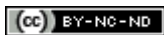


REDEFINING THE RIGHT TO PUBLIC
EDUCATION

Vivi R. Besteman

ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2022.866
<http://lawreview.law.pitt.edu>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.



This site is published by the University Library System of the University of Pittsburgh as part of its D-Scribe Digital Publishing Program and is cosponsored by the University of Pittsburgh Press.

REDEFINING THE RIGHT TO PUBLIC EDUCATION

Vivi R. Besteman*

ABSTRACT

The failure to recognize education as a fundamental constitutional right has meant that the quality of education in public schools varies greatly depending on where students live. This Note analyzes the origins of education litigation, current state constitutional standards for education quality, and previous arguments in support of a federal constitutional right to education. It then examines two recent cases, *A.C. v. Raimondo* and *Gary B. v. Whitmer*, and advocates for their novel stance on education rights: education is an implicit right that allows students to become meaningful participants in democracy.

* J.D., 2022, University of Pittsburgh School of Law; B.A., 2019, American University. I would like to thank my family, friends, and all the wonderful teachers I have had over the years; I would not be where I am today without their guidance and encouragement.

Table of Contents

Introduction 705

I. Education in the United States 706

 A. Variation in School Quality 707

 B. Effects on Academic Achievement 709

 C. Impact on Racial Minorities 709

 D. Education and Democracy 710

II. Origins of Education Litigation 712

 A. *Brown v. Board of Education* 712

 B. *Rodriguez v. San Antonio Independent School District* 713

 C. *Plyler v. Doe* 715

III. State Constitutional Standards 716

IV. Where the Literature Currently Stands 718

 A. Four Forms of the Right to Education 718

 1. Education as a “Power” 718

 2. Education as a “Privilege” 719

 3. Education as a “Claim Right” 719

 4. Education as an “Immunity” 720

 B. Other Theories 720

V. Recent Litigation 722

 A. *Gary B. v. Whitmer* 722

 B. *A.C. v. Raimondo* 726

VI. The Future of Education Rights: A Discussion 728

INTRODUCTION

There are more than 190 countries in the world, the vast majority of which contain the word “education” in their constitutions.¹ Most of these countries make the guarantee that every child will have the right to a free education.² In many of these countries, participation in some form of schooling is mandatory.³ Even in the few countries without guarantees or mandatory requirements, the United Nations Convention on the Rights of the Child, an international human rights treaty on children’s rights (which has been universally ratified with the exceptions of Somalia, South Sudan, and the United States) provides a number of comparable protections.⁴ In particular, Article 28 of the Convention recognizes the “right of children to education,” and works, among other things, to “make primary education compulsory and available for free to all.”⁵

The only country in the world with a constitution that is “absolutely silent” on the subject of education is the United States.⁶ It feels odd that the United States—a world leader in many categories including entertainment, technology, economics, finance, and military⁷—has yet to recognize the value of a uniform, high-quality education system. Because of this, the United States has fallen behind in the area of schooling and was placed fourteenth out of thirty-nine countries in the 2014 Learning Curve Report, an index produced by the publishing company Pearson which globally

¹ 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/> [<https://perma.cc/ED3U-S4NT>].

² *Id.*

³ *Id.*

⁴ *Id.*; *25th Anniversary of the Convention on the Rights of the Child*, HUMAN RIGHTS WATCH (Nov. 17, 2014, 11:50 AM), <https://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child> [<https://perma.cc/6DHS-26G5>].

⁵ G.A. Res. 44/25, Convention on the Rights of the Child, art. 28 (Nov. 20, 1989), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [<https://perma.cc/2HLD-N87J>].

⁶ David Boaz, *Education and the Constitution*, CATO: CATO AT LIBERTY (May 1, 2006, 10:25 AM), <https://www.cato.org/blog/education-constitution#:~:text=Where%2C%20in%20the%20Constitution%2C%20is,matter%20reserved%20for%20the%20states> [<https://perma.cc/VFR6-5E4H>].

⁷ Yen Nee Lee, *The U.S. Is Still a Dominant Power—But It’s Not Clear If It Remains the Global Leader*, CNBC (Sept. 17, 2020, 1:18 AM EDT), <https://www.cnbc.com/2020/09/17/us-is-still-a-dominant-power-but-it-may-not-be-the-global-leader.html> [<https://perma.cc/29TM-CW9F>]; *United States Country Profile*, BBC (Mar. 1, 2022), <https://www.bbc.com/news/world-us-canada-16761057> [<https://perma.cc/E3UH-LLX2>]; *Overview of United States*, U.S. NEWS (2020), <https://www.usnews.com/news/best-countries/united-states>.

ranks education systems.⁸ To summarize, “[w]hat was once a golden gem of the United States has become a national embarrassment.”⁹

According to the Learning Curve Index, the countries surpassing the United States in education rankings are South Korea, Japan, Singapore, Hong Kong-China, Finland, the United Kingdom, Canada, the Netherlands, Ireland, Poland, Denmark, Germany, and Russia.¹⁰ Finland, number five on the list and a world leader in education, directly asserts in its constitution that “[e]veryone has the right to basic education free of charge.”¹¹ Article 31 of South Korea’s constitution contains six sections that address education.¹² The constitution of Switzerland mentions education *more than two dozen times*.¹³ The United States, however, has persisted in regarding education as a mere privilege while students continue to face inequitable funding, school quality, and academic and social outcomes.¹⁴

I. EDUCATION IN THE UNITED STATES

Throughout the history of the United States, activists have attempted to advocate for an express or implied constitutional right to education and have done so through a variety of mediums including congressional action, administrative law, and grassroots campaigns.¹⁵ Unfortunately, of the roughly 11,000 proposed amendments to the U.S. Constitution over the years, only a handful have directly addressed the right to education, and only two have actually proposed an education

⁸ THE LEARNING CURVE, THE ECONOMIST INTELLIGENCE UNIT 20 (Pearson 2014), [http://www.edmide.gr/anakoinoseis/The-Learning-Curve-Report-2014%20\(1\).PDF](http://www.edmide.gr/anakoinoseis/The-Learning-Curve-Report-2014%20(1).PDF) [<https://perma.cc/NN42-KML2>].

