

2020

A Constitutional Right to an Education: Revisited

Andy Froelich

Follow this and additional works at: <https://lawcommons.luc.edu/clrj>



Part of the [Family Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Andy Froelich, *A Constitutional Right to an Education: Revisited*, 40 CHILD. LEGAL RTS. J. 159 (2021).
Available at: <https://lawcommons.luc.edu/clrj/vol40/iss2/8>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Children's Legal Rights Journal by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

In the Courts:
A Constitutional Right to an Education: Revisited

By: Andy Froelich

I. INTRODUCTION

The United States is one of the few countries in the world that does not have any mention of the word “education” in its constitution, and the only country in the world that has not ratified the United Nations Convention on the Rights of the Child, which specifies various education protections and guarantees. In 1973, the Supreme Court in *San Antonio Independent School District v. Rodriguez* held that there is no constitutional right to an education or to equally funded schools. Since *Rodriguez*, the disparities in school funding, quality, and academic outcomes have continued to widen.

However, there are two cases in the courts today that revisit, in a new way, some of the same questions presented in *Rodriguez*. First is *Gary B. v. Whitmer* (formally *Gary B. v. Snyder*) in the Sixth Circuit, which is a class action lawsuit made up of recent high school students from the Detroit area. In this case the plaintiffs alleged that their subpar school environments and unqualified teachers deprived them of a basic right to literacy. Second is another class action lawsuit, *Cook (A.C.) v. Raimondo*, in the U.S. District Court for the District of Rhode Island. This case is comprised of minor, school-aged children from Rhode Island who alleged that the State’s failure to provide them with an adequate civics education violated their constitutional rights. This article will discuss the unique and creative arguments the plaintiffs use in *Gary B.* and *Cook*, which revisit the unanswered questions in *Rodriguez*. The article will also explore possible implications these cases will have on future education litigation and education in general in the United States.

II. REVISITING RODRIGUEZ

The Court in *Rodriguez* seemingly closed the door to the questions of whether the Constitution provides for a fundamental right to education under the Due Process Clause or to equally funded schools under the Equal Protection Clause. However, the plaintiffs in both *Gary B.* and *Cook* point out that the *Rodriguez* Court left a crucial question unanswered: whether some “identifiable quantum of education is a constitutionally protected prerequisite” to provide students “an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.” The Court specifically avoided answering this question because it found that the plaintiffs were afforded access to those “basic minimal skills.”

Nearly fifty years after *Rodriguez*, the plaintiffs in *Gary B.* and *Cook* hope to force the Supreme Court to answer the questions they left open in 1973. This time around, the plaintiffs attempt to creatively maneuver their current circumstances and arguments to fit squarely in the narrow space left open by the *Rodriguez* Court. In *Cook*, a neglected civic

education curriculum, the plaintiffs argue, has denied students the skills necessary for full participation in the political process. Similarly, in *Gary B.*, crumbling and disinvested Detroit school buildings have created “schools in name only,” depriving students of an access to literacy, which they argue is a “basic minimal skill” required to participate in the political process.

III. *GARY B. v. WHITMER*

In *Gary B. v. Whitmer*, the plaintiffs paint a particularly dire picture of their Detroit area schools, some of the worst-performing schools in Michigan. They describe schools rampant with broken windows, doors, and fire alarms that go unaddressed for months, and ceilings that frequently buckle, occasionally collapse, and require buckets to catch leaking water. The plaintiffs also claim that temperatures in their classrooms regularly reach as high as ninety degrees (one school as high as 110 degrees in the summer adjacent months), and classrooms so cold in the winter that students have to wear jackets to class and can often see their breath. Academically, the plaintiffs allege that many of their classrooms do not have textbooks, and teacher shortages in the school district have led to classes consistently being taught by “non-certificated paraprofessionals, substitutes, or misassigned teachers who lack any expertise or knowledge in the subject course content to which they are assigned.”

But the crux of their argument is that their “schools in name only” have had a devastating effect on their academic outcomes and have denied them an access to literacy. A vast majority of students in the plaintiffs’ schools cannot read, write, or comprehend most subject areas at grade level. In one of the plaintiffs’ schools, only 1.9% of eleventh graders were proficient in English. Resulting from the failing literacy instruction, every eleventh grader throughout the plaintiffs’ high schools had a 0% proficiency in at least Math, Science, or Social Studies. Accordingly, plaintiffs argue that the State has failed to provide them with access to attain literacy – *i.e.*, “a basic minimal skill necessary for the enjoyment of the rights of speech and of full participation in the political process.”

