

**DEREK W. BLACK**

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**EDUCATION**

**UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW, J.D., May 2002**

*High Honors; Order of the Coif; NORTH CAROLINA LAW REVIEW, staff and senior staff*

**UNIVERSITY OF TENNESSEE, B.A., May 1999**

*Summa Cum Laude; Majors: African American Studies, Philosophy, and Political Science*

**TEACHING EXPERIENCE**

**UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW, Columbia, SC**

*Professor of Law, June 2012 – present*

*Class of 1959 Chair for Legal Research, October 2018 - present*

**HOWARD UNIVERSITY SCHOOL OF LAW, Washington, DC**

*Assistant and Associate Professor of Law, August 2005 – June 2012*

**UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW, Chapel Hill, NC**

*Visiting Associate Professor of Law, August 2010 – July 2011*

**PUBLICATIONS**

**BOOKS**

SCHOOLHOUSE BURNING: DEMOCRACY, CITIZENSHIP, AND PUBLIC EDUCATION (Public Affairs/Hachette, forthcoming 2018).

EDUCATION LAW: EQUALITY, FAIRNESS, AND REFORM (Aspen 1<sup>st</sup> ed. 2013; 2<sup>nd</sup> ed. 2017).

ENDING ZERO TOLERANCE: THE CRISIS OF ABSOLUTE SCHOOL DISCIPLINE (NYU Press 2016).

**FULL LENGTH ARTICLES, ESSAYS AND REVIEWS**

*The Right to Education, Equal Opportunity, and the Schoolhouse Gate, YALE LAW JOURNAL* (forthcoming 2019) (book review with Michelle Adams).

*The Fundamental Right to Education, NOTRE DAME LAW REVIEW* (forthcoming 2019).

*Preferencing Educational Choice: The Constitutional Limits, 102 CORNELL LAW REVIEW* (forthcoming 2018).

*The Constitutional Compromise to Guarantee Education, 70 STANFORD LAW REVIEW 735* (2018).

*Abandoning the Federal Role in Education*, 105 CALIFORNIA LAW REVIEW 1309 (2017).

*Averting Educational Crises*, 94 WASHINGTON UNIVERSITY LAW REVIEW 423 (2017).

*Reforming School Discipline*, 111 NORTHWESTERN UNIVERSITY LAW REVIEW 1 (2016).

*Taking Teacher Quality Seriously*, 57 WILLIAM & MARY LAW REVIEW 1597 (2016).

*The Constitutional Challenge to Teacher Tenure*, 104 CALIFORNIA LAW REVIEW 75 (2016).

*Federalizing Education by Waiver?*, 68 VANDERBILT LAW REVIEW 607 (2015).

*The Constitutional Limit of Zero Tolerance in Schools*, 99 MINNESOTA LAW REVIEW 823 (2015).

*Charter Schools, Vouchers, and the Public Good*, 48 WAKE FOREST LAW REVIEW 445 (2013).

*Middle Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 BOSTON COLLEGE LAW REVIEW 373 (2012).

*Education's Elusive Future, Storied Past, and the Fundamental Inequity in Between*, 46 GEORGIA LAW REVIEW 557 (2012).

*Civil Rights, Charter Schools, and Lessons to Be Learned*, 64 FLORIDA LAW REVIEW 1723 (2012).

*How the Elementary and Secondary Education Act Undermines Equal Protection and Congress's Duty to Remedy It*, 90 BOSTON UNIVERSITY LAW REVIEW 313 (2010).

*Unlocking the Power of State Constitutions with Equal Protection: The First Step Toward Education as a Federally Protected Right*, 51 WILLIAM & MARY LAW REVIEW 1343 (2010).

*Cultural Norms and Race Discrimination Standards: A Case Study in How the Two Diverge*, 43 CONNECTICUT LAW REVIEW 503 (2010).

*In Defense of Voluntary Desegregation: All Things Are Not Equal*, 44 WAKE FOREST LAW REVIEW 107 (2009).

