMENT GAPS: AN EXAMINATION OF DIFFERENCE IN STUDENT ACHIEVEMENT AND GROWTH, NORTHWEST EVALUATION ASSOCIATION, 43 (2006) (finding that disparities in academic gains over the summer can lead to an aggregate achievement gap that is "substantial" in size). Organizations and experts that seek to eliminate the deleterious effects of summer learning loss also recognized that a cumulative gap exists. See, e.g., AUGUSTINE ET AL., *supra* note 42, at 24 ("[I]t appears that summer learning loss is cumulative and that, over time, these periods of differential learning rates between low-income and higher-income students contribute substantially to the achievement gap.").

⁵⁶ See *One Step Forward Three Steps Back: How Summer Learning Loss Is Widening the Achievement Gap*, GAFCP.ORG (May 2012), http://www.gafcp.org/sys_gafcp/publications/PolicyPapers/SummLearnLoss.pdf [hereinafter *One Step Forward*] ("Research tells us it is possible to identify high-school dropouts as early as third grade based on their reading proficiency.")

early reading proficiency is considered to be critical to the future educational success of all students.⁵⁷ In fact, summer losses that accrue in the elementary years persist through high school, and may ultimately reduce the likelihood that a student will graduate high school in four years.⁵⁸ Thus, while early summer learning loss creates short-term handicaps for poor students in their elementary school years, it has even more deleterious long-term repercussions on poor students' secondary educational achievement, college attendance rates, and job prospects.

Moreover, aggregate summer reading deficits can also affect success in college. Advanced reading habits are essential necessary for collegiate research and writing assignments, as well as class participation.⁵⁹ Because students from poor socioeconomic backgrounds are less likely to have a strong foundation in reading, they enter college less prepared and more likely to drop out.⁶⁰ Hence, the long-term repercussions of early summer reading deficits can be seen in the problems affecting students from disadvantaged backgrounds even into their college years.

America has long recognized how its economic disparities influence academic achievement.⁶¹ However, virtually all legislative effort at the federal, state, and local levels to reduce this achievement gap has been devoted to improving aspects of the school year.⁶² This school-year focus

⁵⁷ See Catherine Gewertz, *States Target Early Years to Reach 3rd Grade Reading Goals*, EDUC. WEEK (June 29, 2011), <http://www.edweek.org/ew/articles/2011/06/29/36literacy.h30.html> ("It's not unusual for states or school districts to consider 3rd grade reading proficiency a key goal; research suggests it's a pivotal skill.").

⁵⁸ DONALD J. HERNANDEZ, DOUBLE JEOPARDY: HOW THIRD-GRADE READING SKILLS AND POVERTY INFLUENCE HIGH SCHOOL GRADUATION 8 (2012) ("Children who have lived in poverty and are not reading proficiently in third grade are about three times more likely to dropout or fail to graduate from high school than those who have never been poor.").

⁵⁹ Kimberly B. Pyne, *Reading and College Readiness*, EDUC. LEADERSHIP (June 2012), <http://www.ascd.org/publications/educational-leadership/jun12/vol69/num09/Reading-and-College-Readiness.aspx>. Indeed, reading competency is considered to be central to academic success according to some research. See CLIFFORD ADELMAN, U.S. DEP'T OF EDUC., ANSWERS IN THE TOOL BOX: ACADEMIC INTENSITY ATTENDANCE PATTERNS, AND BACHELOR'S DEGREE ATTAINMENT 74 (1999) (finding that students who needed to take any remedial courses in college were less likely to earn a bachelor's degree). The chance for success in college when a student lacks the ability to read proficiently is low. Clifford Adelman, *The Kiss of Death? An Alternative View of College Remediation*, NAT'L CROSSTALK, <http://www.highereducation.org/crosstalk/ct0798/voices0798-adelman.shtml> (last visited Jan. 30, 2015).

⁶⁰ See Pyne, *supra* note 59 ("Developing strong reader identities . . . [is] especially crucial for low-income students whose college completion rates are much lower than those of their middle-income peers.").

⁶¹ See *Elementary and Secondary Education Act of 1965 (ESEA)*, AECT.ORG (2001), http://aect.site-ym.com/?page=elementary_and_secon (last visited Feb. 27, 2015) ("The overall purpose of ESEA was to improve educational opportunities for poor children.").

⁶² See, e.g., No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 1111(b)(2)(A), 115 Stat. 1445 (2002) ("Each State plan shall demonstrate that the State has developed and is implementing a single statewide State accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress . . ."). A plain reading of The No Child Left Behind Act of 2001 reveals that summer learning had been contemplated as a possible means to narrow the achievement gap. See *id.* at 115

is certainly necessary because it furthers the basic goal of educating and enriching students. However, at this point, policymakers should pay greater attention to summer learning patterns because research reveals that the achievement gap actually grows significantly more during the summer months than during the school year.⁶³ In fact, research shows that socioeconomically disadvantaged students make gains at a similar rate during the school year as their more advantaged peers, in that each group moved forward during the school year at the same pace.⁶⁴ In the BSS study, researchers found that socioeconomically disadvantaged students kept pace with their more privileged peers during the 9-month school year.⁶⁵ Indeed, BSS researchers found that over the course of the school year, the at-risk children made slightly greater achievement gains than advantaged students.⁶⁶ In support of these conclusions, researchers in a separate longitudinal study found that while in school, students in low-income schools made similar achievement gains as higher-income students.⁶⁷ Thus, according to important research, the discrepancies in achievement are primarily attributable to the summer learning loss phenomenon and not to deficiencies during the school year.⁶⁸

It is the premise of this piece, therefore, that the summer learning loss phenomenon should become the focus of educational reform going forward. School-year equity is not the primary cause of the education disparities seen throughout America that have been worsening decade by decade—the heart of the schooling problem lies outside the school year. It is summer.

Stat. 1472–73 (“A schoolwide program shall include . . . [s]choolwide reform strategies that . . . use effective methods and instructional strategies that . . . increase the amount and quality of learning time, such as providing . . . summer programs and opportunities . . .”). However, the overwhelming and central focus of No Child Left Behind appears to be on school improvement, indicating that academic enrichment during the 9-month school year is primarily the focus of the legislation, not year-round learning. See Coby Meyers, *The Centralizing Role of Terminology: A Consideration of Achievement Gap, NCLB, and School Turnaround*, 87 PEABODY J. OF EDUC. 468, 474 (2012) (“NCLB marked a significant shift in federal education policy, with heavy emphasis on increased accountability . . . and expanded school choice.”) (citation and quotations omitted). Federal enactment of No Child Left behind also meant that states and school districts had to be more concerned with student learning during the 9-month school year, as the law mandated that “all states annually assess students in Grades 3 through 8, set ambitious and uniform improvement goals for their schools, and prescribe sanctions for schools that failed to meet these goals.” *Id.* at 475.

⁶³ See Alexander et al., *supra* note 1, at 17–18.

⁶⁴ See *id.*

⁶⁵ See *id.* (“In fact, [disadvantaged students] might even make up a bit of ground: their cumulative school-year gain is 191.3 points, and that for the [advantaged] group is 187.0 points.”).

⁶⁶ *Id.*

⁶⁷ See MILLER, *supra* note 27, at 7 (“If one were simply to add the gap that existed at the beginning of elementary school to the gaps that are created when school is not in session during the summer, that would account for virtually the entire achievement gap between middle-class and disadvantaged students at the end of elementary school.”) (citation omitted).

⁶⁸ See *id.*

Therefore, the ideal approach to remedying education inequities requires school districts to consider summer programs as an integral part of their core educational strategy. Such is not currently the case. Often, district officials are so beset with general financial concerns that summer programs become a casualty of budget battles.⁶⁹ However, even though these officials' fiscal apprehensions about spending on new programs may be legitimate, there are equally costly hidden factors school districts underestimate that are being caused by summer learning loss. First, teachers spend significant time re-teaching the previous year's material to students who suffer from summer learning loss.⁷⁰ Because remediation subtracts from the time allotted to enrichment activities during the school year, teachers confronting learning loss issues must necessarily spend less time covering new material. This is costly to the taxpayer, to the teacher, and to society as a whole. Second, the cumulative inefficiencies associated with re-teaching material are high. One expert estimates that over the duration of one child's primary and secondary education, the total cost of inefficiency resulting from one month of re-teaching material each fall is over \$18,000.⁷¹ This estimate does not appear far-fetched considering the hundreds of millions of dollars that states spend on remedial education annually.⁷² Therefore, sacrificing summer programs because of fiscal constraints may save money in the short-term,⁷³ but the long-term effects of summer learning loss may pose an even greater loss for school districts and taxpayers.⁷⁴

⁶⁹ See, e.g., Emma Brown & Tim Craig, *D.C. Spending Plan Cuts Programs and Staff at Dozens of Schools*, WASH. POST (May 2, 2013), http://www.washingtonpost.com/local/education/despending-plan-cuts-programs-and-staff-at-dozens-of-schools/2013/05/01/e973b7c4-b1a9-11e2-bbf2-a6f9e9d79e19_story.html (describing the District's plan to switch to invitation-only enrollment for the summer because of limited resources).

⁷⁰ See Brett M. Kelman, *Summer School: Should More Kids Go?*, USA TODAY (June 29, 2013, 5:09 PM), <http://www.usatoday.com/story/news/nation/2013/06/28/summer-school-not-a-penalty-but-a-chance-to-dream/2472519/> ("Sixty-six percent of teachers say it takes at least three to four weeks to reteach skills at the beginning of a new school year.").