⁹ Barry Friedman & Sara Solow, *The Federal Right to an Adequate Education*, 81 GEO. WASH. L. REV. 93 (2013).

¹⁰ Amrutha Gayathri, *US 17th In Global Education Ranking; Finland, South Korea Claim Top Spots*, INT’L BUS. TIMES (Nov. 27, 2012, 2:24 AM), <https://www.ibtimes.com/us-17th-global-education-ranking-finland-south-korea-claim-top-spots-901538> [<https://perma.cc/P8HN-U5Y9>].

¹¹ SUOMEN PERUSTUSLAKI [CONSTITUTION] June 11, 1999, ch. 2, § 16 (Fin.).

¹² 대한민국 헌법 [CONSTITUTION] July 17, 1948, art. XXXI (S. Kor.).

¹³ BUNDESVERFASSUNG [CONSTITUTION] Apr. 18, 1999 (Switz.).

¹⁴ See Wong, *supra* note 1.

¹⁵ David Tyack & Aaron Benavot, *Courts and Public Schools: Educational Litigation in Historical Perspective*, 19 LAW & SOC’Y REV. 339, 340 (1985).

amendment.¹⁶ Efforts to enshrine a right to education in the U.S. Constitution have been almost entirely futile in light of the United States Supreme Court's unfavorable rulings on the issue, especially *Brown v. Board of Education*, *San Antonio Independent School District v. Rodriguez*, and *Plyler v. Doe*.¹⁷

There are few people who dispute the idea that “education is vital to full participation in democratic governance and the national and global economies.”¹⁸ So why the resistance? Some argue that “there simply hasn’t been a movement in the [United States] to establish the rights of children in respect to equal, free, and adequate education.”¹⁹ Others feel that the bias against a right to education is a historical one, dating back to the Founders’ fear of a concentration of power.²⁰ The Founders “believed that the best way to protect individual freedom and civil society was . . . [through] limit[ation] and divi[sion of] power,” and the management of public schools by state and local governments (rather than federal management) was a manifestation of that belief.²¹

A. *Variation in School Quality*

Whatever the cause, the failure of the U.S. Constitution to address education has meant that since the 1970s, nearly every state has experienced some form of litigation over inequities in education.²² This is primarily due to the fact that many states rely heavily on local property taxes to fund their schools; today, for example, nearly 45% of all school funding comes from local sources.²³ As a result, high-poverty areas with lower home values tend to collect less tax revenue than areas

¹⁶ Stephen Lurie, *Why Doesn't the Constitution Guarantee the Right to Education?*, ATLANTIC (Oct. 16, 2013), <https://www.theatlantic.com/education/archive/2013/10/why-doesnt-the-constitution-guarantee-the-right-to-education/280583/> [<https://perma.cc/W76D-DVNX>].

¹⁷ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (suggesting the possibility of an individual, rather than collective, right to education); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 18 (1973) (finding no fundamental right to education in the Constitution); *Plyler v. Doe*, 457 U.S. 202 (1982) (refusing to recognize a Constitutional right to education for children not legally admitted to the United States).

¹⁸ Friedman & Solow, *supra* note 9.

¹⁹ Lurie, *supra* note 16.

²⁰ Boaz, *supra* note 6.

²¹ *Id.*

²² Alana Semuels, *Good School, Rich School; Bad School, Poor School*, ATLANTIC (Aug. 25, 2016), <https://www.theatlantic.com/business/archive/2016/08/property-taxes-and-unequal-schools/497333/> [<https://perma.cc/6BE2-ZSP3>].

²³ James P. Pinkerton, *A Grand Compromise*, 291 ATLANTIC MONTHLY 115, 115 (2003).

where homes are worth millions of dollars, creating vastly different schooling experiences depending on where students live.²⁴ According to the U.S. Department of Education, “high-poverty districts spend 15.6% less per student than low-poverty districts do.”²⁵ If, however, spending in high-poverty districts were to increase by approximately 20% per student, each student would experience, on average, an educational attainment level equivalent to one additional year of completed education.²⁶ The data also finds that there would be an almost 25% increase in family income²⁷ and a 20% reduction in the incidence of poverty in adulthood.²⁸

Connecticut illustrates the impact of location-based differences on education quality. Connecticut has long been one of the wealthiest states in the country.²⁹ Within this wealthy state, students in higher-income towns like Greenwich and Darien almost always have ready and plentiful “access to guidance counselors, school psychologists, personal laptops, and up-to-date textbooks.”³⁰ On the other hand, students in “high-poverty areas like Bridgeport and New Britain” typically find that the same resources are lacking, despite the fact that these districts often have a higher quantity of students who are in need of additional help.³¹ Not only do these areas “have fewer guidance counselors, tutors, and psychologists” than their wealthy

²⁴ Semuels, *supra* note 22.