*Turning Stones of Hope into Boulders of Resistance: The First and Last Task of Social Justice Curriculum, Scholarship, and Practice*, 86 NORTH CAROLINA LAW REVIEW 673 (2008).

*The Mysteriously Reappearing Cause of Action: The Court's Expanding Concept of Intentional Discrimination in Gender and Race Discrimination Statutes*, 67 MARYLAND LAW REVIEW 358 (2008).

*A Framework for the Next Civil Rights Act: What Tort Concepts Reveal about Goals, Results, and Standards*, 60 RUTGERS LAW REVIEW 259 (2008).

*The Uncertain Future of School Desegregation and the Importance of Good Will, Good Sense, and a Misguided Decision*, 57 CATHOLIC LAW REVIEW 947 (2008).

*The Contradiction Between Equal Protection's Meaning and Its Legal Substance: How Deliberate Indifference Can Cure It*, 15 WILLIAM & MARY BILL OF RIGHTS JOURNAL 533 (2006).

*The Power of Small Schools: Achieving Equal Educational Opportunity Through Academic Success and Democratic Citizenship*, 82 NEBRASKA LAW REVIEW 50 (2003) (Gregory Malhoit, co-author).

*Picking Up the Pieces After Alexander v. Sandoval? Resurrecting a Private Cause of Action for Disparate Impact*, 81 NORTH CAROLINA LAW REVIEW 356 (2002).

*The Case for the New Compelling Government Interest: Improving Educational Outcomes*, 80 NORTH CAROLINA LAW REVIEW 923 (2001) (cited by the *en banc* panel of the 9th Circuit in *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 426 F.3d 1162, 1175 (9th Cir. 2005) and also three briefs filed in the appeal before the Supreme Court).

## **BLOGS**

Co-Founder, Co-Editor & Author, EDUCATION LAW PROF BLOG,  
[http://lawprofessors.typepad.com/education\\_law/](http://lawprofessors.typepad.com/education_law/).

Guest Blogger, THE FACULTY LOUNGE, [thefacultylounge.org](http://thefacultylounge.org).

## **SHORTER WORKS: CHAPTERS, ESSAYS, REVIEWS, AND POLICY BRIEFS**

*Closing Achievement Gaps Through Socio-Economic Integration* in OXFORD'S HANDBOOK OF U.S. EDUCATION LAW (Kristi Bowman, ed., forthcoming 2019).

*Implying a Fundamental Right to Education* in THOUGHTS ON A FEDERAL RIGHT TO EDUCATION (Kimberly Robinson, ed., forthcoming NYU Press 2019)

*Leveraging Federal Funding for Equity and Integration* in EXPLORING NEW PATHS TO EQUAL EDUCATIONAL OPPORTUNITY (Charles Ogletree & Kimberly Robinson eds., HARVARD UNIVERSITY EDUCATION PRESS 2015).

*Defining Discrimination: Intent, Impact, and the Future of Title VI of the Civil Rights Act of 1964* in THE PURSUIT OF RACIAL AND ETHNIC EQUALITY IN AMERICAN PUBLIC SCHOOLS: *MENDEZ, BROWN, AND BEYOND* (Kristi Bowman ed., MICHIGAN STATE UNIVERSITY PRESS 2014).

*Reflecting on the 50th Anniversary of the Civil Rights Act of 1964*, 23 POVERTY & RACE RESEARCH ACTION COUNCIL 5 (July 2014).

*Fisher v. Texas and the Irrelevance of Function in Race Cases*, 57 HOWARD LAW JOURNAL 701 (symposium 2014).

*In Defense of Voluntary Desegregation: All Things Are Not Equal* in CHARLES H. HOUSTON: AN INTERDISCIPLINARY STUDY OF CIVIL RIGHTS LEADERSHIP (James L. Conyers, Jr., ed. 2012).

*Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 21 POVERTY & RACE RESEARCH ACTION COUNCIL 3 (2012).

