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## Education is a Fundamental Right

Anna Nornes

Equitable education has been a long-fought issue.<sup>1</sup> Historically, the federal government has been silent on the matter and left it to the discretion of state legislatures.<sup>2</sup> The United States Supreme Court first ruled on the right to education in *San Antonio v. Rodriguez*, holding that education was not a fundamental right provided under the United States Constitution.<sup>3</sup> Although education was not considered a federal right, state legislatures did not necessarily have complete autonomy.<sup>4</sup> As a result, across different states and municipalities, there are vast discrepancies in educational funding, quality of teachers, and overall quality of education.<sup>5</sup> A 2020 study explored the United States' gaps in funding for public education, and found that over the past decade there has been an enormous amount of disinvestment in states' education funds and the students are suffering as a result.<sup>6</sup> Specifically in California, Texas, and Florida, education funds are seeing funding gaps greater than \$10 billion, while hosting over fourteen million students collectively.<sup>7</sup> The inadequacy of investment has significant consequences for students.<sup>8</sup> In 2018, the

<sup>1</sup> Paul D. Carrington, *Financing the American Dream: Equality and School Taxes*, 73 COLUM. L. REV. 1227, 1227 (1973).

<sup>2</sup> *Id.*

<sup>3</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973).

<sup>4</sup> Sarah A. Nagro et al., *The Evolution of Access to Education Through Landmark Legislation, Court Cases, and Policy Initiatives Setting Precedent for The Gary B. Court Decision*, J. OF DISABILITY POL'Y STUD. 1, 5 (2022).

<sup>5</sup> *Id.*; See Tina Trujillo et al., *Responding to Educational Inequality: Addressing Race and Social Disparities to Increase Opportunity*, UNIV. CAL. BERKELEY, HAAS INST. (Sept. 2016), [https://belonging.berkeley.edu/sites/default/files/haas\\_institute\\_race\\_education\\_brief\\_june\\_2017\\_1.pdf](https://belonging.berkeley.edu/sites/default/files/haas_institute_race_education_brief_june_2017_1.pdf).

<sup>6</sup> Trujillo, *supra* note 5, at 3.

<sup>7</sup> *TCF Study Finds U.S. Schools Underfunded by Nearly \$150 Billion Annually*, THE CENTURY FOUND. (July 20, 2022), <https://tcf.org/content/about-tcf/tcf-study-finds-u-s-schools-underfunded-nearly-150-billion-annually/?agreed=1>.

<sup>8</sup> Bruce Baker, *The Unequal State of Public Education in the United States*, THE CENTURY FOUND. (June 25, 2020), [https://production-tcf.imgix.net/app/uploads/2020/06/24185424/1bruce-baker\\_-fn.pdf](https://production-tcf.imgix.net/app/uploads/2020/06/24185424/1bruce-baker_-fn.pdf); See also Lisette Partelow, et al., *Fixing Chronic Disinvestment in K-12 Schools*, THE CENTER FOR AM. PROGRESS (Sept. 20, 2018), <https://www.americanprogress.org/article/fixing-chronic-disinvestment-k-12-schools/> (Summarizing increases in education spending leads to higher graduation rates, improvements in test results, increase in future earnings, reduced disparities in high to low income districts, and investing in school resources that matter to the students).

Century Foundation discovered that adequately funded districts were performing at higher levels in reading and math assessments, while underfunded school districts were falling short.<sup>9</sup> This reality leaves the United States with dramatically different education systems.<sup>10</sup> Education law professor, Miranda Johnson, discusses how the lack of a federal right to an education means that the education provided by school districts can drastically vary: “one provides a meaningful pathway to opportunity and post-secondary success and another does not.”<sup>11</sup> Overall, this disregard from the federal government perpetuates racial and socio-economic inequalities in the U.S.<sup>12</sup>

It is time to rethink the federal government’s role in public education because the current decentralized system has created harmful discrepancies among students’ education. Recently, there has been a rise of cases offering an opportunity to reevaluate the federal government’s role in education.<sup>13</sup> These cases aim to establish a fundamental right to education by arguing the notion that all citizens have a right to an education that will adequately prepare them to participate in democracy.<sup>14</sup>

#### THE SUPREME COURT’S RULING

Famously, *Brown v. Board of Education* discussed how education is the most important function of the government.<sup>15</sup> Education holds a deep-rooted tradition in the U.S. and is vital to every individual and society.<sup>16</sup> In that case, the Supreme Court laid the foundation for education to be highly protected.<sup>17</sup> However, twenty years later, the Court directly addressed the issue in *San Antonio v. Rodriguez* when it held that the Constitution does not provide education as a fundamental right and that this issue should be left to the states.<sup>18</sup>

<sup>9</sup> Baker, *supra* note 8, at 12.