²⁵ *Id.*; PUBLIC EDUCATION: DEFENDING A CORNERSTONE OF AMERICAN DEMOCRACY 229 (David C. Berliner & Carl Hermanns eds., 2021); U.S. COMM’N ON CIVIL RIGHTS, PUBLIC EDUCATION FUNDING INEQUALITY 78 (2018), <https://www.usccr.gov/files/pubs/2018/2018-01-10-Education-Inequity.pdf> [<https://perma.cc/4AEY-M5K9>].

²⁶ This data comes from a study analyzing the effect of school finance reform induced changes in school spending on long run adult outcomes. The data was nationally representative and followed children born between 1955 and 1985 until 2011. The timing of the passage of court-mandated reforms and their related funding formula changes were compared to the adult outcomes of groups that were differently exposed to reforms based on place and year of birth. C. Kirabo Jackson et al., *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms*, 131 Q.J. ECON. 157, 192 (2016).

²⁷ *Id.* at 200.

²⁸ *Id.* at 201–03.

²⁹ Semuels, *supra* note 22; see also Elizabeth A. Harris & Kristin Hussey, *In Connecticut, a Wealth Gap Divides Neighboring Schools*, N.Y. TIMES (Sept. 11, 2016), <https://www.nytimes.com/2016/09/12/nyregion/in-connecticut-a-wealth-gap-divides-neighboring-schools.html> [<https://perma.cc/7ZTY-EKS4>].

³⁰ Semuels, *supra* note 22.

³¹ *Id.*

counterparts, but they also tend to have “more dilapidated facilities and bigger class sizes.”³²

B. *Effects on Academic Achievement*

Differences in local funding also tend to produce intangible (and often more concerning) effects on student achievement.³³ Research has shown that districts with fewer resources and larger class sizes tend to be negatively correlated with achievement gains in math and reading.³⁴ In particular, a twenty-five year study by the National Council of Professors of Educational Administration determined that when class sizes were kept small (between fifteen and seventeen students), students were more likely to (1) take college entrance examinations; (2) graduate; and (3) complete advanced course work.³⁵

With respect to taking college entrance exams like the SAT and ACT, the benefit of small class sizes was substantially greater for Black students than for White, reducing the Black-White gap in college entrance test taking by fifty-four percent.³⁶ The effects of attending small classes for at least four years increased the odds of graduation by nearly eighty percent.³⁷ Finally, the study showed that smaller classes led to a significant positive impact on the amount of foreign language courses taken as well as encouraged students to take the highest levels of coursework in both foreign languages and mathematics.³⁸

C. *Impact on Racial Minorities*

Variation in education quality has also had a particularly strong impact on students in the racial minority, exacerbating existing obstacles faced by this group. As recently as the 1960s, the school districts in the United States racially segregated

³² *Id.*

³³ Bruce J. Biddle & David C. Berliner, *Unequal School Funding in the United States*, 59 EDUC. LEADERSHIP 48, 55 (2002).

³⁴ Linda Darling-Hammond, *Unequal Opportunity: Race and Education*, BROOKINGS (Mar. 1, 1998), <https://www.brookings.edu/articles/unequal-opportunity-race-and-education/> [https://perma.cc/LK69-HQWB].

³⁵ CHARLES M. ACHILLES, NAT'L COUNCIL OF PROFESSORS OR EDUC. ADMIN., CLASS-SIZE POLICY: THE STAR EXPERIMENT AND RELATED CLASS-SIZE STUDIES 2 (2012), <https://files.eric.ed.gov/fulltext/ED540485.pdf> [https://perma.cc/CU97-HNJS].

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

their students, and the separated schools for minority students received less funding.³⁹ Although the end of legal segregation and efforts to equalize spending post-1970 have made substantial differences in the quality of education at these schools, nearly two-thirds of minority students still attend predominantly minority schools that are located in cities that receive much less funding than schools in neighboring suburban districts.⁴⁰

Additionally, the National Commission on Teaching and America's Future found that teachers who had substandard (or, in some cases, nonexistent) licenses in their main field were disproportionately assigned to students in low-income and high-minority schools.⁴¹ In contrast, the most highly educated new teachers were hired almost exclusively by high-income, low-minority schools.⁴² According to the study, "[t]his continues the habit of assigning the least prepared teachers to students with the least clout and greatest learning needs while the best prepared teachers are hired by schools serving the most advantaged students."⁴³ This is especially problematic given that unprepared teachers are consistently found to be less effective with students and often have difficulty with curriculum development, classroom management, student motivation, and teaching strategies.⁴⁴

D. Education and Democracy

Ultimately, the constitutional failure to address education not only impacts each student's learning experiences but also fosters a general social and political environment that is too often lacking in informed decision-making and other meaningful participation. It is challenging to sustain a constitutional democracy, like the United States, that is committed to protecting fundamental rights and governance by the people.⁴⁵ As such, education should theoretically play a crucial role in preparing younger generations for the responsibilities and opportunities of self-

³⁹ Darling-Hammond, *supra* note 34.

⁴⁰ *Id.*

⁴¹ LINDA DARLING-HAMMOND, NAT'L COMM'N ON TEACHING & AMERICA'S FUTURE, DOING WHAT MATTERS MOST: INVESTING IN QUALITY TEACHING 2 (1997), <https://eric.ed.gov/?id=ED415183> [<https://perma.cc/JY9L-J5SB>].

⁴² *Id.* at 25.

⁴³ *Id.*

⁴⁴ Darling-Hammond, *supra* note 34.