*Parents Involved in Community Schools v. Seattle School District No. 1*, ENCYCLOPEDIA OF DIVERSITY IN EDUCATION (James A. Banks, eds., 2012).

Book Review, *Martha Chamallas & Jennifer B. Wriggins, The Measure of Injury: Race, Gender, and Tort Law*, 39 JOURNAL OF PSYCHIATRY AND LAW 517 (2011).

*Voluntary Desegregation, Resegregation, and the Hope for Equal Educational Opportunity*, 98 HUMAN RIGHTS 2 (2011).

*Accounting for Historical Forces in the Effort to Align Law with Science*, 54 SAINT LOUIS UNIVERSITY LAW JOURNAL 1511 (2010) (Childress Lecture Symposium).

*Ensuring Equity, Deconcentrating Poverty, and Meeting Student Needs Through the Elementary and Secondary Education Act*, Policy Brief, EDUCATION RIGHTS CENTER (Feb. 2010).

*Leave No Child Out: An Introduction to Homelessness, Joblessness, and Bullying in America's Schools*, 51 HOWARD LAW JOURNAL 765 (2008) (symposium introduction).

*Beyond Brown: Its Impact upon American Education and Culture*, NATIONAL BAR ASSOCIATION MAGAZINE (March 2004).

## **POPULAR MEDIA PUBLICATIONS**

*Don't Divert Taxpayer Money to Vouchers*, USA TODAY, August 16, 2018.

*On Racial Diversity, Schools Should Heed Obama and Courts, Ignore Trump Scare Tactic*, USA TODAY, July 6, 2018.

*We Shouldn't Call Teacher Salary Hikes "Raises,"* EDUCATION WEEK, May 4, 2018.

*Don't Cheer Too Loudly at Massachusetts' Charter-School Ruling*, SLATE, May 1, 2018.

*The Arizona Teacher Walkouts Are Just a Skirmish in the Larger War on Public Education*, L.A. TIMES, April 26, 2018.

*The Constitutional Right to Education Is Long Overdue*, THE CONVERSATION, Dec. 4, 2017. Republished by L.A. TIMES, CHICAGO TRIBUNE, SALON, TIME

*Why Schools Still Can't Put Segregation Behind Them*, THE CONVERSATION, June 6, 2017. Republished by NEWSWEEK, INTERNATIONAL BUSINESS TIMES, BUSINESS INSIDER

*Trump Budget Would Abandon Public Education for Private Choice*, THE CONVERSATION, May 23, 2017.

Republished by SALON, HUFFINGTON POST

*“Moonlight” Schooled Hollywood on Race. Can It Take on School Discipline, Too?*, THE CONVERSATION, May 9, 2017.

Republished by HUFFINGTON POST

*Why Integration Matters in Schools*, EDUCATION WEEK, May 14, 2014.

## **SIGNIFICANT APPELLATE BRIEFS**

Amicus Brief of Education Law Center and Constitutional and Education Law Scholars, *Guzman v. State of Minnesota* (Minn. S.C. 2017).

Amicus Brief of Law Professors, *Vergara v. State* (Cal. App. 2015).

Amicus Brief of NAACP Legal Defense and Education Fund, *Doe v. Lower Merion School Dist.*, 665 F.3d 524 (3rd Cir. 2011).

Brief of Petitioner, Lawyers’ Committee for Civil Rights Under Law, *Holton v. City of Thomasville School District*, 521 F.3d 1318 (11th Cir. 2008) (*en banc*).

Civil Rights Clinic at Howard University School of Law, Brief of Amicus Curiae, *Parents Involved in Community Schools v. Seattle School District* and *Meredith v. Jefferson County Board of Education*, Supreme Court Nos. 05-908 and 05-915 (2007).

Brief of Appellant, Lawyers’ Committee for Civil Rights Under Law, *Holton v. City of Thomasville School District*, 490 F.3d 1257 (11th Cir. 2007).