⁷¹ Ronald A. Fairchild & Matthew Boulay, *What If Summer Learning Loss Were an Education Policy Priority*, 6 (Nov. 9, 2002), <http://www.whatkidscando.org/archives/whatslearned/WhatIfSummerLearning.pdf>.

⁷² See *Hot Topics in Higher Education Reforming Remedial Education*, NAT'L CONFERENCE OF STATE LEGISLATURE, <http://www.ncsl.org/research/education/improving-college-completion-reforming-remedial.aspx#FF> (last visited Mar. 11, 2015) ("[C]osts of remedial education to states and students [is estimated] at around \$2.3 billion each year.").

⁷³ AUGUSTINE ET AL., *supra* note 42, at 43 (indicating that funding is the greatest challenge that school districts face). *But see* Fairchild & Boulay, *supra* note 71 (finding that summer programming offered by a district is less expensive on a per-week, per-pupil basis than education costs during the academic year).

⁷⁴ See *Avoiding the Summer Slide: The Importance of Summer School to Student Achievement: Hearing Before the S. Comm. On Health, Education, Labor, and Pensions*, 107th Cong. (2003) [hereinafter *Avoiding the Summer Slide*] (statement of Christina Ramoglou at 26, questioning whether this nation could afford to have high school graduates who are unable to read).

B. Possible Root Causes

Research has sought root causes of the achievement gap between low-income students and their middle- and upper-class peers resulting from summer learning loss.⁷⁵ Some research indicates a lack of participation in summer camps or enrichment programs by poorer students may directly impact achievement disparities.⁷⁶ Because summer camp enrollment usually requires some monetary consideration, low-income youth are less likely to participate than their middle and upper-class counterparts.⁷⁷ Additionally, disadvantaged students often have familial obligations that may impede their ability to participate in summer learning programs.⁷⁸

The achievement gap can also be explained, in part, by summer reading trends and differential access to books.⁷⁹ Some experts have shown that summer learning is strongly correlated to the number of books read and the frequency that students read for leisure.⁸⁰ This is because reading has a profound and cumulative impact on academics generally because it is the primary—and most effective—way to improve literacy skills in fluency, comprehension and vocabulary.⁸¹ Indeed, studies have shown that students who are economically disadvantaged have a greater tendency to experience summer reading loss because they read less and have limited access to reading material.⁸² As a result, disadvantaged students' reading scores drop significantly relative to their higher-income peers after the summer months.⁸³ After several successive

⁷⁵ See generally Alexander et al., *supra* note 1.

⁷⁶ McLaughlin & Smink, *supra* note 42, at 2–3 (indicating that the low summer camp attendance rate among disadvantaged students may contribute to the growth in the achievement gap).

⁷⁷ *Id.*

⁷⁸ See *Avoiding the Summer Slide*, *supra* note 74, at 35–36 (indicating that socioeconomically disadvantaged students are responsible for supervising their siblings during the summer months, which will inhibit them from attending summer school).

⁷⁹ See ROMAN & FIORE, *supra* note 53, at 13 (“[T]he public library . . . directly influences children’s reading. Educational policies that increase access to books, perhaps through increased library services, stand to have an important impact on achievement, particularly for less advantaged children.”) (citation omitted).

⁸⁰ Jimmy Kim, *Summer Reading and the Ethnic Achievement Gap*, 9 J. EDUC. FOR STUDENTS PLACED AT RISK 169, 169 (2004); see ROMAN & FIORE, *supra* note 53, at 14 (“Both the number of books read and participating in a group in which reading and literacy activities are valued add significantly to improved reading abilities, achievement, and attitudes.”).

⁸¹ MILLER, *supra* note 27, at 23.

⁸² See *id.* at 24 (noting that in a study at 17 high-poverty schools, students who received access to books of their preference scored higher on the state reading assessment than students who did not receive books). ROMAN & FIORE, *supra* note 53, at 16 (“[Researchers] note that for children from low-income families, public libraries are the only obvious source of books during the summer, and [there is] a strong relationship between the amount of reading done over the summer and if the students had easy access to books at the library.”) (citation omitted).

⁸³ See Alexander et al., *supra* note 1, at 15 (stating that a large disparity was found in reading levels between low-income students and higher-income students).

summers, the cumulative disparity in reading level between low-income and high-income students becomes quite large.⁸⁴

Other research indicates that familial structure and residency patterns may also contribute to summer reading loss.⁸⁵ For example, children whose mothers are at least twenty years old at the birth of their first children and children who live both parents tend to have better educational outcomes over the summer than the children of teenage mothers.⁸⁶ Additionally, neighborhood characteristics, such as “neighborhood safety, cohesiveness, and areas for play [may] influence learning and development” during the summer months.⁸⁷ Children in poorer neighborhoods plagued by higher levels of violence are often kept inside for their own safety.⁸⁸ These children are more likely to spend their summer hours watching television, “an activity that is negatively associated with . . . reading” achievement.⁸⁹

Together, the lack of summer enrichment opportunities, the lack of access to books, familial structure, and residential patterns each contribute to widening the achievement gap. However, these factors are not solely responsible for the existence of the achievement gap; rather, they amplify the deleterious effect of the summer gap and its negative impact on disadvantaged students. Thus, even though the aforementioned factors are pertinent, they do not fully explain the summer gap problem.

C. National and Local Focus on Education Fails to Extend Beyond the Traditional Nine- Month School Year

While the above-mentioned factors exacerbate the reading gap, it is policymakers’ and the public’s failure to understand and focus on the summer learning loss problem that is even more destructive to solving those achievement disparities.⁹⁰ It is hard to solve a problem whose very

⁸⁴ See ROMAN & FIORE, *supra* note 53, at 9 (“[Summer reading] loss accumulates each summer and may become a gap of eighteen months by the end of sixth grade, and two or more years by middle school.”) (citation omitted).

⁸⁵ See MILLER, *supra* note 27, at 13 (“[Researchers] found that children in neighborhoods with high levels of poverty had greater summer learning loss, even after controlling for family resources.”); Stephanie L. Slates et al., *Counteracting Summer Slide: Social Capital Resources Within Socioeconomically Disadvantaged Families*, 17 J. EDUC. FOR STUDENTS PLACED AT RISK 165, 167 (2012) (“If within-family social capital is lacking, children will not benefit from their parents’ human capital.”).

⁸⁶ Slates et al., *supra* note 85, at 180.

⁸⁷ MILLER, *supra* note 27, at 8 (citations omitted).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See MILLER, *supra* note 27, at 34 (“The biggest learning gap we face is not an education or opportunity gap for our children. It is a knowledge gap for the adults concerned about these issues—the gap between what scientists and educators already know and what society does . . . with that knowledge.”).

existence is relatively unknown. Initiatives like No Child Left Behind (“NCLB”) primarily aim to reduce the achievement gap by focusing efforts on and committing financial resources to the traditional school day.⁹¹ It is true that the school year is important: few would dispute that improving the quality of education delivered to disadvantaged students during the school year is an important objective.⁹² However, any policy that attempts to remedy the achievement gap by targeting the traditional school year alone is ultimately inadequate.⁹³ As decades of research have shown, it is summer that is a uniquely critical time for students, especially for those who lack the economic means for enrichment activities.⁹⁴

Despite extensive research on the issue, lawmakers have not adequately sought to eliminate the summer gap. Congress has been aware of the negative effects of summer learning loss for over a decade;⁹⁵ however, the overwhelming focus continues to be on traditional school year remedies. There is a cognitive and policy disconnect between prominent social scientists who study the effects of summer learning loss and lawmakers who continue to ignore decades of research on the problem. This disconnect may be a result of policymakers’ unfamiliarity about how to effectively resolve the summer learning loss issue.⁹⁶ If lawmakers are not knowledgeable about the problem, then they are likely unequipped to develop substantive solutions.⁹⁷ Fortunately, in recent years, some state legislatures have sought to learn more about summer deficits that affect the disadvantaged population.⁹⁸

⁹¹ Cf. at 36 (“[I]f summer programs are to reach their potential for children, they will require significant expansion in funding and program capacity so that all children have equal access to high quality summer experiences. To move toward this goal we must . . . [m]ap current sources of funding sources at the . . . federal level[.]. For example, supplemental education services under the No Child Left Behind Act can support summer educational support for many children attending Title I schools.”) (emphasis omitted).

⁹² See *id.* at 1 (“[W]hile the findings regarding summer learning loss are profound, they must not distract us from the unfinished business of school improvement. Achievement is too low and the quality of school time activities is part of the problem.”).

⁹³ See MILLER, *supra* note 27, at 6 (“The research on seasonal learning calls into question the wisdom of the fact that the lion’s share of public and philanthropic resources are dedicated to school-year education, and that relatively scant resources are earmarked for summer learning experiences.”).

⁹⁴ *Id.* at 5 (“While their middle class peers are engaged in activities and often enrolled in enrichment programs and camps that strengthen and reinforce all kinds of learning, the vast majority of children in lower-income communities have little or no access to such opportunities.”).

⁹⁵ See generally *Avoiding the Summer Slide*, *supra* note 74 (discussing the impact of summer learning loss on the achievement gap).