⁴⁵ Martha Minow, *Foreword to A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY* viii (Kimberly Jenkins Robinson ed., 2019).

governance.⁴⁶ The Founders themselves acknowledged that “[a]n ignorant people can never remain a free people” and that “democracy cannot survive too much ignorance.”⁴⁷

Irami Osei-Frimpong, a Professor of Philosophy at the University of Georgia, summarized this issue in a July 2020 interview with *The Hill* by arguing that “[p]ublic education as a national good isn’t about what every individual knows, it’s about what any individual needs other people to know in order to participate . . . in an advanced constitutional democracy.”⁴⁸ To further emphasize the fundamental importance of education and access to knowledge, Osei-Frimpong provides the following metaphor:

Once I’m playing basketball with someone who doesn’t know the rules of basketball, they can’t actually contest anything I say about what the rules of basketball are. . . . [I]n democracy, it’s about being able to contest your power. But in order to contest power, you need to know what the rules are, you need . . . access to information, you need to know your access to power.⁴⁹

Is this really what we want—a generation incapable of contesting power due to a lack of education and knowledge—in today’s climate? A climate where our nation’s leaders are encouraging violent behavior and the destruction of our political institutions, and where law enforcement officials are letting personal biases dictate the decision to take innocent lives?⁵⁰ Surely not.

⁴⁶ *Id.* at vii.

⁴⁷ *How to Teach Citizenship in Schools*, ECONOMIST (Feb. 2, 2017), <https://www.economist.com/international/2017/02/02/how-to-teach-citizenship-in-schools> [<https://perma.cc/D2DR-JK6Z>].

⁴⁸ *The Hill, Funky Academic: How Our Education System Churns Out Corporatists*, YOUTUBE (July 16, 2020), <https://www.youtube.com/watch?v=7FdGUqIKo6M> [<https://perma.cc/7LRZ-RA6H>].

⁴⁹ *Id.*

⁵⁰ Kimberly Dozier & Vera Bergengruen, *Incited by the President, Pro-Trump Rioters Violently Storm the Capitol*, TIME (Jan. 7, 2021), <https://time.com/5926883/trump-supporters-storm-capitol/> [<https://perma.cc/W5KQ-NHWT>] (discussing former President Trump’s January 2021 speech urging supporters to storm the Capitol, claiming that “[i]f you don’t fight like hell, you’re not going to have a country anymore”); Wenei Philimon, *Not Just George Floyd: Police Departments Have 400-Year History of Racism*, USA TODAY (June 7, 2020), <https://www.usatoday.com/story/news/nation/2020/06/07/black-lives-matters-police-departments-have-long-history-racism/3128167001/> [<https://perma.cc/FE8V-R9QR>] (discussing the long history of race-focused law enforcement in the United States).

II. ORIGINS OF EDUCATION LITIGATION

A. *Brown v. Board of Education*

There is an assumption among many that the Supreme Court found a federal right to education in *Brown v. Board of Education*.⁵¹ While this is not entirely true, *Brown* is an important case in the history of public education and offers insight that should be considered when redefining the right to education.

The Court in *Brown* consolidated various cases that arose in Kansas, South Carolina, Virginia, and Delaware—each case involving a Black student being denied admission to a public school based on laws that allowed segregation in schools due to race.⁵² The plaintiffs alleged that school segregation violated the Equal Protection Clause of the Fourteenth Amendment.⁵³ In most of the consolidated cases, the lower courts had denied relief to the plaintiffs based on *Plessy v. Ferguson*, which held that racially segregated public facilities were legal so long as they were equal.⁵⁴

The Supreme Court in *Brown* acknowledged in a unanimous decision that “education is perhaps the most important function of state and local governments” because it “is required in the performance of our most basic public responsibilities.”⁵⁵ The Court went on to state that:

[Education] is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.⁵⁶

In other words, *Brown* did not hold that *all students* had a fundamental right to education; rather, only *students who had been denied access to education based on*

⁵¹ Julie Underwood, *Education as an American Right?*, PHI DELTA KAPPAN (Jan. 22, 2018), <https://kappanonline.org/underwood-education-american-right/> [https://perma.cc/X4KU-GDUA].

⁵² *Brown v. Bd. of Educ.*, 347 U.S. 483, 486–88 (1954).

⁵³ *Id.* at 488.

⁵⁴ *Id.*

⁵⁵ *Id.* at 493.

⁵⁶ *Id.*

race. Despite this, *Brown* is important because (1) the Court directly touts the benefits of access to education, which include, among other things, the ability to perform public (democratic) functions, and (2) a group that was denied access to those benefits was provided with an individual right to education.

B. *Rodriguez v. San Antonio Independent School District*

Brown's refusal to recognize a federal or national right to education meant that education rights were left unresolved until the issue was again addressed by the Court in 1973. In *Rodriguez v. San Antonio Independent School District*, Mexican-American parents challenged the system of financing public education in Texas, bringing a class action suit on behalf of poor and minority students in the state.⁵⁷ These students primarily resided in school districts with low property tax bases.⁵⁸ The Court ultimately held that education was not a fundamental right guaranteed by the Constitution.⁵⁹

Historically, Texas was a predominantly rural state where population and property wealth were spread relatively evenly.⁶⁰ As the State became more industrialized, as virtually every state has over the last century, differences in population and property values between rural and urban areas became significantly more pronounced.⁶¹ Consequently, local expenditures for education fluctuated with these changes.⁶² To remedy some of the disparities in local spending, the state enacted the Texas Minimum Foundation School Program.⁶³ The Program was financed primarily by the state, which supplied eighty percent of total funding from its general revenues.⁶⁴ The remaining twenty percent of funding was obtained at the local level, from individual school districts acting collectively as a unit.⁶⁵ Each

⁵⁷ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 4–5 (1973).