Brief of Appellant, Lawyers’ Committee for Civil Rights Under Law, *Holton v. City of Thomasville School District*, 425 F.3d 1325 (11th Cir. 2005).

Brief of Amicus Curiae, Lawyers’ Committee for Civil Rights Under Law, *Comfort v. Lynn School Committee*, 418 F.3d 1 (1st Cir. 2005) (*en banc*).

Brief of Appellee, U.S. Postal Service, *Martinez v. Potter*, 347 F.3d 1208 (10th Cir. 2003).

## **SELECTED PRESENTATIONS**

*What Norms Should We Break When We Reform Schools?*, Keynote Address, 2018-19 Arkansas Law Review Symposium (Nov. 2, 2018).

*New Insights into School Privatization*, Public Education Network Annual Conference, Indianapolis, IN (Oct 20, 2018).

*The Foundations of Democracy: Critical Literacy, Civics Knowledge, and Public Education*, Tedx, University of South Carolina (Oct. 9, 2018).

*Empirical Trends, Constitutional Challenges, and School Privatization*, Annual Conference, National Organization of Lawyers for Education Associations (Oct. 5, 2018).

*Free Speech and Student Conflict on the Modern University Campus*, Panelist, 80<sup>th</sup> Judicial Conference of the Fourth Circuit (June 29, 2018).

*Theorizing a Constitutional Right to Education*, Presidential Session, American Educational Research Association (April 14, 2018).

*Charter Schools and Educational Equity*, Debate, Harvard Graduate School of Education (March 29, 2018).

*Social Science and Education Law Reform: Discipline, Special Education, and School Funding*, University of Colorado School of Education (Nov. 29, 2017).

*Preferencing Educational Choice*, University of North Carolina School of Law (Nov. 16, 2017).

*The Constitutional Compromise to Guarantee Education*, Temple University School of Law (Oct 26, 2017).

*Preferencing Educational Choice*, University of North Carolina School of Law (Nov. 16, 2017).

*The Constitutional Compromise to Guarantee Education*, Temple University School of Law (Oct 26, 2017).

*Abandoning the Federal Role in Education*, Drexel University School of Law (March 8, 2017).

*The Intersection of School Quality and Student Discipline*, Fordham University School of Law (March 6, 2017).

*Legislative Barriers to School Funding Reform*, Virginia Commonwealth Institute, Richmond, VA (Nov. 11, 2016).

*Averting Educational Crises*, Education Law Association Annual Conference, Orlando, FL (Nov. 3, 2016).

*Choosing the Correct Measuring Stick for Charter Schools and Vouchers*, NYU School of Law (April 5, 2016).

*Half a Step Forward, Three Steps Back: The Every Student Succeeds Act*, American

Association of Law Schools, New York City (Jan. 6, 2016).

*Ending Zero Tolerance*, American Const. Society, Harvard Law School (Sept. 17, 2015).

*Creating Access and Equity: Have Charter Schools Made The Dream More Real?*, National Alliance for Public Charter Schools, Memphis, TN (April 16, 2015).

*Due Process Implications of School Discipline*, Guest Lecture, Washington University School of Law (Feb. 24, 2015).

*The Constitutional Requirements of Abbeville v. State*, SC House of Representatives Education Policy Review and Reform Task Force, Columbia, SC (Feb. 23, 2015).

*Recognizing the Right to Education at the Federal Level*, Constitutional Personhood Summit, New York University School of Law: Hosted in Princeton, NJ (Nov. 7, 2014).

*The Constitutional Limits of Zero Tolerance*, Law and Society, Minneapolis, MN (May 30, 2014).

*Balancing Competing Values in School Desegregation: The Beginning of the End*, 50<sup>th</sup> Anniversary of the Civil Rights Act of 1964 Conference, Michigan St. Univ. College of Law-Univ. of Missouri-KC School of Law (April 11, 2014).

*Ending Zero Tolerance*, University of North Carolina School of Law, Chapel Hill, NC (Jan. 23, 2014).