⁹⁶ Cf. MILLER, *supra* note 27, at 39 (recommending further research be done to investigate the role of academic enrichment models in achieving positive outcomes from students in different classes).

⁹⁷ Cf. 155 CONG. REC. S7264 (“We’re still in the learning stages of expanded learning time.”).

⁹⁸ See H.B. 765, 2011 Gen. Assembly, Reg. Sess. (N.C. 2011) (establishing a blue ribbon

Lawmakers may also misperceive summer learning opportunities as merely a “frill,” an expensive extra that can be ignored, especially in a recovering, but fragile, economy.⁹⁹ Recently, a congressional contingent committed itself to reducing summer learning loss and, to that end, attempted to pass a law that would extend learning time by 300 hours.¹⁰⁰ This law, referred to as the TIME Act, would have authorized between \$350 million and \$500 million of federal government spending in support of school and community-based organization partnerships that planned to, among other things, provide summer enrichment activities for disadvantaged children.¹⁰¹ This legislation might have proven to be a viable federal solution to the summer learning loss problem. Unfortunately, after introductions in the House and Senate in 2009 and 2011 respectively, the bill died and has not been reintroduced.¹⁰²

Action has also been proposed at the state level. Some state lawmakers have recently sought to resolve the reading achievement gap by limiting summer learning loss among their state’s students.¹⁰³ These actions signal increased recognition of the summer learning loss phenomenon and a willingness to mitigate its effects. However, state legislative actions specifically targeted at mitigating summer learning loss currently lack the necessary detail and depth to be effective. That is, some states recognize that the summer gap is an issue that requires a remedy, but they too are not certain about how to tackle the problem with any level of specificity.¹⁰⁴

State and municipal budget constraints also limit a legislature’s ability to fix the summer learning loss problem.¹⁰⁵ Although some states have recently seen improvements in overall state revenues, a majority of them have appropriated less funding per student for the 2013–14 year

commission to study the effects of a traditional calendar school year on students); H.J.R. 646, 2011 Leg. Reg. Sess. (Va. 2011) (directing a joint legislative audit and review commission to study the efficacy of year-round schools).

⁹⁹ See *Avoiding the Summer Slide*, *supra* note 74 (statement of Sandra Feldman: “Summer school cannot be considered a frill any longer when money gets tight.”).

¹⁰⁰ 155 CONG. REC. S7263.

¹⁰¹ 155 CONG. REC. S7263–64.

¹⁰² *H.R. 1636 (112th): Time for Innovation Matters in Education Act of 2011*, GOVTRACK.US (April 15, 2011), <https://www.govtrack.us/congress/bills/112/hr1636#related>.

¹⁰³ See, e.g., S.B. 6163, 2013 Leg., Reg. Sess. (Wa. 2014) (“The legislature acknowledges that access to quality expanded learning opportunities during the school year and summer helps mitigate summer learning loss and improves academic performance The legislature intends to increase expanded learning opportunities by identifying ten schools to participate in a pilot program to combat summer learning loss”); H.B. 4618, 2014 Leg., Reg. Sess. (Wv. 2014) (“[Legislative] rules shall provide for . . . the . . . [d]evelopment of a comprehensive, systemic approach to close the reading achievement gap by third grade, which targets school readiness . . . summer learning loss and a transformative intervention framework for student and learning supports.”).

¹⁰⁴ *Cf. supra* note 103.

¹⁰⁵ AUGUSTINE ET AL., *supra* note 42, at 2 (“The clear challenge to extending the school year is its cost.”).

than they did prior to the recession.¹⁰⁶ Moreover, thirteen states have cut per student funding by more than 10 percent.¹⁰⁷ Although some states have increased per pupil funding, these increases have only marginally offset aggregate cuts from previous years.¹⁰⁸ As a result, current funding for many states remains below pre-recession levels.¹⁰⁹ Ironically—given the crucial importance of summer to overall academic achievement—when there are cuts to be made, they tend to hit first and hardest on summer programs.¹¹⁰ Therefore, cuts to traditional school year funding tend to result in even less funding for summer academic enrichment activities.¹¹¹

State-level cuts greatly impact their constituent local school districts. State educational funding comprises over 40 percent of total educational spending in the United States.¹¹² Consequently, cuts at the state level are generally passed on to the school district level.¹¹³ Such has been the case for some school districts in recent years as they have cut instructional days from their school calendars because of oppressive fiscal pressure from their state funding.¹¹⁴ Ironically, again—given the effect of summer on student achievement—these cuts have the effect of expanding summer, and its detrimental effect on students from underprivileged backgrounds.¹¹⁵ Socioeconomically disadvantaged students rely heavily on in-school instruction during the school year to make their academic progress.¹¹⁶ For them, less time in school means more summer, more

¹⁰⁶ Michael Leachman & Chris Mai, *Most States Funding Schools Less Than Before the Recession*, CENTER ON BUDGET & POL'Y PRIORITIES (May 20, 2014), <http://www.cbpp.org/cms/index.cfm?fa=view&id=4011>.

¹⁰⁷ *Id.*

¹⁰⁸ *See id.* (“Where funding has increased, it has generally not increased enough to make up for cuts in past years.”).

¹⁰⁹ *Id.*

¹¹⁰ *See, e.g.*, Jed Kim, *Students feel deep cuts to L.A. Unified Summer School Program*, SCPR.ORG (July 22, 2013, 6:00 AM), <http://www.scpr.org/blogs/education/2013/07/22/14220/students-feel-deep-cuts-to-l-a-unified-summer-scho/> (“In 2008 when the budget stood at more than \$51 million, the district was able to serve nearly 200,000 students in summer school. Now, for the second year in a row, the district cut its summer school budget to \$1 million, shuffling the rest of the money into programs for the academic year to meet demands there.”).

¹¹¹ *Id.*

¹¹² *See* Leachman & Mai, *supra* note 106 (“Some 44 percent of total education spending in the United States comes from state funds.”).

¹¹³ *Id.*

¹¹⁴ AUGUSTINE ET AL., *supra* note 42, at 2. Many districts fund their schools through property taxes. *See* Leachman & Mai, *supra* note 106. Since the recession, school districts have been unable to offset some of the state budget cuts because the real estate markets are still in a state of recovery. *See id.*

¹¹⁵ *See* MILLER, *supra* note 27, at 5 (“[While] children in all socioeconomic groups are actually progressing at the same rate during the school year . . . during the summer middle-class children generally continue to learn, or hold steady, especially in reading, while poor children lose knowledge and skills.”).

¹¹⁶ *See id.*

summer learning loss, and more idle time at home, which ultimately results in greater academic disadvantage.¹¹⁷

And finally, public opinion and a lack of public understanding contribute to summer learning loss. The parochial view that local educational agencies have on education is not the only significant obstacle confronting proponents of summer enrichment programs. Just as the resolution of the achievement gap depends on a change of perspective nationwide, a commitment to summer enrichment is contingent on majority support by citizens. The summer learning disparity is a problem that afflicts low-income families the hardest. Because the low-income contingent constitutes a political minority,¹¹⁸ its interests, in many instances, are likely subordinate to those from higher income strata, particularly at the national level.¹¹⁹ In our majoritarian system, marginalized groups like the socioeconomically disadvantaged must, at the very least, garner support from other classes¹²⁰ to ensure that their interests are represented.¹²¹ In many cases, supporting those from other classes may mean denial of one's own interests, especially where there is a belief that school funding is a zero sum where cuts must be made to one's own interests in order to support others. Having voters with money and political power vote to give more of their hard earned taxpayer dollars to improve the academic achievement of the poor is hard to accomplish in a political system that encourages voting in favor of one's self interest.¹²² Similar to other issues that primarily affect

¹¹⁷ See *id.* at 13 (“Housebound children may end up spending many of their summer hours in front of the television, an activity that is negatively associated with learning in general and reading in particular.”).

¹¹⁸ Approximately one third of working families were low-income in 2011. Brandon Roberts et al., *Low-Income Working Families: The Growing Economic Gap*, WORKING POOR FAMILIES PROJECT 1 (2012), http://www.workingpoorfamilies.org/wp-content/uploads/2013/01/Winter-2012_2013-WFPF-Data-Brief.pdf. Low-income working families are defined as those families whose household income is “below 200 percent of the official poverty threshold.” *Id.* at 2.

¹¹⁹ See *Voting Systems*, DEMOCRACY BUILDING, <http://www.democracy-building.info/voting-systems.html> (last visited Feb. 27, 2015). (“With the majority election system, small parties have no chance to win a mandate unless there are some constituencies with a population having political views differing much from those in the rest of the country.”).

¹²⁰ Inherent in this assertion is the belief that disadvantaged individuals seek to advance their own interest.

¹²¹ Admittedly, the statement can be true for any economic class because each is technically a minority; but those from low socioeconomic backgrounds arguably have the most compelling need to garner support from people outside of their class because it is arguably the least capable of furthering their interests. See Ronald J. Angel & Jacqueline L. Angel, *Painful Inheritance and the New Generation of Fatherless Families* 56 (1993) (“Middle-class elderly white Americans have been much more cohesive and effective in furthering their interests than have . . . the poor.”); Martin Gilens, *Inequality and Democratic Responsiveness*, Russell Sage Foundation, <http://www.russellsage.org/research/inequality-and-democratic-responsiveness> (“[I]n ever democracy, citizens with greater resources are better able to shape government policy to their liking.”) (last visited Mar. 19, 2015).