⁵⁸ *Id.* at 5.

⁵⁹ *Id.* at 58–59.

⁶⁰ *Id.* at 7–8.

⁶¹ *Id.* at 8.

⁶² *Id.*

⁶³ *Id.* at 9.

⁶⁴ *Id.*

⁶⁵ *Id.*

district's contribution was determined by a formula that was designed to reflect the individual district's taxpaying ability.⁶⁶

Although the Program led to steady increases in education expenditures, the school district in which the *Rodriguez* appellees resided, as compared to more affluent districts nearby,⁶⁷ was still experiencing substantial disparities that were largely attributable to differences in the amounts of money collected through local property taxes.⁶⁸ As such, the district court held that the Program discriminated on the basis of wealth.⁶⁹ Because the district court determined that wealth was a "suspect" class and that education was a "fundamental" interest, it argued that the Program could only be upheld if the state could show that it was based on a compelling state interest.⁷⁰ Ultimately, the district court determined that there was no such interest.⁷¹

The Supreme Court, however, was not persuaded by the district court's classification of wealth as a suspect class or its fundamental interest analysis.⁷² In his majority opinion, Justice Powell argued that "[e]ducation [was] not among the rights afforded explicit protection under our Federal Constitution," and similarly failed to find any basis for implicit protection despite the appellees' contention that "education [was] distinguishable from other services and benefits provided by the State because it bears a peculiarly close relationship to other rights and liberties accorded protection under the Constitution."⁷³ As such, Justice Powell noted that "[a] century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports the application of the traditional standard of review, which requires only that the State's system be shown to bear some rational relationship to

⁶⁶ *Id.* at 10.

⁶⁷ *Id.* at 11.

⁶⁸ *Id.* at 16.

⁶⁹ *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280, 282 (W.D. Tex. 1971).

⁷⁰ *Id.* at 283.

⁷¹ *Id.* at 285.

⁷² *Rodriguez*, 411 U.S. at 18.

⁷³ *Id.* at 35.

legitimate state purposes.”⁷⁴ The Court felt that the Texas Program “abundantly satisfie[d] this standard.”⁷⁵

Ultimately, the Court was “unwilling to assume for [itself] a level of wisdom superior to that of legislators, scholars, and educational authorities in 50 states.”⁷⁶ While the Court recognized that the financing system for education had “too long and too heavily” relied on the local property tax and though it acknowledged that greater funding was “necessary to assure both a higher level of quality and greater uniformity of opportunity,” the Court held that “solutions must come from the lawmakers and from the democratic pressures of those who elect them.”⁷⁷

Perhaps the most important takeaway from *Rodriguez* was the argument that education rights are distinct from other state-provided benefits because of their close connection with other constitutional rights (specifically, the First Amendment freedoms and the ability to exercise the right to vote).⁷⁸ Though the Court ultimately refused to recognize this argument, it opened the door for discourse on the idea that education should be recognized as an implied constitutional right that is necessary to effectively exercise other constitutional guarantees.

C. Plyler v. Doe

Plyler v. Doe delivered the third and final influential Supreme Court ruling within the area of education rights. In *Plyler*, a 1975 revision to Texas education laws allowed the state to withhold funding from school districts that were educating children who were not “legally admitted” into the United States.⁷⁹ Plaintiffs alleged that the exclusion of these children from public schools in the area violated the Equal Protection Clause of the Fourteenth Amendment.⁸⁰ The Court held that the state did not have a sufficient interest to withhold education from students whose parents had

⁷⁴ *Id.* at 40.

⁷⁵ *Id.* at 55.

⁷⁶ *Id.*

⁷⁷ *Id.* at 58–59.

⁷⁸ *See id.* at 35.

⁷⁹ *Plyler v. Doe*, 457 U.S. 202, 205 (1982).

⁸⁰ *Id.*

brought them into the United States illegally.⁸¹ However, the Court still refused to recognize education as a fundamental right:

Public education is not a “right” granted to individuals by the Constitution. . . . But neither is it merely some governmental “benefit” indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction.⁸²

Despite failing to recognize education as a fundamental right, the *Plyler* decision again suggested the importance of education in allowing individuals to carry out other democratic functions (e.g., “maintaining our basic institutions”).⁸³

III. STATE CONSTITUTIONAL STANDARDS

Currently, most school finance systems satisfy the standard set forth in *Rodriguez*, which means that there is no federal pressure for addressing quality-related issues caused by those finance systems.⁸⁴ As identified by Justice Marshall in a famous dissent, however, “nothing in the Court’s decision . . . should inhibit further review of state educational funding schemes under state constitutional provisions.”⁸⁵ After *Rodriguez*, school financing equity activists began to litigate quality issues under provisions of state constitutions.⁸⁶

⁸¹ *Id.* at 219–20.

⁸² *Id.* at 221.