*Getting Started on Your Scholarly Agenda: Topic Selection, Scheduling, Scope, and Pitfalls*, AALS New Law Teachers Conference, Washington, DC (June 2 2013).

*NCLB Waivers*, No Child Left Behind Symposium: 10 Years in Review, Thurgood Marshall School of Law (Feb. 8, 2013).

*Leveraging Federal Funding for Equity and Integration*, 40th Anniversary of *San Antonio v. Rodriguez*: Exploring New Paths to Equal Educational Opportunity, University of Richmond School of Law (March 7, 2013).

*Pursuing the Public Good in Education: The Competing Interests of Individual Autonomy and Collective Action*, Privatizing the Public Good: Emerging Trends in K-16 Education Symposium, Wake Forest University School of Law (October 26, 2012).

*A Legal History of Disparate Impact Analysis in Education and Civil Rights*, Applying Disparate Impact in Civil Rights Complaints to Derail the School to Prison Pipeline Teleconference, ABA Children's Rights Litigation Committee (October 17, 2012).

*Getting Started on Your Scholarly Agenda*, AALS New Law Teachers Conference, Washington, DC (June 22, 2012).

*Implicit Bias Across the Educational Spectrum: Ability Grouping, Special Education and*

*Discipline, Implicit Racial Bias Across the Law: A Book Conference*, Harvard Law School (June 14, 2012).

*Parallel Movements: Incorporating School Integration into School Reform Agendas*, Advancing the Legacy of Mendez and Brown: A National Conference on School Diversity, Georgetown University Law Center (May 17, 2012).

*Racially Unequal Access to Middle Income Peers*, Charles Hamilton Houston Institute for Race and Justice, Harvard Law School, Boston, MA (Jan. 25, 2012).

*Hearing Testimony on the Benefits of Racial Integration*, Minnesota Department of Education Integration Revenue Replacement Task Force (Dec. 20, 2011).

*Education's Elusive Future, Storied Past, and the Fundamental Inequity in Between*, Civil Rights or Civil Wants Conference, University of Georgia School of Law (August 26, 2011).

*Civil Rights and the K-12 Education Reform Agenda*, Panelist, Southeastern Association of Law Schools (July 26, 2011).

*The Limits of Educational Equity*, Paper Presentation, Wake Forest University School of Law (April 28, 2011).

*Economic Justice for Families and Communities*, Panelist, "The Unfinished Work": Advancing New Strategies in the Struggle for Civil Rights, University of North Carolina School of Law (Nov. 1, 2010).

*Racially Unequal Access to Middle Income Peers*, Study Presentation, NC NAACP State Convention, Charlotte, NC (Oct. 8, 2010).

*Public Perceptions of Race Discrimination and Intent: What Matters Most?*, Panelist, Southeastern Association of Law Schools Annual Meeting (July 30, 2010).

*What the Federal Government Is Doing, and What It Can Do, to Reduce Racial and Socioeconomic Isolation and Promote Diversity in K-12 Schools*, Moderator, Reaffirming the Role of School Integration in K-12 Education Policy Conference, Howard University School of Law (Nov. 13, 2009).

*The Misdirection of Federal Education Funds: Helping Poor Kids or Pushing Educational Agendas?*, Paper Presentation, Poverty and Economic Mobility Conference, American University Washington College of Law (Oct. 26, 2009).

*How the No Child Left Behind Act Shortchanges Minority Students Through Its Funding Formulas and Congress's Constitutional Duty to Fix It*, Congressional Black Caucus Foundation Conference on Breaking Barriers for African American Males, Russell Senate Office Building (April 24, 2009).

*When Old Enemies Become New Friends: Desegregation Lawyers, School Districts, and*



*Communities*, Panelist, National Summit on Interdistrict School Desegregation, Harvard Law School (January 18, 2009).

*Education Is a Civil Right*, Presentation, National Alliance of Black School Educators, Washington, DC (January 2009).

*Racial Bias in School Room Discipline*, Panelist, George Washington University School of Education (April 2008).