¹²² See Dante Atkins, ‘Gifts’: *The Legitimacy of Self-Interested Voting*, DAILY KOS (Nov. 18, 2012, 5:00 PM), <http://www.dailykos.com/story/2012/11/18/1162106/—Gifts-The-legitimacy->

disadvantaged individuals, the summer learning loss disparity may lack salience in the lives of those better off economically. Unless this issue gains relevance to the middle- and upper-class community, it will continue to be dismissed and disregarded.

IV. SOLVING THE ACHIEVEMENT GAP

In order to overcome the summer achievement gap, national, state, and local policymakers must adopt a seasonal perspective and conceptualize education as a year-round commitment. Closing the socioeconomic achievement gap requires dedication to a comprehensive approach to education reform that recognizes the critical importance of summer to a child's academic success. Over the last 50 years, legislators and presidents have prominently spearheaded and advocated a smorgasbord of initiatives for the sake of improving the quality of education for all students. Ironically and tragically, however, during that same time frame, the achievement gap between students from families with means and from those without has grown by approximately 40 percent.¹²³ This paradoxical and perverse outcome cannot merely be a byproduct of all the educational initiatives aimed to help disadvantaged students. Notable policies over the last half-century have been characterized by their increased attention to resolving educational disparities, not intensifying them.¹²⁴ Although these reforms have each been conceived with good intent, most notably and most recently NCLB, they have all failed to fully realize their potential because every one of them neglects summer learning. Whatever small gains occur during the school year through these school-year initiatives are eviscerated by summertime regressions. In addition, the annual assessments that are being administered to students have failed to account for summer learning loss, thereby distorting the advancements that low-income students make during the school year.¹²⁵ Thus, if policymakers continue

of-self-interested-voting# ("Paul Ryan, devotee of objectivist philosophy dedicated completely to self-interest . . . complain[ed] that too many people voted for their own self-interest as opposed to for the good of society as a whole.").

¹²³ See Sabrina Tavernise, *Education Gap Grows Between Rich and Poor*, *Studies Say*, N.Y. TIMES A1 (Feb. 10, 2012), available at http://www.nytimes.com/2012/02/10/education/education-gap-grows-between-rich-and-poor-studies-show.html?pagewanted=all&_r=0 ("The gap in standardized test scores between affluent and low-income students had grown by about 40 percent since the 1960s."). The data used to complete this study ended prior to the Great Recession, thus experts believe that socioeconomic achievement disparities are even more exaggerated today. *Id.*

¹²⁴ See *Elementary and Secondary Education Act of 1965 (ESEA)*, AECT.ORG, http://aect.site-ym.com/?page=elementary_and_secon (last visited Mar. 19, 2015) ("The overall purpose of ESEA was to improve educational opportunities for poor children.").

¹²⁵ See MILLER, *supra* note 27, at 38 ("[U]sing annual tests as school accountability levers, without taking summer learning loss into account, unfairly biases results against schools serving

to deemphasize summer learning and close their eyes to summer losses, especially as a cumulative problem, they risk exacerbating rather than resolving the achievement gap while simultaneously rendering their own reforms ineffectual. In order to avoid such a self-defeating result, federal, state, and local decision-makers must treat summer learning as tantamount to learning in the other seasons.

A. Policymakers Must Approach the Achievement Gap Problem with a Year-Round Perspective to Education

1. Federal solutions

At the federal level, the mandate since the enactment of NCLB has been to increase academic accountability by creating national benchmarks that students must meet.¹²⁶ To achieve these benchmarks, the law emphasizes data accumulation and disaggregation on student achievement based on several factors, most notably economic status.¹²⁷ These data collection and reporting requirements are essential to attain transparency in academic achievement; in doing so, they also enable parents as well as state and school district officials to better address disparities in academic achievement. While lawmakers at all levels may now be better equipped with actionable information on socioeconomic achievement gaps, they still lack critical information on summer gaps due to NCLB's data mandate. Specifically, schools are only required to administer one examination annually,¹²⁸ which is insufficient to understand student-learning patterns. Without data on summer achievement and summer losses, schools are not equipped with the necessary information to meet NCLB objectives.¹²⁹ Specifically, schools are able to identify students who fail to meet proficiency standards, but they are ill equipped to comprehensively ascertain *why* and *when* certain

low-income children and in favor of schools serving high income children.”).

¹²⁶ See No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 1111(b)(2)(A), 115 Stat. 1445 (2002) (“Each State shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies, public elementary schools, and public secondary schools make adequate yearly progress.”).

¹²⁷ See *id.* § 1111(b)(2)(G) (“The State shall include in its annual State report card information, in the aggregate, on student achievement at each proficiency level on the State academic assessments, disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged.”).

¹²⁸ See *id.* § 1111(h)(1)(C)(i) (“Each State shall establish statewide annual measurable objectives . . . for meeting the requirements of this paragraph, and which shall be set separately for the assessments of mathematics and reading or language arts.”).

¹²⁹ See *id.* § 1111(b)(2)(G)(iv) (“Each State . . . shall ensure that all students will meet or exceed the State’s proficient level of academic achievement on the State assessments within the State’s timeline.”).

students fail. In order to achieve NCLB goals, schools need visibility into the *seasonal* learning patterns of their students. Currently, any progress achieved during the school year is offset by summer regressions for poorer students, but that loss is invisible with the current once-a-year testing. Unless students are tested before and after each summer, there is no way to *see* the effect of summer on achievement. However, as significant research indicates and as outlined above in Part II, summer learning loss is responsible for the majority of the achievement gap.¹³⁰ Thus policies that seek to successfully resolve achievement gaps must account for possible summer deficits by emphasizing data accumulation and disaggregation for the traditional school year *as well as* for the summer.

If policymakers seek to narrow the achievement gap, the next ESEA reauthorization could be a part of the solution by relying on its transparency and data-gathering mandate. Two alternatives are possible. The first alternative would be new mandated testing to more accurately measure school-year and summertime gains and losses. To that end, the reauthorization should require all states accepting federal funds to administer reading assessments both at the beginning and at the end of each school year. This measure would increase visibility into student learning patterns, especially during the summer. Existing data shows that students who do not participate in academic enrichment activities during the summer months will require remedial instruction when the new school year begins.¹³¹ Adding the second assessment in each state would likely reveal this trend, thereby providing state lawmakers and district officials with an even greater understanding of student academic regression during the summer months. Consequently, state lawmakers and district officials would be in a better position to investigate the root causes of these regressions, and could develop and implement solutions to resolve reading deficiencies caused by summer learning loss.

Although more targeted data collection would clarify the extent of summer learning loss, adding a new mandatory testing cycle is extremely unlikely to occur because many lawmakers are reluctant to increase

¹³⁰ See Cooper et al., *supra* note 45, at 261 (“The results indicated that middle-class children showed significantly greater absolute summer gains in reading and language achievement than lower-income students.”); Slates et al., *supra* note 85, at 165 (“By the end of elementary school, low-SES children are nearly three grades behind their higher-SES peers on average, and summer is ‘the biggest culprit’ in producing this gap.”) (citation omitted); see also ALEXANDER ET AL., *supra* note 1, at 17–18 (indicating greater gains among high socioeconomic status students in reading comprehension than low socioeconomic status students); MILLER, *supra* note 27, at 4 (“[N]early all the differences in achievement between poor and middle class children can be attributed to changes in learning that take place over the summer.”).

¹³¹ Gary Huggins, *The Promise of Summer Learning*, THE EXPANDED LEARNING & AFTERSCHOOL PROJECT, <http://www.expandinglearning.org/expandingminds/article/promise-summer-learning> (last visited Feb. 27, 2015).

federal involvement in primary and secondary education.¹³² The common criticism of NCLB is that it is too invasive and that it infringes on states' autonomy to provide education to their students.¹³³ For this reason, federal lawmakers have said they do not intend to expand but, instead, to limit federal involvement in the next iteration of the ESEA.¹³⁴ Therefore, garnering support for mandating additional tests may prove to be too significant of a political obstacle.

As a second alternative, Congress could implement a solution by relying on the already existing wealth of research on the disparate effects of summer learning loss. This strategy would not require any mandated additional testing because the reauthorization would *presume* that there is an inequity, given the research that already proves the scope of the problem. Since summer learning loss has been shown to be a widespread issue, its existence could be presumed in every state without the expense of proving it with new data. Relying on the well-documented proof of generalized summer learning loss, the ESEA reauthorization could then earmark funds for summer achievement programs targeted at narrowing the reading gap. In an attempt to encourage states to administer fall and spring assessments to monitor student progress, Congress could condition the receipt of federal funds upon the actual administration of those pre-summer and post-summer assessments.

Though there is compelling research showing that reading achievement gaps are attributable to summer learning loss, individual states may desire to confirm that disparities exist within their own jurisdictions.¹³⁵ States could only arrive at this level of assurance with in-depth research that occurs over time.¹³⁶ Although, some states have recently begun investigating summer loss and its effects on students, their research remains relatively immature at this juncture.¹³⁷ Thus, under

¹³² See *Raising the Bar: Exploring State and Local Efforts to Improve Accountability: Hearing Before the H. Comm. On Education and the Workforce*, 113th Cong. 2 (2013) [hereinafter *Raising the Bar*] (statement of John Kline, Chairman) (“[W]e must restore local control, and encourage the kind of flexibility states and school districts need to develop their own accountability plans [I]t’s [also] time to reduce the federal footprint Innovation and effective reform cannot be mandated from Washington. We must put control back in the hands of the state and local leaders who know their students best.”).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Cf.* S.B. 6163, 2013 Leg., Reg. Sess. (Wa. 2014) (“The legislature finds that research shows that summer learning loss contributes to the educational opportunity gaps between students in *Washington’s* schools.”) (emphasis added).