⁸³ *See id.*

⁸⁴ *See* JAY G. CHAMBERS, THE ISSUE OF ADEQUACY IN THE FINANCING OF PUBLIC EDUCATION 22 (1982) (“Rodriguez slowed . . . the school finance reform movement.”); Douglas S. Reed, *Twenty-Five Years After Rodriguez: School Finance Litigation and the Impact of the New Judicial Federalism*, 32 LAW & SOC’Y REV. 175, 176 (1998) (“After *Rodriguez*, school financing equity activists, realizing that federal courts held little promise for their claims, began to litigate the matter under provisions of state constitutions.”); NAT’L RSCH. COUNCIL, EQUITY AND ADEQUACY IN EDUCATION FINANCE 146 (1999) (“[C]hanges [to school financing post-*Rodriguez*] were enough to satisfy the courts and subdue the public pressure for equity from educational and social interest groups.”); Peter D. Roos, *The Potential Impact of Rodriguez on Other School Reform Litigation*, 38 LAW & CONTEMP. PROBS. 566, 566 (1974) (“The immediate consequence of the decision in *San Antonio Independent School District v. Rodriguez* was to foreclose a federal attack on certain inequitable school financing programs.”).

⁸⁵ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 133 n.100 (1973) (Marshall, J., dissenting).

⁸⁶ Reed, *supra* note 84, at 176.

Today, there are four main types of state constitutional provisions related to public education. Sixteen states merely mandate a system of free public schools.⁸⁷ For example, the Oklahoma Constitution requires that “[t]he Legislature shall establish and maintain a system of free public schools wherein all the children of the state may be educated.”⁸⁸

Eighteen states mandate that the system of public schools meet a certain minimum standard of quality, such as “thorough and efficient.”⁸⁹ This includes Pennsylvania, whose constitution requires that “[t]he General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”⁹⁰

Eight states require a “stronger and more specific education mandate” and “purposive preambles.”⁹¹ To illustrate, the South Dakota Constitution states that:

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.⁹²

⁸⁷ ALA. CONST. art. XIV, § 256; ALASKA CONST. art. VII, § 1; ARIZ. CONST. art. XI, § 1; CONN. CONST. art. VIII, § 1; HAW. CONST. art. X, § 1; KAN. CONST. art. VI, § 1; LA. CONST. art. VIII, § 1; MISS. CONST. art. VIII, § 201; NEB. CONST. art. VII, § 1; N.M. CONST. art. XII, § 1; N.Y. CONST. art. XI, § 1; N.C. CONST. art. IX, § 2; OKLA. CONST. art. XIII, § 1; S.C. CONST. art. XI, § 3; UTAH CONST. art. X, § 1; VT. CONST. ch. 2, § 68.

⁸⁸ OKLA. CONST. art. XIII, § 1.

⁸⁹ ARK. CONST. art. XIV, § 1; COLO. CONST. art. IX, § 2; DEL. CONST. art. X, § 1; IDAHO CONST. art. IX, § 1; KY. CONST. § 183; MD. CONST. art. VIII, § 1; MINN. CONST. art. XIII, § 1; MONT. CONST. art. X, § 1; N.J. CONST. art. VIII, § 4, para. 1; N.D. CONST. art. VIII, § 1; OHIO CONST. art. VI, § 2; OR. CONST. art. VIII, § 3; PA. CONST. art. III, § 14; TENN. CONST. art. XI, § 12; TEX. CONST. art. VII, § 1; VA. CONST. art. VIII, § 1; W. VA. CONST. art. XII, § 1; WIS. CONST. art. X, § 3.

⁹⁰ PA. CONST. art. III, § 14.

⁹¹ CAL. CONST. art. IX, § 1; IND. CONST. art. VIII, § 1; IOWA CONST. art. XI, § 1, 3; MASS. CONST. pt. 2, ch. 5, § 2; NEV. CONST. art. XI, § 2; R.I. CONST. art. XII, § 1; S.D. CONST. art. VIII, § 1; WYO. CONST. art. VII, § 1.

⁹² S.D. CONST. art. VIII, § 1.

Finally, eight states provide that education is “fundamental,” “primary,” or “paramount.”⁹³ Washington is one such state, with a constitution stating that “[i]t is the paramount duty of the state to make ample provisions for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”⁹⁴

These varying state constitutional standards illustrate that there continues to be disparate education quality based on where a child lives. Many have expressed concerns that “education clauses in state constitutions do not fix the standards for mutually enforcing equality and adequacy.”⁹⁵ Rather, state standards merely “encumber[] already-reluctant courts in addressing educational disparities and embolden[] legislative resistance when they do.”⁹⁶ As such, the need for a federal or national standard of education remains.

IV. WHERE THE LITERATURE CURRENTLY STANDS

A. *Four Forms of the Right to Education*

The legal literature surrounding the right to education has identified four main theories that the right has been supported under in the United States, including education as (1) a “power” held by the state; (2) a qualified immunity “privilege” held by parents or guardians; (3) a “claim-right” held by children correlative with state duties; and (4) an “immunity” held by children against the state.⁹⁷

1. Education as a “Power”

The right to education, framed in terms of a “power” held by the state embodies the idea that “no law entitles children to create, waive, or annul” their own or another’s “legal relations regarding publicly funded and regulated education.”⁹⁸ This power is held almost exclusively by the state and is one which is unlimited and

⁹³ FLA. CONST. art. IX, § 1; GA. CONST. art. VIII, § 1; ILL. CONST. art. X, § 1; ME. CONST. art. VIII, pt. 1, § 1; MICH. CONST. art. VIII, § 2; MO. CONST. art. IX, § 1(a); N.H. CONST. pt. 2, art. LXXXIII; WASH. CONST. art. IX, § 1.

⁹⁴ WASH. CONST. art. IX, § 1.

⁹⁵ Joshua Weishart, *Reconstructing the Right to Education*, 67 ALA. L. REV. 915, 915 (2016).