<sup>10</sup> Man Hung et al., *Exploring Student Achievement Gaps in School Districts Across the United States*, 52 EDUC. URB. SOC’Y 175, 177 (2019).

<sup>11</sup> Virtual Interview with Miranda Johnson, Director of the Education Law and Policy Institute, Loyola University Chicago School of Law (Oct. 11, 2022).

<sup>12</sup> See generally Lincoln Bernard, *Education Inequality in the United States: A Wicked Problem with a Wicked Solution* (2021), [https://scholarship.claremont.edu/cmcs\\_theses/2780/](https://scholarship.claremont.edu/cmcs_theses/2780/).

<sup>13</sup> Andy Froelich, *In the Courts: A Constitutional Right to An Education: Revisited*, 40 CHILD. LEGAL RTS. J. 159, 159–60 (2019).

<sup>14</sup> *Id.*

<sup>15</sup> *Brown v. Board of Educ. of Topeka*, 75 U.S. 686, 691 (1954).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Rodriguez*, 411 U.S. at 40.

By making this decision, the Court failed to protect the right to education, increased education disparities, and ultimately harmed students.<sup>19</sup>

This case arose out of a class action lawsuit in Texas, a state that heavily relies on property taxes to support its public schools.<sup>20</sup> The plaintiffs brought the case on behalf of parents whose students attended school in San Antonio, Texas.<sup>21</sup> The district struggled to fund their school because the tax base consisted of low-income neighborhoods.<sup>22</sup> The parents argued that education is a fundamental right, and therefore the Fourteenth Amendment prohibited the existing tax-based financing plan in Texas.<sup>23</sup> Supreme Court Justice Lewis Powell wrote for the majority, stating that education is not a fundamental right granted to individuals by the Constitution.<sup>24</sup> The majority's opinion was predicated upon the fact that education was not mentioned in either the U.S. Constitution or Bill of Rights.<sup>25</sup>

Nonetheless, the majority recognized that some degree of education is necessary to prepare individuals to exercise their constitutional rights.<sup>26</sup> The majority concluded that there are "basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process."<sup>27</sup> Unfortunately, since the plaintiffs did not present any evidence that their education was not preparing them to exercise their constitutional rights, such as their right to vote or other First Amendment privileges, the Court found that review would be inappropriate.<sup>28</sup>

Notably, in the dissent, Supreme Court Justice Thurgood Marshall noted that every individual should have the right to an equal start in life and that education is fundamental to that process.<sup>29</sup> Justice Marshall continued by explaining that education is related to constitutional values, and is necessary to practice constitutional rights.<sup>30</sup> For example, some education is necessary for the exercise of First Amendment rights and to prepare citizens to participate in

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<sup>19</sup> Charles J. Ogletree, *The Legacy and Implications of San Antonio Independent School District v. Rodriguez*, 17 RICHMOND J. LAW PUB. INT. 515, 528 (2014).

<sup>20</sup> *Rodriguez*, 411 U.S. at 14.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.* at 15–16.

<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* at 56.

<sup>25</sup> *Id.* at 18.

<sup>26</sup> *Id.* at 30–31.

<sup>27</sup> *Id.* at 37.

<sup>28</sup> *Id.* at 35.

<sup>29</sup> *Id.* at 91.

<sup>30</sup> *Id.*

the political system and be self-sufficient.<sup>31</sup> Ultimately, with this dissent, Justice Marshall opened the door for future arguments to include education as a fundamental right provided by the Constitution.<sup>32</sup> The *Rodriguez* case has left the federal government exempt from any responsibility to provide meaningful education within a system of gross disparities.<sup>33</sup>

#### LOWER COURTS UNDERMINING THE RIGHT TO EDUCATION

The next time a federal court significantly re-examined the right to education was fifty years after the landmark *Rodriguez* case.<sup>34</sup> In the 2016 case of *Gary B. v. Whitmer*, the U.S. Sixth Circuit Court of Appeals found that the Constitution provides a fundamental right to a basic, minimum education.<sup>35</sup> Within this case, students from five underperforming Detroit Public Schools sued Michigan state officials over inadequate school conditions and unequal educational outcomes.<sup>36</sup> The students argued that their Fourteenth Amendment rights were violated when the students received extremely inadequate education in comparison to other Michigan students.<sup>37</sup> The students alleged missing and unqualified teachers, poor conditions within their classrooms, inadequate teaching lessons, physically dangerous facilities, and insufficient materials.<sup>38</sup> Overall, plaintiffs argued that their basic right to education was deprived when their schools did not deliver them access to literacy.<sup>39</sup>