¹³⁶ See, e.g., ALEXANDER ET AL., *supra* note 1, at 16 (indicating that the study on summer learning loss commenced in 1982 and concluded in 1998); Cooper et al., *supra* note 45, at 252 (analyzing samples gathered in three consecutive decades).

¹³⁷ See, e.g., S.B. 6163, 2013 Leg., Reg. Sess. (Wa. 2014) (“The expanded learning opportunities council is established to advise the governor, the legislature, and the superintendent of public instruction regarding a comprehensive expanded learning opportunities system, with

this proposed scenario, states would have to undertake some research investment in order to immediately participate in such a federal initiative. As with the previous strategy, this one could also fail if states decline to participate in the federal program because lawmakers, especially many in the House of Representatives, intend to reduce the federal footprint on public education under the next ESEA enactment.¹³⁸

Unlike the first strategy, however, this second legislative strategy provides states with the option of not participating in a summer funding initiative. This distinction, while nuanced, significantly differentiates the second strategy from the first. Every state accepts ESEA dollars to provide education for its students.¹³⁹ Because of this, an ESEA reauthorization that requires all states to administer fall and spring assessments would be a *de facto* mandate. By contrast, this second approach is more permissive because it would require states to administer fall and spring assessments *only if* they want to receive federal funding for *summertime* initiatives. Politically, this strategy is likely to garner more support because it is less intrusive than the first, and it allows states the flexibility to structure solutions that are specifically tailored to address summer learning loss in their own school systems. In view of these advantages, Congress should seriously consider adopting this more permissive, contingency funding approach.

2. State and school district solutions

Moving down a level in localism, there are several solutions to summer learning loss that could be used at the state and local levels. First, decision makers at the state and local levels could consider implementing summer programs that emphasize academic enrichment and a high level of student interactivity. Additionally, policymakers could transition away from a traditional 9-month school calendar to one that significantly reduces those long summer breaks that are currently the norm and that perpetuate learning loss. This can be accomplished either by adding more days to the school year or by spreading existing days out more evenly to shorten the long summer break.

The most conventional of these solutions is summer school. Traditional summer school, which has an overwhelming focus on remedial and accelerated education, does in fact have positive impacts on

particular attention paid to solutions to summer learning loss.”).

¹³⁸ See *Raising the Bar*, *supra* note 132.

¹³⁹ See *College- and Career-Ready Students (Title I, Grants to LEAs)*, DEP’T OF EDUC. (Jan. 6, 2015), available at <https://www2.ed.gov/about/overview/budget/statetables/15stbyprogram.pdf>. More specifically, every state accepts funds to improve the education they provide to low-income schools and students. See *id.*

its participants.¹⁴⁰ While summer school has positive effects on those who attend, some research indicates the gains may be small in certain instances. For example, some research deems summer school to be an effective solution only if children attend on a consistent basis through many summers. If students merely attend one summer, their gains often do not carry over into the regular school year.¹⁴¹

By contrast, over the last twenty years, a new model of summer programs has developed. These programs can be classified as youth development or academic enrichment programs.¹⁴² However, they are not like traditional summer school or summer camps. Instead of taking a remedial approach, these programs aim to boost a student's academic performance by taking an accelerated or an enrichment approach.¹⁴³ These summer programs "combine the qualities of typical youth development programs—building self confidence, sense of mastery, sense of belonging, self discipline, sense of responsibility to self and others—with high-quality curricula that increase engagement in learning and specific skills in reading, math, and other subjects."¹⁴⁴ Students in these programs have realized improvements in reading proficiency, especially over consecutive years.¹⁴⁵ Unfortunately, while these few academic enrichment programs are growing in number, they are still not very prevalent today.¹⁴⁶

Finally, another summer-focused, cost-effective solution that has been proposed by some researchers is to encourage summer reading by simply increasing poor children's access to books.¹⁴⁷ Disadvantaged children who receive "interesting, age appropriate and level appropriate books" are more likely to realize gains in reading achievement during the summer.¹⁴⁸ Furthermore, the reading achievement gains are even more pronounced after consecutive years of reading regularly over the summer.¹⁴⁹ Thus, poorer students who lack the financial wherewithal to enroll in summer programs may still catch up to their richer peers by

¹⁴⁰ Harris Cooper, *Summer Learning Loss: The Problem and Some Solutions*, ERIC DIGEST (May 2003), available at <http://files.eric.ed.gov/fulltext/ED475391.pdf>.

¹⁴¹ See MILLER, *supra* note 27, at 18.

¹⁴² *Id.* at 27.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See *id.* at 27–28.

¹⁴⁶ See CATHERINE H. AUGUSTINE ET AL., GETTING TO WORK ON SUMMER LEARNING: RECOMMENDED PRACTICES FOR SUCCESS xi (2013) ("Many school districts offer *mandatory* summer programs to students at risk of grade retention, but fewer districts offer summer learning programs to a broader population of students as a means of stemming summer learning loss and boosting academic performance.") (emphasis added).

¹⁴⁷ See MILLER, *supra* note 27, at 24.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

simply reading more over the summer.

States dedicated to eliminating the achievement gap should also reconsider their commitment to the traditional school year calendar. In addition to amplifying the summer loss disparity, the standard nine-month calendar most states have adopted, lacks contemporary relevance. The conventional nine-month school year calendar emerged in the early 1900s, a period characterized by the “implementation of standardized, grade-leveled curricula” by most states.¹⁵⁰ Many speculate that the traditional calendar was adopted to accommodate the agrarian schedule,¹⁵¹ and indeed, at the time when states implemented the nine-month calendar, “85% of Americans were involved in agriculture.”¹⁵² Given the original purpose, continued adherence to a nine-month calendar so as to comport with the agriculture calendar is untenable in the present day, given that our country is now predominantly industrialized.¹⁵³

Even though states are responsible for the adoption of the traditional calendar, they do not require school boards to strictly adhere to it. Instead, states generally require schools to instruct for a minimum number of days or hours. Public school districts often have the latitude to reorganize the school calendar and add instructional days at their discretion.¹⁵⁴ Therefore, by abandoning the traditional nine-month calendar school districts can have a direct impact on achievement disparities that exist among their students.¹⁵⁵

¹⁵⁰ Cooper et al., *supra* note 45, at 228.

¹⁵¹ See Sindhu Nair, *Should American Schools Go Year Round?*, TEACHHUB.COM, <http://www.teachhub.com/should-american-schools-go-year-round> (last visited Feb. 6, 2015) (“[T]his system was implemented because children were often needed to work in the fields during the summer.”); Linda W.Y. Parrish, *Nine-Month School Year is Antiquated, Many Say*, SEATTLE TIMES, <http://community.seattletimes.nwsourc.com/archive/?date=19920225&slug=1477737> (last visited Mar. 13, 2015) (“This is no longer an agrarian society.”); see also Asenith Dixon, *Focus on the School Calendar*, SREB (Apr. 2010), http://publications.sreb.org/2010/10S03_Focus_School_Cal.pdf (“There are several reasons why state officials may have thought adopting a common school calendar was essential including the rising demand for an educated work force and for sparing children from hot classrooms during the summer months.”). *But see* Cooper et al., *supra* note 45, at 252 (“In agricultural areas, it was typical for children to attend school for only 5 or 6 months so that they were free to participate in the farming economy, from planting to harvesting. During the same era, urban schools were operating on 11 or 12 month schedules.”).

¹⁵² Cooper et al., *supra* note 45, at 228.

¹⁵³ *Id.* (“The present 9-month calendar, under which schools are closed in summer, emerged as the norm when 85% of Americans were involved in agriculture. Today, about 3% of Americans’ livelihood is tied to the agricultural cycle.”).

¹⁵⁴ *Cf.* Cooper et al., *supra* note 45, at 228 (“Year-round scheduling has been especially popular in school districts where the need for space is paramount.”).

¹⁵⁵ Prior to the Civil War, and years thereafter, students in rural areas were in school for six months out of the year. Dixon, *supra* note 151. Children were often needed to perform agricultural work for the other half of the year, and thus school calendars revolved around the agricultural season. *Id.* However, following the passage of federal child labor laws and increased industrialization throughout the country, states began implementing a 180 school day calendar. *Id.*

Experts generally offer two alternatives to the traditional calendar to remedy the negative effects of summer learning loss. There are those who advocate for an extended school year, arguing students need more instructional time.¹⁵⁶ Under an extended school year, students attend classes for a specified number of days in excess of the minimum required by the state.¹⁵⁷ Proponents of this solution reason that American students' shortfalls in academics are largely caused by too few days spent in school.¹⁵⁸ Their argument is buttressed by students' higher level of academic achievement in foreign school systems that require more instructional days.¹⁵⁹

The second solution is offered by those who recommend modifying school calendars by shrinking summer itself to limit summer learning loss.¹⁶⁰ Under this modified calendar strategy, school districts redistribute the currently mandated number of school days throughout the calendar year to eliminate long summer breaks.¹⁶¹ Although the school calendar is modified, the number of instructional days remains unchanged.¹⁶² Modified calendars are primarily designed to break up the long summer vacation and redistribute those vacation days to create several shorter breaks.¹⁶³ Theoretically, a modified and redistributed school calendar may be effective because it reduces the time away from instruction. Presently, however, there is a lack of strong evidence to prove whether or not this solution is effective.¹⁶⁴ Thus, adopting a modified calendar

¹⁵⁶ Cooper et al., *supra* note 45, at 228.