Thus, the plaintiffs brought causes of action against the State under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Taking advantage of the unique and unfortunate circumstances of Detroit area schools and the unanswered question in *Rodriguez*, plaintiffs allege that by denying them access to literacy, they have been denied a fundamental right that is deeply rooted in the Nation’s history and tradition under the Due Process Clause. Additionally, the plaintiffs’ Equal Protection cause of action asserts that the State has denied a discrete minority “the opportunity to acquire literacy by assigning them, unlike other students who participate in Defendants’ education system, to schools that do not deliver access to literacy.”

In July of 2018, United States District Court Judge Stephen J. Murphy of the Eastern District of Michigan granted the defendants’ motion to dismiss, holding that there is “no fundamental right that a state affirmatively provide students with a defined, minimum level of education by which they can attain literacy.” On October 24, 2019, a

Sixth Circuit panel heard oral arguments on the plaintiffs' appeal of the District Court's ruling to dismiss the case.

On April 23, 2020, in a 2-1 vote, a three-judge panel from the Sixth Circuit reversed the decision of the District Court as to the case's central issue: whether the plaintiffs have a fundamental right to a basic minimum education, specifically one that provides access to literacy. The court applied the two-prong analysis to determine whether the asserted right is fundamental: (1) whether a fundamental right to a basic minimum education is objectively "deeply rooted in the Nation's history and tradition," and (2) whether this fundamental right is "implicit in the concept of ordered liberty." First, the court found the right to an education to be such a universal feature in our country since the adoption of the Fourteenth Amendment that "people have come to expect and rely on this education . . . in order to provide the basic skills needed for our children to participate as members of American society and democracy." Second, when considering illiteracy as an "enduring disability" along with the reality that literacy is required for essentially every interaction between a citizen and the government, the court also found that a right to a basic minimum education is "implicit in the concept of ordered liberty." Put simply, the court established that without access to literacy provided by a basic minimum education, "it is impossible to participate in our democracy." Applied to *Gary B.*, the court held that denying the plaintiffs access to literacy in their schools warrants a constitutional remedy, and that under the Due Process Clause, they are entitled to a fundamental right to a basic minimum education, "meaning one that can provide them with a foundational level of literacy."

Three weeks after the panel ruling, Governor Gretchen Whitmer of Michigan came to a settlement agreement with the plaintiffs which, among other things, sent roughly \$2.7 million to the Detroit Public School Community District to help fund literacy efforts. However, after the settlement, a Sixth Circuit judge *sua sponte* requested a poll on whether to rehear the case. And on May 19, 2020, a majority of the Sixth Circuit voted to rehear the case *en banc*, vacating the previous decision and opinion.

IV. *COOK V. RAIMONDO*

The plaintiffs in *Cook* base their arguments on the current state of Rhode Island's civics education in public schools. The plaintiffs assert that Rhode Island has neglected civics education for decades, and that recent standardized assessments clearly show this shortfall. The most recent administration of the National Assessment of Educational Progress (a nationally representative assessment of what American students know in various subjects) in a national sample of eighth graders who took the assessment, only 23% reached "proficiency" levels in civics knowledge. They also cite national statistics that they allege show students' "depth of ignorance" concerning their civics competence. For example: in 2006, only half of Americans could name all three branches of government and only 40% of young people could find Iraq on a map; less than a third of eighth graders could name the historical significance of the Declaration of Independence; and less than 20% of high school seniors "could explain how citizen participation benefits democracy."

These statistics, the plaintiffs argue, demonstrate that they have not been adequately prepared to participate in the civic process. In order to prepare students to have the skills to meaningfully participate in the political process, they must have knowledge of government structures and democratic institutions, verbal, media, and literacy skills, interpersonal and civic engagement skills, and basic character values.

As a result of Rhode Island's neglected civics education program, the plaintiffs allege that the State's failure to provide them with the necessary education for meaningful civic participation infringes on their constitutional rights under the Equal Protection, Privileges and Immunities, and Due Process Clauses of the Fourteenth Amendment, the Sixth and Seventh Amendments, and also violates the guarantee that they will live in a state with a republican form of government under Article Four, Section Four of the Constitution.