⁹⁶ *Id.*

⁹⁷ *Id.* at 925.

⁹⁸ *Id.* at 927.

virtually unreviewable.⁹⁹ In addition, framing the power in this way is based on early concepts of the public education system in the United States, where children had, and continue to have, limited autonomy.¹⁰⁰ Thus, “[t]he state’s duty to protect children through education in particular emanates from ‘the natural duty of the parent to give his children education suitable to their station in life.’”¹⁰¹

2. Education as a “Privilege”

As a qualified immunity “privilege,” the right to education is conceptualized in terms of parents’ ability to decide whether their children will receive a public, private, or religious education.¹⁰² These powers, unlike those of the state, are not unlimited and are subject to the exercise of state powers that result in “reasonable” regulations.¹⁰³ The right to education as a “privilege” is one that parents and guardians hold and ignores the idea that children themselves are holders of some form of a right to education.¹⁰⁴

3. Education as a “Claim Right”

Another conception of the right to education is that it is a “claim right” held by children correlative with state duties.¹⁰⁵ Most state constitutions have “a strong textual basis for an explicit . . . duty to provide for education.”¹⁰⁶ Despite this, “only . . . six state courts [have] articulated both the duty and the individual right” as well as “entered or approved entry of a remedial order ‘*compelling the performance* of the legislative duty on behalf of the plaintiffs.’”¹⁰⁷

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 928.

¹⁰¹ *Id.* at 929 (quoting *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923)).

¹⁰² *Id.* at 930.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 931.

¹⁰⁵ *Id.* at 925.

¹⁰⁶ *Id.* at 936 (quoting Scott R. Bauries, *State Constitutions and Individual Rights: Conceptual Convergence in School Finance Litigation*, 18 GEO. MASON L. REV. 301, 325 (2011)).

¹⁰⁷ *Id.* (quoting Bauries, *supra* note 106, at 340).

4. Education as an “Immunity”

The idea of the right to education as an “immunity” primarily focuses on immunity against inequitable or inadequate distributions (or both).¹⁰⁸ Though the notion of the right to education as an immunity addresses the idea that children hold some form of a right to education, “immunities have not generally received as much attention” despite the fact that “they are of huge importance.”¹⁰⁹ Regardless, in many cases “the immunity held by children regarding the distribution of educational resources derives from recognition that the right to education is fundamental under the state constitution.”¹¹⁰

For the purposes of this Note, education as an “immunity” is the most relevant theory of the four, as it articulates the need for protection against inequitable and inadequate distributions of education. As previously mentioned, the current method of funding public schools has resulted in the exact type of distributions that this theory is meant to address. Furthermore, this theory posits that protection against these distributions derives from recognition that the right to education is *fundamental*, albeit under state constitutions. This Note similarly argues that protection against inequitable and inadequate distributions derives from the fundamental nature of the right to education but believes that the right should take root in the federal Constitution due to the broader reach and resources associated with a national approach.

B. Other Theories

Many have argued that the national commitment to education dates from the Fourteenth Amendment to today, growing stronger with each generation.¹¹¹ As such, a simple application of the Supreme Court’s fundamental rights test to this history suggests that the Constitution should protect a minimally adequate education.¹¹² In addition, it has been said that “Congress’s support for education immediately following the enactment of the Fourteenth Amendment[,] . . . coupled with

¹⁰⁸ *Id.* at 935 (quoting Matthew H. Kramer, *Rights in Legal and Political Philosophy*, in THE OXFORD HANDBOOK OF LAW AND POLITICS 414, 415 (Gregory A. Caldeira, R. Daniel Kelemen & Keith E. Whittington eds., 2008)).

¹⁰⁹ Kramer, *supra* note 108, at 416–17.

¹¹⁰ Weishart, *supra* note 95, at 933.

¹¹¹ Friedman & Solow, *supra* note 9, at 110.

¹¹² *Id.*

Fourteenth Amendment debates, establish[es] that education is a privilege and immunity of national citizenship.”¹¹³

These theories overlook historic information revealing that “Congress and the states did not just favor education,” but they actually “mandated the provision of public education in conjunction with the ratification of the Fourteenth Amendment itself.”¹¹⁴ After the Civil War, Congress conditioned the readmission of Southern states to the Union on ratification of the Fourteenth Amendment and required these states to adopt new state constitutions that conformed to a “republican” form of government with provisions for education.¹¹⁵ Subsequent “Supreme Court precedent has, at times, been contrary to this history.”¹¹⁶

Scholars have considered a number of ways to redefine the right to education and realign that definition with congressional intent at the adoption of the Fourteenth Amendment. This includes proposals to petition the Supreme Court to overrule *Rodriguez* and to recognize a fundamental right to equal educational opportunity under the Fourteenth Amendment’s Equal Protection Clause.¹¹⁷ If the Court refuses to overrule *Rodriguez* entirely (which is likely), some feel that the case should at least be revisited because the Court did not properly consider alternative foundations for the right such as the First Amendment’s Free Speech Clause; the implied right to vote; the Fourteenth Amendment’s Due Process and Privileges and Immunities Clauses; the Citizenship Clause; or the Ninth Amendment.¹¹⁸

Aside from solutions centered around *Rodriguez* specifically, scholars, advocates, legal institutions, and other communities have also contemplated the organization of a grassroots movement to amend the Constitution and make the right explicit.¹¹⁹ Others think that Congress should bypass *Rodriguez* and the Constitution entirely in favor of a federal statutory right to education.¹²⁰

¹¹³ Derek Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV. 1059, 1071 (2019) (citing Goodwin Liu, *Education, Equality, and National Citizenship*, 116 YALE L.J. 330 (2006)).