¹⁵⁷ *Id.*

¹⁵⁸ *See id.* ("Among the more prominent arguments for increasing the number of school days is the potential to increase the amount that students learn.").

¹⁵⁹ Isabel Owen, *Time Matters: Why We Need to Expand Learning Time*, CTR. FOR AM. PROGRESS (April 15, 2011), <http://www.americanprogress.org/issues/education/news/2011/04/15/9425/time-matters/> ("Students in Finland, Japan, and Korea receive an average of 197 days of instruction per year. All three countries also outrank the United States in an international comparison of academic achievement."). While these countries require more days of formal instruction, students in these countries likely receive fewer hours of instruction in an academic year. *Time in school: How does the U.S. Compare?*, CENTER FOR PUB. EDUC., <http://www.centerforpubliceducation.org/Main-Menu/Organizing-a-school/Time-in-school-How-does-the-US-compare> (last visited Feb. 27, 2015) (indicating that most schools in the United States require at least as much instructional time as Finland, Japan, and Korea).

¹⁶⁰ *See, e.g.*, Cooper, *supra* note 140 (recommending a modified school year calendar).

¹⁶¹ *See* JENNIFER SLOAN MCCOMBS ET AL., *Getting to Work on Summer Learning: Recommended Practices for Success*, at 2 ("Modifying the calendar does not add instructional days to the calendar, but redistributes days across the calendar to replace the long summer break with several shorter breaks.").

¹⁶² Harris Cooper et al., *The Effects of Summer Vacation on Achievement Test Scores: A Narrative and Meta-Analytic Review*, 66 REV. OF EDUC. RESEARCH 227, 228 (1996) ("Under [a modified calendar] children might or might not attend school for more days.").

¹⁶³ *See* Cooper, *supra* note 140 ("[M]odified arrangements in which children might or might not attend school for more days, but the long summer vacation is replaced by shorter cycles of attendance breaks.").

¹⁶⁴ *See* MCCOMBS ET AL., *supra* note 161, at 2.

system is, at this time, purely exploratory as a remedy.¹⁶⁵

Whatever calendar is used in these 12-month solutions, by adopting a yearlong approach to education, districts would need to abandon their antiquated perceptions of summer school. Traditionally, summer school has been conceived of as being solely remedial in purpose.¹⁶⁶ While remediation is always an important objective in the educational context, districts must consider summer more holistically as part of more progressive strategies that narrow the academic achievement gap and as part of the educational mandate as a whole. Low-income children do not have access to cost-prohibitive activities such as academic enrichment programs and summer camp that have become routine for their middle- and upper-income peers. Remedial instruction alone does not sufficiently address the central problem during the summers for disadvantaged students—namely, their lack of access to academically enriching activities.

Instead, the ideal seasonal approach requires school districts to consider summer programs as an integral component of their overall, yearlong educational strategy. School board officials are so distracted by financial concerns that summer programs usually become a casualty of budget disputes. In the long run, undervaluing summer in this way is suboptimal because summer reading loss is not only a problem for disadvantaged students; it significantly affects teachers' curricula as well.¹⁶⁷ Teachers often spend a substantial part of the beginning of each school year reviewing materials they covered during the previous school year, before summer break.¹⁶⁸ This obvious inefficiency wastes taxpayer money.¹⁶⁹ Hamstrung by the need to remediate the knowledge that was taught the year before but lost during the summer, teachers have less flexibility to implement new instructional approaches or further develop their curriculum to better serve their students.¹⁷⁰ Teachers also have less

¹⁶⁵ See MILLER, *supra* note 27, at 38.

¹⁶⁶ See A New Vision for Summer School, NAT'L SUMMER LEARNING ASS'N (2010), available at http://www.edstrategies.net/files/2010_new_vision.pdf ("While many school districts offer summer school, it is often in the form of remedial and punitive options that result in poor attendance, limited engagement and mediocre results.").

¹⁶⁷ See Rebecca Klein, *Summer Learning Loss Study: Can 'Summer Slide' Be Prevented?*, HUFFINGTON POST (June 21, 2013, 3:20 PM), http://www.huffingtonpost.com/2013/06/21/summer-learning-loss-study_n_3391594.html ("[A National Summer Learning Association] survey . . . found that 66 percent [of] teachers have to spend three to four weeks re-teaching students course material at the beginning of the year, while 24 percent of teachers spend at least five to six weeks re-teaching material from the previous school year.").

¹⁶⁸ Gary Huggins, *The Promise of Summer Learning*, THE EXPANDED LEARNING & AFTERSCHOOL PROJECT, <http://www.expandinglearning.org/expandingminds/article/promise-summer-learning> (last visited Jan. 30, 2015).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

opportunity to help students meet higher state educational targets.¹⁷¹ Thus, summer learning loss does not solely affect the students whose knowledge and skills have been reduced, but also their instructors who lack the time to provide instruction on new materials.

A seasonal approach to education will only be as effective as states and local decision-makers choose to make them. Although the federal presence in primary and secondary education has increased over the last fifty years, it is state and local decision-makers who remain primarily responsible for educating their students.¹⁷² Consequently, even if the federal government crafts an effective policy, it will fall short of its potential without state- and municipal-level support. Therefore, it is the state and local governments who must ultimately commit to eliminating the summer gap so as to ensure the success of a year-round strategy and ultimately, the educational success of all rich, poor, and middle class students.

B. Policymakers Could Narrow the Achievement Gap Through a Program Specifically Targeting the Summer Disparity

A policy to eradicate the summer learning loss disparity may be most effective as an independent initiative. National, state, and local policymakers could resolve the achievement gap problem by cooperating on a consolidated, targeted initiative specifically aimed at reducing summer learning loss. Over the last half-century, federal lawmakers have made numerous attempts to assist underprivileged students in obtaining an adequate education,¹⁷³ but to little avail because despite all the efforts

¹⁷¹ *Id.*

¹⁷² See *10 Facts About K-12 Education Funding*, DEP'T OF EDUC. (June 2005), <http://www2.ed.gov/about/overview/fed/10facts/index.html?exp=3> ("The U.S. Constitution leaves the responsibility for public K-12 education with the states.").

¹⁷³ See Elementary and Secondary School Education Act of 1965, Pub. L. No. 89-10, § 201, 79 Stat. 27 ("In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance . . . to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means . . . which contribute particularly to meeting the special educational needs of educationally deprived children."); Head Start Act, Pub. L. No. 97-35, § 636, 95 Stat. 499 ("In recognition of the role which Project Head Start has played in the effective delivery of comprehensive . . . education[] . . . to economically disadvantaged children and their families, it is the purpose of this subchapter to extend the authority for the appropriation of funds for such program."); Improving America's Schools Act of 1994, Pub. L. No. 103-382, § 1001(b), 108 Stat. 3519 ("The Congress recognizes that although the achievement gap between disadvantaged children and other children has been reduced . . . a sizable gap remains, and many segments of our society lack the opportunity to become well educated."); See No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 1001, 115 Stat. 1439 (2002) ("The purpose of this title is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.").

made and money spent, there are few laws that clearly seek to abate the summer learning loss disparity as a part of a coordinated strategy to narrow the achievement gap.¹⁷⁴ These efforts have produced mostly disappointing results, however, as few school districts have committed to adopting comprehensive summer curricula to boost the achievement results of lower-income students.¹⁷⁵ A program that solely exists to target summer learning loss could remedy this problem.

At the national level, policymakers have created many vehicles to disperse educational funding, including programs that are sources of funding for district-run summer programs.¹⁷⁶ Unfortunately, none of the federally funded education initiatives is specifically and solely targeted at summer learning loss.¹⁷⁷ As a result, local education agencies are forced to seek funding from multiple sources, including their respective cities, private organizations, and school district funds, none of which is specifically devoted to summer education.¹⁷⁸ Although there are some school districts that have successfully funded their programs through multiple streams, many others do not possess the business and political savvy to effectively fundraise, and especially on the issue of summer learning loss.¹⁷⁹ For these local educational agencies, money from a federal program committed solely to mitigating the discriminatory effects of summer learning loss would alleviate many financial burdens on local governments, and enable the state and local governments to adopt comprehensive strategies to narrow the achievement gap.

An initiative that exclusively allocates funds to summer education programs would also eliminate districts' discretionary power, which they often use to favor traditional school year programming at the expense of summer enrichment.¹⁸⁰ Thus, districts that participate in such a summer-

¹⁷⁴ See, e.g., No Child Left Behind Act of 2001 § 1001 (“A schoolwide program shall include . . . schoolwide reform strategies that . . . increase the amount and quality of learning time, such as providing an extended school year, and before and after-school and summer programs and opportunities.”).