Although the plaintiff's Equal Protection claim failed, the court found that the students were denied access to basic minimum education through a lack of literacy.<sup>40</sup> The court referenced *Rodriguez* by stating that the Supreme Court saved the question of basic minimum education for a later day.<sup>41</sup> The court discussed the deep rooted tradition, history, and importance of literacy being provided in public education.<sup>42</sup> The court also emphasized how literacy is essential for the political process and for exercising other fundamental rights.<sup>43</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> Ogletree, *supra* note 19, at 519.

<sup>33</sup> Virtual Interview with Miranda Johnson, *supra* note 11.

<sup>34</sup> *Gary B. v. Whitmer*, 957 F.3d 620 (6th Cir. 2020).

<sup>35</sup> *Id.* at 621.

<sup>36</sup> *Id.* at 622.

<sup>37</sup> *Id.* at 628.

<sup>38</sup> *Id.* at 624–627.

<sup>39</sup> *Id.* at 633.

<sup>40</sup> *Id.* at 662.

<sup>41</sup> *Id.* at 652.

<sup>42</sup> *Id.* at 649.

<sup>43</sup> *Id.*

Thus, the Sixth Circuit essentially held that access to literacy is a fundamental right.<sup>44</sup> In the dissent, Justice Stephen Murphy implied that this case did not overturn *Rodriguez*, and courts are left to discern the difference between *Gary B.* and *Rodriguez*.<sup>45</sup>

Advocates of education law and policy recognized the potential of *Gary B.* to overturn or modify the holding of *Rodriguez*, if it were appealed to the Supreme Court.<sup>46</sup> Shortly after the case was heard by the Sixth Circuit, however, litigation was disrupted when Michigan offered a settlement of \$94 million as a minimum to the Detroit Public Schools literacy programs and the case was vacated.<sup>47</sup> Despite the opinion being set aside, the legal arguments remain for advocates to use in the future to overturn *Rodriguez*.<sup>48</sup>

Another significant federal case to address the idea of a right to education was *Cook v. McKee*, filed in 2018.<sup>49</sup> Formerly *A.C. v. Raimondo*, the class-action lawsuit was brought against Rhode Island officials by students who attended fourteen schools within the state.<sup>50</sup> The students argued that state officials violated the Fourteenth Amendment's Equal Protection Clause by their failure to provide civic education in public schools.<sup>51</sup> The Rhode Island students claimed there was a large disparity in civic engagement and limited preparation for civic life in comparison to neighboring schools.<sup>52</sup> The students argued that civic education is fundamental to "civic participants capable of voting, serving on a jury, understanding economic, social, and political systems sufficiently to make informed choices, and [participating] effectively in civic activities."<sup>53</sup>

The district court dismissed the case, but in its opinion stated: "plaintiffs should be commended for bringing this case. It highlights a deep flaw in our national education priorities."<sup>54</sup> The court mentioned how Justice Powell in

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 679.

<sup>46</sup> Rocco E. Testani, *A Short-Lived Constitutional Right to Education*, EDUC. NEXT (May 21, 2020), <https://www.educationnext.org/short-lived-constitutional-right-to-education-sixth-circuit-rehear-gary-b-whitmer/>.

<sup>47</sup> Alyssa Evans, *The Other Branch: Outcomes of Gary B. v. Snyder*, EDUC. NOTE (July 15, 2020), <https://ednote.ecs.org/the-other-branch-outcomes-of-gary-b-v-snyder/>.

<sup>48</sup> Nagro, *supra* note 4, at 10.

<sup>49</sup> *Cook v. McKee*, 20 F.1st 2082 (Fed. Cir. 2022).

<sup>50</sup> *A.C. v. Raimondo*, 494 F.3d 170, 174 (D.R.I. 2020).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 197.