*Solidifying Education as a Civil Right: The Choice Between a Constitutional Amendment and the Courts*, Panelist, National Alliance of Black School Educators Annual Convention, Washington, DC (April 2008).

*Teaching Hope to Social Justice Students*, Presenter, Teaching for Social Change Conference, University of California School of Law (March 2008).

*Can We Continue Brown v. Board's Promise by Suing Kennedy's Taste?*, Presenter, Supreme Court Update, Southeastern Association of Law Schools Annual Meeting (July 2007).

*The Future of Voluntary Desegregation*, Panelist, The Marshall-Brennan Constitutional Literacy Project Conference, American University Washington College of Law (March 2007).

*A Reason to Hope*, Opening Address, 4th Annual Norman Amaker Public Interest Law Retreat, Indiana University School of Law-Indianapolis (Feb. 2005).

*Connecting the Dots from Brown to Grutter*, Brown v. Board 50th Anniversary Lecture Series, Georgetown University (April 2004).

*The Right to a High Quality Education under Florida Law*, Presenter, Brown v. Board 50th Anniversary Event, University of Miami School of Law (March 2004).

*Recognizing Inequity in Ability Grouping Practices*, Panelist, Georgia Branches of NAACP Annual Convention, Atlanta, GA (Oct. 2003).

*When Discrimination Can't Be Proven: The Uphill Battle of Alexander v. Sandoval*, Tennessee Branches of the N.A.A.C.P Annual Convention, Nashville, TN (Sept. 2003).

*Proving Intent by Alternative Means: An Answer to Alexander v. Sandoval*, Panelist, Lawyers' Committee for Civil Rights Under Law 40th Anniversary Symposium, Washington, DC (June 2003).

## **OTHER LEGAL EXPERIENCE**

**PRESIDENTIAL TRANSITION TEAM, CIVIL RIGHTS CLUSTER**, Washington, DC  
*U.S. Commission on Civil Rights Team Member*, November 2008 – January 2009

**NATIONAL ALLIANCE OF BLACK SCHOOL EDUCATORS**, Washington, DC  
*Consultant*, April 2008 – June 2010

**LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**, Washington, DC  
*Education Project Staff Attorney*, June 2003 – July 2005

**RURAL EDUCATION FINANCE CENTER**, Raleigh, NC  
*Consultant*, May 2002 – October 2003

**U. S. POSTAL SERVICE LAW DEPARTMENT, APPELLATE DIVISION**, Washington, DC  
*Honors Attorney*, Appellate Litigation, October 2002 – June 2003

**AMERICAN CIVIL LIBERTIES UNION, NORTH CAROLINA**  
*Dan Pollitt Legal Fellow*, August 2001 – May 2002

**OFFICE FOR CIVIL RIGHTS, UNITED STATES DEPARTMENT OF EDUCATION**, Washington, DC  
*Law Clerk*, May 2000 – August 2000 and May 2001 – August 2001

### **SELECTED PRO BONO ACTIVITIES AND COMMUNITY SERVICE**

South Carolina Advisory Committee, United States Commission on Civil Rights (2015-present).

Steering Committee, National Coalition for School Diversity (2009-present).

Counsel, Brief of Amici Curiae NAACP Legal Defense & Education Fund, et al., *Doe v. Lower Merion School District*, Civ. No. 09-2095 (3rd Cir. 2011).

Counsel, Lawyers' Committee for Civil Rights Under Law (trial, appellate and post-trial proceedings in *Holton v. City of Thomasville School District*, 425 F.3d 1325 (11th Cir. 2005) (2005-2009).

Volunteer Regional Supervisor, Election Protection, Lawyers' Committee for Civil Rights Under Law (2008).

Supervisor, New Orleans Alternative Spring Break (2008, 2009).

Co-Author, Amicus Brief of Howard University School of Law, *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701 (2007).

Coordinator, Student Hurricane Network *pro bono* program (2006–07).