¹⁷⁵ See AUGUSTINE ET AL., *supra* note 146, at xi; Lorna Smith, *Slowing the Summer Slide*, ASCD.ORG (Jan. 2012), <http://www.ascd.org/publications/educational-leadership/dec11/vol69/num04/Slowing-the-Summer-Slide.aspx> (“Despite the problem of widening achievement gaps in the summer months, many districts are seeking to curb costs by eliminating summer school.”).

¹⁷⁶ See, e.g., American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115; No Child Left Behind Act of 2001, Pub. L. No.107-110, 115 Stat. 1439 (2002); Head Start Act, Pub. L. No. 97-35, 95 Stat. 499.

¹⁷⁷ See, e.g., American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115; No Child Left Behind Act of 2001, Pub. L. No.107-110, 115 Stat. 1439 (2002); Head Start Act, Pub. L. No. 97-35, 95 Stat. 499.

¹⁷⁸ See AUGUSTINE ET AL., *supra* note 146, at 43–44.

¹⁷⁹ MCCOMBS ET AL., *supra* note 161, at 49 (“[A]bsent consistent funding streams, such as dedicated tax levies, fundraising is a challenge. . . . Programming for a large proportion of students often requires negotiation of local politics to secure and retain limited public financial support.”).

¹⁸⁰ Cf. Skip Peterson, *Budget Woes Force Cuts in Summer-School Programs*, USA TODAY (July 17, 2008, 2:41 PM), <http://usatoday30.usatoday.com/news/education/2008-07-16-summer->

focused funding program would be mandated to coordinate and operate summer activities for disadvantaged students. Furthermore, such a program would have a profound impact on school district budgeting decisions. According to a recent study, federal funds account for a majority of total revenues used to operate some district-run summer programs.¹⁸¹ If adequately funded, a federal program targeted at summer programs would, at the very least, supplement revenue from other federal programs. Consequently, school districts' decisions on how to allocate funding to both traditional school year and summer activities would not be a zero-sum choice because revenue would be earmarked for the summer.

While this targeted strategy would alleviate some crucial decision-making responsibilities among school district officials, it could place additional burdens on federal legislators. Without increases in educational spending, creation of a federally subsidized or mandated summer funding program would necessitate offsetting cuts in other educational initiatives.¹⁸² As a result, district budget allocations for the traditional school year could become more constrained. In effect, this could become an indirect zero-sum choice on school district funding because it would merely reallocate the zero-sum choice to the federal government decision-makers. In the end, therefore, as the ultimate beneficiaries of funding allocations, this is a zero-sum solution for the students themselves who participate in new summer programs but at the cost of losing some benefits of school year funding.¹⁸³ More importantly, underprivileged students who choose not to attend summer school or whose school districts do not offer them that option would be doubly disadvantaged because the costs of summer programming would be imposed on to them, but not the benefits.¹⁸⁴ These inequitable outcomes may be strong deterrents for policymakers who might consider this summer-funding solution.

school_N.htm (“[T]ough financial conditions . . . forc[e] school districts . . . to cut back on summer programs that are widely viewed as invaluable to . . . struggling . . . students.”).

¹⁸¹ See AUGUSTINE ET AL., *supra* note 146, at 43–44 (indicating that Title I, 21st Century Community Learning Centers, School Improvement Grant and American Recovery and Reinvestment Act funds account for approximately 61 percent of the funding used to operate and run summer programs in districts surveyed).

¹⁸² Cf. MCCOMBS ET AL., *supra* note 161, at xvi (“[T]he recent economic downturn has created such severe shortfalls in state education budgets that many districts across the country have cut what little summer school programming they have offered.”). Presumably, funding for summer learning programs may require reallocation of money normally used to fund schools during the traditional school year. Cf. *id.*

¹⁸³ See MCCOMBS ET AL., *supra* note 161, at xvi (“[S]ummer programs . . . represent an additional cost to districts, especially relative to other interventions that simply update or reform practices used during the school year.”).

¹⁸⁴ *Id.* (“Not all summer learning programs result in positive outcomes for enrollees. Programming needs to be high-quality, and students need to enroll and attend regularly.”).

Furthermore, a federal decision to reallocate revenue to a targeted summer initiative contravenes Congress's promise to relinquish control over public education. That is, by assuming decision-making power over *how* local educational agencies should resolve the achievement gap, federal legislators would forsake the federalist principles they have recently espoused.¹⁸⁵ Such an aggressive measure could also be viewed as a de facto federal mandate for schools to operate on a year-round basis. Defunding traditional school year initiatives to fund summer programming signals the federal government's adoption of a year-round calendar. Although this strategy could disrupt the autonomy that state and local officials possess in providing educational enrichment opportunities to their disadvantaged students, it may be the best resolution to a persistent summer learning loss problem that has plagued disadvantaged youths.

C. State Constitutional Rights to Education and Existing Federal Legislation Are Mechanisms that May Be Used to Implement a Summer Gap Solution

While education is important in social and moral terms, and although it is vital for civic participation, it has never been recognized as a federal right.¹⁸⁶ The question of whether education is a right was before the Supreme Court in *San Antonio Sch. Dist. v. Rodriguez*. In this case, the Court held that the San Antonio Independent School District's inequitable financing system did not violate the Equal Protection Clause of the Fourteenth Amendment.¹⁸⁷ The respondents in this case claimed that the financing scheme, which was partially based on local property taxes, resulted in inter-district disparities between low-income and wealthier students.¹⁸⁸ The district court ruled in favor of the students challenging the funding structure.¹⁸⁹ In its reversal of the district court's ruling, the Supreme Court concluded that "the undisputed importance of education will not alone cause th[e] Court to depart from the usual

¹⁸⁵ See *Raising the Bar*, *supra* note 132 ("[W]e must restore local control, and encourage the kind of flexibility states and school districts need to develop their own accountability plans [I]t's [also] time to reduce the federal footprint Innovation and effective reform cannot be mandated from Washington. We must put control back in the hands of the state and local leaders who know their students best.").

¹⁸⁶ *Plyler v. Doe*, 457 U.S. 202, 221 (1982) ("Public education is not a 'right' granted to individuals by the Constitution.").

¹⁸⁷ See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54–55 (1973).

¹⁸⁸ See *id.* at 12–13 (stating that under the financing scheme, \$356 was apportioned per pupil in one of the poorest school districts and \$594 was apportioned per pupil in one of the richest school districts).

¹⁸⁹ *Id.* at 15–16.

standard for reviewing a State's social and economic legislation."¹⁹⁰

The Court also made clear in *Rodriguez* that education is not a fundamental right, and thus, any federal, state, or municipal law regarding the apportionment of education is evaluated by the rational basis standard of review.¹⁹¹ Compliance with the rational basis standard merely requires a federal, state, or municipal law to "bear some rational relationship to legitimate state purposes."¹⁹² The Supreme Court also upheld the constitutionality of laws that essentially discriminate on the basis of wealth, absent the implication of some other fundamental right.¹⁹³ According to the Court, unless a party is so impecunious that it sustains an "absolute deprivation of a meaningful opportunity to enjoy [an educational] benefit" then wealth discrimination is constitutionally acceptable.¹⁹⁴ That is, "lack of personal resources [alone does] not occasion an absolute deprivation of [a] desired benefit."¹⁹⁵ Thus, the Equal Protection Clause "does not require absolute equality or precisely equal advantages" in primary or secondary school education.¹⁹⁶ It is therefore permissible for governmental bodies to allocate financial resources to primary and secondary schools in a manner that does not patently discriminate, even if doing so has a disproportionate effect on those who are socioeconomically disadvantaged.¹⁹⁷

Although the Supreme Court did not recognize education as a fundamental right, its dicta intimated a need for legislative action to mitigate disparities between low-income students and those with greater wherewithal.¹⁹⁸ The Court appeared sensitive to the existing disparities and construed its ruling as an obligatory but reluctant exercise of judicial restraint, which it hoped would not be construed as an apathetic endorsement of Texas's legislation.¹⁹⁹ The majority insisted that "innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity."²⁰⁰ The Court's refusal to recognize education

¹⁹⁰ *Id.* at 35.

¹⁹¹ *See id.* ("Education, of course, is not among the rights afforded explicit [or implicit] protection under [the] Federal Constitution.").

¹⁹² *Id.* at 40.

¹⁹³ *See id.* at 30, 35, 55 ("[W]ealth discrimination alone [does not] provide an adequate basis for invoking strict scrutiny Education . . . is not among the rights afforded protection under the Constitution [Thus] the Texas plan [is constitutional].").

¹⁹⁴ *Id.* at 20.

¹⁹⁵ *Id.* at 23.

¹⁹⁶ *Id.* at 24.

¹⁹⁷ *See id.*

¹⁹⁸ *See id.* at 58 ("The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax.").

¹⁹⁹ *See id.*

²⁰⁰ *Id.*

as a right and subsequent dicta imploring legislative action exhibits a judicial empathy for disadvantaged students, while strictly adhering to federalism principles.²⁰¹ Because the right to education is not within the text of the Constitution,²⁰² disadvantaged students are mostly without a constitutional remedy at the federal level.

However, federalism principles allow the states to make substantive guarantees to their citizens, including the right to education.²⁰³ All 50 state constitutions contain clauses that, ostensibly, bestow a right to education to all students in their own state.²⁰⁴ Only North Carolina, however, expressly guarantees a right to education to its residents.²⁰⁵ Education provisions in most other state constitutions approach the problem from the opposite direction and instead impose an obligation on their state legislature to provide free education.²⁰⁶ In contrast, some courts in Kentucky, Montana, Texas, Arizona, New Jersey, and Tennessee, have relied on their state constitution's education provisions to create an implicit right to education for the state's citizens.²⁰⁷ Thus, a state's constitutional education provisions can provide a right of action against the state.²⁰⁸ This may be a potent procedural mechanism for underprivileged students to enforce their state's tacit or express right to education.