Similar to the plaintiffs' claims in *Gary B.*, the plaintiffs in *Cook* brought both due process and equal protection claims, but also creatively brought causes of action under various parts of the Constitution, potentially giving the court other options if they choose to follow the *Rodriguez* precedent on the due process or equal protection arguments. Of particular note is the plaintiffs' cause of action under the Republican Form of Government Clause under Article Four, Section Four of the Constitution. This clause, simply put, guarantees that every state must have a republican form of government. This clause has rarely been invoked, but significantly, under this clause during the Reconstruction era, the U.S. government forced Southern states to include a right to public education in their state constitutions. The plaintiffs also brought claims under the Sixth and Seventh Amendments of the Constitution, alleging that the State has failed to prepare plaintiffs to be "eligible for and to serve effectively on federal and state juries." In summary, the plaintiffs argue that the denial of an adequate civics education impacts their participation in almost every aspect of the democratic and civic process.

On December 5, 2019, United States District Court Judge William E. Smith held a hearing on the State of Rhode Island's motion to dismiss. As of the publication of this article, the District Court has yet to issue a decision on the motion to dismiss. Depending on the District Court's ruling, the plaintiffs are prepared to appeal the decision to the First Circuit Court of Appeals.

V. CONCLUSION

In both *Gary B.* and *Cook*, the respective plaintiffs bring to the table unique circumstances and creative arguments that have yet to be tested at this level. If the courts decide the two cases differently, there is the possibility that the Supreme Court would take up the issue to resolve the split circuit decisions. And although short-lived, the Sixth Circuit panel's ruling in *Gary B.* established for the first time that students have a fundamental right to an education that at least reaches a minimum level of quality. Depending on the result of *Cook* and the forthcoming en banc rehearing of *Gary B.*, these cases could drastically impact how states allocate funds to their schools in an effort to achieve more

equitable educational opportunities for all students. Given the current makeup of the Supreme Court, many legal experts wonder if this is the right time to bring forward this litigation. Regardless of the results of these cases, they will undoubtedly have a lasting effect on whether there is a constitutional right to an education.

SOURCES

Brief for Petitioners-Appellants, *Gary B. v. Snyder*, No. 18-1855/18-1871 (6th Cir. Nov. 16, 2018).

Class Action Complaint, *A.C. v. Raimondo*, No. 1:18-cv-00645 (D. R.I. Nov. 28, 2018).

Erin Einhorn, *How a Lawsuit Over Detroit Schools Could Have an 'Earth-shattering' Impact*, NBC NEWS (Oct. 28, 2019), <https://www.nbcnews.com/news/us-news/how-lawsuit-over-detroit-schools-could-have-earth-shattering-impact-n1072721>.

Gary B. v. Snyder, 329 F. Supp. 3d 344 (E.D. Mich. 2018).

Gary B. v. Whitmer, 957 F.3d 616 (6th Cir. 2020).

Gary B. v. Whitmer, 958 F.3d 1216 (6th Cir. 2020).

History Is Made: Groundbreaking Settlement in Detroit Literacy Lawsuit, PUB. COUNS. (May 14, 2020), <http://www.publiccounsel.org/stories?id=0303>.

Linda Jacobson, *Rhode Island Right-to-education Lawsuit to Be Heard in Federal Court*, EDUC. DIVE (Dec. 4, 2019), <https://www.educationdive.com/news/rhode-island-right-to-education-lawsuit-to-be-heard-in-federal-court/568209/>.

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

Stephen Sawchuk, *Is the Time Right to Make Education a Constitutional Right?*, EDUC. WEEK (Dec. 11, 2018), <https://www.edweek.org/ew/articles/2018/12/12/is-the-time-right-to-make-education.html>.

Sarah Wang, *Rhode Island Students Take Fight for Civic Education to Courts*, BROWN DAILY HERALD (Feb. 10, 2020), <https://www.browndailyherald.com/2020/02/10/rhode-island-students-take-fight-civic-education-courts/>.

Alia Wong, *The Students Suing for a Constitutional Right to Education*, ATLANTIC (Nov. 28, 2018), <https://www.theatlantic.com/education/archive/2018/11/lawsuit-constitutional-right-education/576901/>.