*Rodriguez* established potential for future constitutional arguments regarding the fundamental right to education.<sup>55</sup> The First Circuit Court of Appeals affirmed the district court's ruling and recognized the important connection between civic education and safeguarding democracy.<sup>56</sup> After this decision, the plaintiffs started preparing to appeal their case to the United States Supreme Court.<sup>57</sup> However, in the summer of 2022, Rhode Island offered a settlement to address the quality of civic education and in return, the plaintiffs would not proceed in appealing the case.<sup>58</sup> *Cook* offers a legal argument that there are ambiguities in *Rodriguez* that can be used to argue for the establishment of right to education through lack of civic education.<sup>59</sup>

The most recent case, *Haymer v. Reeves*, was brought by four African American mothers against state officials whose children attended school districts that received an "F" rating from the Mississippi Department of Education in 2018.<sup>60</sup> These schools had 99 percent African American students, while the neighboring schools with 70 percent white student attendees had an "A" rating in education.<sup>61</sup> Schools in the "F" districts had under 11 percent of students proficient in reading and math, while the "A" districts' students were over 65 percent proficient.<sup>62</sup> These evident school disparities were the basis for the suit.<sup>63</sup> Unfortunately, the plaintiffs' claims were found invalid and barred, and the case continued on remand, but only to discuss issues regarding standing, political question, and the private right of action.<sup>64</sup> *Reeves* exemplifies another future legal battle that could secure education as a federal right.

### MOVING FORWARD

Although these cases ended in settlements, they address important arguments for the fundamental right to education. In *Rodriguez*, the majority rec-

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<sup>55</sup> *Id.* at 189.

<sup>56</sup> *McKee*, 20 F.1st at 2082.

<sup>57</sup> *Cook v. McKee: The Case to Establish a Right to Education Under the U.S. Constitution*, THE CTR. FOR EDUC. EQUITY (2022), <http://www.cookvmckee.info/>.

<sup>58</sup> *Id.*

<sup>59</sup> *Making the Case for Continuing the Case*, TEACHERS COLL. COLUMBIA UNIV. (Oct. 16, 2020), <https://www.tc.columbia.edu/articles/2020/october/making-the-case-for-continuing-the-case/> [hereinafter *Making the Case*].

<sup>60</sup> *Haymer v. Reeves*, S. POVERTY LAW CTR. (2021), <https://www.splcenter.org/seeking-justice/case-docket/haymer-v-reeves>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Haymer v. Reeves*, 954 F.3d 729 (5th Cir. 2020).

ognized the importance of education to prepare individuals to participate in democracy and practice their constitutional rights.<sup>65</sup> *Gary B.* and *Cook* applied the dissent's argument in *Rodriguez* by saying that access to literacy and civic education are fundamental to participating in democracy.<sup>66</sup> The courts found these arguments to be extremely compelling and left judges rethinking the connection between education and democracy.<sup>67</sup> There is potential for future advocates to use these arguments when pursuing litigation for the right to education.<sup>68</sup>

It's important to continue fighting for education to be protected under the Constitution by litigating this issue. This can create a direct path for the Supreme Court to establish a fundamental right to education and offer an opportunity to create consistency in the United States in the quality of education.<sup>69</sup> Additionally, creating adequate and equitable education systems will in turn benefit all of society. Equitable education is proven to expand the economy, increase public goods, decrease adult poverty, and lower incarceration rates.<sup>70</sup> Adequate education also increases an individual's participation in democracy, literacy, social stability, and increases physical and mental health.<sup>71</sup> The right to education is foundational to the United States and requires continued efforts to achieve.

<sup>65</sup> *Rodriguez*, 411 U.S. at 30–31.

<sup>66</sup> See *Whitmer*, 957 F.3d at 635; *Raimondo*, 494 F.3d at 190.

<sup>67</sup> *Making the Case*, *supra* note 60.

<sup>68</sup> *Id.*

<sup>69</sup> Trish Brennan-Gac, *Educational Rights in the States*, AM. BAR ASS'N. (Apr. 1, 2014), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/2014\\_vol\\_40/vol\\_40\\_no\\_2\\_civil\\_rights/educational\\_rights\\_states/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_2_civil_rights/educational_rights_states/).

<sup>70</sup> Trujillo et al., *supra* note 5, at 3; Dave Davies, 'Sum of Us' Examines the Hidden Cost of Racism—For Everyone, *Fresh Air* (2021), <https://www.npr.org/2021/02/17/968638759/sum-of-us-examines-the-hidden-cost-of-racism-for-everyone>.

<sup>71</sup> *Why Education Matters to Health: Exploring the Causes*, CTR. ON SOCIETY AND HEALTH (Feb. 13, 2015), <https://societyhealth.vcu.edu/work/the-projects/why-education-matters-to-health-exploring-the-causes.html>; See also Caitlin E. Ahearn, et al., *How, and For Whom, Does Higher Education Increase Voting?*, RES. IN HIGHER EDUC. (Sept. 29, 2021), <https://link.springer.com/content/pdf/10.1007/s11162-022-09717-4.pdf>.