In the last thirty years, economically disadvantaged plaintiffs have successfully utilized their state's constitution's education provisions to challenge inequitable financing systems in state courts.²⁰⁹ This wave of litigation is "characterized as a pursuit of educational adequacy."²¹⁰ Courts that adjudicate issues of education adequacy must determine exactly what constitutes an adequate education under state constitutional

²⁰¹ See *id.* at 58–59.

²⁰² *Id.* at 35.

²⁰³ See U.S. CONST. amend. X.

²⁰⁴ See Molly A. Hunter, *State Constitution Education Clause Language*, EDUC. L. CTR, <http://pabarcr.org/pdf/Molly%20Hunter%20Article.pdf> (last updated Jan. 2011).

²⁰⁵ See N.C. CONST. art. I, § 15 ("The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.").

²⁰⁶ Evelyn Nakano Glenn, *Constructing Citizenship: Exclusion, Subordination, & Resistance*, 76 AM. SOC. REV. 1, 11 (2011). Some scholars argue that if these "state constitutional provisions establish an obligation on the part of each state to provide free education", then, "by implication, a corresponding claim right of state residents to receive an education" is created. *Id.*

²⁰⁷ See Jared Buszin, *Beyond School Finance: Refocusing Education Reform Litigation to Realize the Deferred Dream of Education Equality and Adequacy*, 62 EMORY L.J. 1613, 1623 (2013).

²⁰⁸ See generally *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605 (2004).

²⁰⁹ See Derek Black, *Unlocking the Power of State Constitutions with Equal Protection: The First Step Toward Education as a Federally Protected Right*, 51 WM. & MARY L. REV. 1343, 1364 (2010).

²¹⁰ See *id.*

principles.²¹¹ While the term “adequate education” is ambiguous, most courts have agreed it denotes something more than just a minimum level of education.²¹² In some states, demonstrated proficiency as measured by standardized examinations is used as evidence to prove the adequacy of education.²¹³ Thus, poor school districts may have a viable right of action if their students fail to demonstrate academic proficiency, especially if there is proof that state-financing schemes for education are also inequitable. This state-based constitutional litigation strategy may be a vehicle disadvantaged students who suffer from summer learning loss can exploit to effectuate change. Instead of praying for school-year relief, these students could lobby their respective courts for summer learning remedies from education inequities caused by disparate funding. In essence, students could revive an argument first advanced by the plaintiffs in *Abbott by Abbott v. Burke*, 153 N.J. 480, 589 (1998), which advocated summer school programs as a means of relief.²¹⁴

Plaintiffs who seek to close the summer gap by litigating state constitutional adequacy claims may face some legal challenges. First, courts are reluctant to order structural injunctive remedies, even if a plaintiff succeeds on an education adequacy claim.²¹⁵ Because policy solutions that aim to resolve summer reading loss are quintessential structural injunctive remedies,²¹⁶ courts will likely refrain from ordering summer school remedies.²¹⁷

Second, decisions on questions of “adequate education” are fairly unpredictable.²¹⁸ Much depends on a state court’s definition of “adequate”, which is inherently a qualitative measure.²¹⁹ Hence, courts

²¹¹ See *id.*

²¹² See *id.*

²¹³ See *Hancock v. Comm’r of Educ.*, 443 Mass. 428, 439 (2005) (measuring adequacy by student competency in core subject areas); *Conn. Coal. for Justice in Educ. Funding, Inc. v. Rell*, 295 Conn. 240, 247 (2010) (“[A]s evidence of the state’s failure to provide ‘suitable educational opportunities,’ the plaintiffs . . . rely on educational outputs . . . as measured by the adequate yearly progress on student achievement tests required under the federal No Child Left Behind Act.”).

²¹⁴ *Abbott by Abbott v. Burke*, 153 N.J. 480, 589 (1998).

²¹⁵ See Nora Gillespie, *Charter Remedies: The Structural Injunction*, 11 *Advoc. Q.* 190, 190 (“Structural injunctions . . . are remedies which attempt to coalesce abstract group rights with institutions which are constitutionally defective. This process, to some extent, . . . redefines the institution. The court . . . provides concrete solutions to institutional defects which have resisted other pressures to change.”).

²¹⁶ Kamina Aliya Pinder, *Reconciling Race-Neutral Strategies and Race-Conscious Objectives: The Potential Resurgence of the Structural Injunction in Education Litigation*, 9 *STAN. J. C.R. & C.L.* 247, 261 (explaining that the structural injunction allows courts to use their “broad equitable powers to remedy inequities” in education adequacy cases).

²¹⁷ *Id.* at 259 (“In their reluctance to be labeled judicial activists, courts have erected self-imposed barriers to structural injunctions.”).

²¹⁸ See *Buszin*, *supra* note 207, at 1622–23 (“[I]nconsistent results still characterize the jurisprudence of [adequacy claims].”).

²¹⁹ See *Black*, *supra* note 209, at 1366 (“When a court uses the term ‘adequate education,’ it

must decide whether to ascribe a high or low standard to the term “adequate education.” A state court that defines adequate as an education standard synonymous with low education attainment would be less likely to find a constitutional violation, notwithstanding large achievement disparities between socioeconomic classes.

Third, adequacy arguments have mostly prevailed in the context of state financing during the nine-month school year.²²⁰ Even though the socioeconomic divide between disadvantaged students and the rest of their peers perpetuates the summer gap, disparate school year financing is not solely to blame for disproportionate summer learning loss among disadvantaged students. Many state and local governments have subordinated summer enrichment to “school-year” learning, a practice that has proven to negate the very academic gains made during the school year.²²¹ Ignoring summer learning, as stated previously, has a disproportionately negative impact on poorer students because during the summer, middle- and upper-class students rely heavily on family resources to make achievement gains—resources that lower-class students lack. Therefore, even if education financing were uniform between socioeconomic classes during the traditional nine-month school year, disadvantaged students would still lag behind their better-off peers because the summer learning loss problem would plague them. Ostensibly, the need for an efficacious legislative solution would still exist, requiring federal, state, and local governments to address the summer learning loss problem.

V. CONCLUSION

As we approach the 50th Anniversary of the enactment of the Elementary and Secondary School Education Act of 1965, it is natural and appropriate to reflect on the progress made in education. This seminal legislation effectuated profound changes in the legal and educational environment across the country.²²² Prior to this Act, states and municipalities were almost solely responsible for the provision of children’s education and inequities were rampant.²²³ The post- enactment

is, at a minimum, indicating that students are entitled to a particular qualitative level of education.”).

²²⁰ See *id.* at 1363–65 (explaining the success of adequacy finance litigation in the traditional school year).

²²¹ See *supra* Part III.C.

²²² Dennis Van Roekel & Lois Edinger, *The Elementary and Secondary Education Act – 45 Years Later*, HUFFINGTON POST (May 25, 2011, 4:05 PM), http://www.huffingtonpost.com/dennis-van-roekel/the-elementary-and-second_b_533301.html (“[The ESEA] was the first massive infusion of federal dollars into our nation’s schools, and it . . . provided educational resources in under-served communities.”).

²²³ *Id.*

period, however, has been characterized by increased federal involvement in public education, which has remained the norm in the decades that followed.²²⁴

Today, our nation's decision makers confront education reform challenges at all levels. The federal government is charged with maintaining accountability measures to ensure that all children receive a satisfactory education during the traditional academic school year. States seek to regain the autonomy that they possessed prior to the enactment of No Child Left Behind.²²⁵ Local school districts continue to struggle with budget constraints that compel them to forego summer enrichment opportunities. Although these factors seem like they might hinder implementing programs that would eliminate the inequities created by summer learning loss, in actuality they create the perfect opportunity for policymakers.

By targeting summer learning loss, federal decision makers can finally realize their goal of ensuring a satisfactory education to disadvantaged students and of fairly assessing the progress made by students during the school year. Because the federal government will have less of a reason to make mandates if the summer learning loss problem is resolved, states will gain greater autonomy in providing education to their students. Resolving the summer learning loss disparity will also reduce the financial costs associated with re-teaching material to students at the beginning of the school year.²²⁶

It is clear that policymakers cannot fulfill their objective of educating all students and offering academically enriching opportunities to disadvantaged youth without resolving summer learning loss inequities. But if the legislative agenda can be focused on summer learning loss as the source of the education achievement problem, it may be possible to remedy education inequity.

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²²⁴ See *supra* note 173 (listing federal laws enacted to narrow the socioeconomic achievement gap).

²²⁵ See *supra* note 130.

²²⁶ See *supra* Part III.A

* J.D. Candidate Howard University School of Law; B.S. Duke University. Praise be to God the Father—the author of all of creation—the Son, who died for my sins and now intercedes on my behalf and will return—and the Holy Spirit, which abides in and directs me daily. Amen. I would like to thank Professor Olivia Farrar for her invaluable mentorship, instruction, and guidance, and the editors of Brigham Young University Education and Law Journal, whose tireless efforts and commitment to excellence made this all possible.