¹¹⁴ Black, *supra* note 113, at 1071.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 1072.

¹¹⁷ Weishart, *supra* note 95, at 918.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 918–19.

¹²⁰ *Id.* at 919.

V. RECENT LITIGATION

Two recent cases, *Gary B. v. Whitmer* and *A.C. v. Raimondo*, have sought to redefine the right to public education as fundamental to the ability of students to become full and functional democratic participants.¹²¹ It is this approach—the idea that the right to education is an implied right that is fundamental to effectively exercising other constitutional guarantees—on behalf of which this Note advocates.

A. *Gary B. v. Whitmer*

Gary B. was the first time that a federal court recognized that children have a “right of access to literacy.”¹²² The plaintiffs in *Gary B.* were primarily low-income students of color who had attended some of the worst-performing public schools in Detroit.¹²³ Inadequacies in these schools were grouped into three main categories and included missing or unqualified teachers, physically dangerous facilities, and inadequate books and materials.¹²⁴

With respect to teaching, the schools relied heavily on sources of high teacher turnover, such as Teach for America, which resulted in up to 200 vacancies before the start of the 2016–2017 school year.¹²⁵ Schools also experienced significant rates of short-term teacher absences, with some teachers absent as many as fifty days in one year.¹²⁶ The shortage of teachers meant that classes were combined on short notice, sometimes forcing up to sixty students in a single classroom, and that classes were covered by substitutes, non-certified teachers, or teachers lacking experience in course subject matter.¹²⁷ In one striking instance, “an eighth grade student was put in charge of teaching seventh and eighth grade math classes for a month because no

¹²¹ See *Gary B. v. Whitmer*, 957 F.3d 616 (6th Cir. 2020); see also *A.C. v. Raimondo*, 494 F. Supp. 3d 170 (D.R.I. 2020).

¹²² Linda Jacobson, *Plaintiffs in Two Right-To-Education Cases Celebrate 6th Circuit Court Ruling*, K-12 DIVE (Apr. 27, 2020), <https://www.k12dive.com/news/plaintiffs-in-two-right-to-education-cases-celebrate-6th-circuit-court-ruli/576774/> [<https://perma.cc/WDY5-CA25>].

¹²³ *Id.*; *Gary B.*, 957 F.3d at 620–21.

¹²⁴ *Gary B.*, 957 F.3d at 620.

¹²⁵ *Id.* at 625.

¹²⁶ *Id.*

¹²⁷ *Id.*

math teacher was available.”¹²⁸ Aside from issues related to teachers specifically, Plaintiffs also complained of a lack of consistent literacy curricula.¹²⁹

Regarding the school facilities, classrooms were often decrepit.¹³⁰ During the 2015–2016 school year, none of the City of Detroit School District’s buildings complied with city health and safety codes.¹³¹ This meant that during the summer and winter, classroom temperatures regularly exceeded ninety degrees due to malfunctioning furnaces.¹³² Other times, rooms would be so cold that students and teachers could see their breath and would be forced to wear layers of clothing indoors.¹³³ Students were often sent home early due to the drastic changes in temperature and, in some cases, experienced physically harmful symptoms such as fainting, throwing up, and heat rashes.¹³⁴ Other problematic conditions included the presence of mice, cockroaches, and other vermin as well as hot, contaminated drinking water.¹³⁵

Finally, schools also experienced significant shortages in books and other materials like pens, pencils, and paper.¹³⁶ This often meant that children had to share a single book among four or more students and that they could not take books home after school to complete homework assignments.¹³⁷ Where books were available, they were often far out of date, torn beyond repair, or marked up in a way that made them unreadable.¹³⁸ Many times, books were also inappropriate for the grade level in which they were provided.¹³⁹

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 626.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 626–27.

¹³⁷ *Id.* at 626.

¹³⁸ *Id.*

¹³⁹ *Id.* at 626–27.

Based on the conditions described above, Plaintiffs contended that they attended “schools in name only, characterized by slum-like conditions and lacking the most basic educational opportunities that children elsewhere in Michigan and throughout the nation take for granted.”¹⁴⁰ These concerns were supported by data related to school education outcomes.¹⁴¹ Such data revealed that proficiency rates in the *Gary B.* plaintiffs’ schools hovered near zero in nearly all subject areas.¹⁴² Students argued that these conditions deprived them of an education that provided them a chance at foundational literacy and asked the court to recognize a fundamental right to a basic minimum education.¹⁴³

The district court once again held that a basic minimum education was not a fundamental right for students.¹⁴⁴ The court noted that “a case like this one could be argued on either positive- or negative-right theories,” where negative rights represent freedom from government intervention or intrusion and positive rights consist of affirmative obligations that the state must afford its citizens.¹⁴⁵ Because the Plaintiffs sought relief based entirely on a positive-right theory, the court only considered their claim in terms of whether access to literacy is a fundamental right and noted that federal courts had long been opposed to finding positive rights, even in areas involving important necessities of life.¹⁴⁶

The Sixth Circuit, however, found that “[a] review of the Supreme Court’s education cases, and an application of their principles to our substantive due process framework, demonstrates that we should recognize a basic minimum education to be a fundamental right.”¹⁴⁷ In reaching this conclusion, the court applied a two-prong analysis for determining whether an asserted right is fundamental.¹⁴⁸ The first prong of the analysis specifically protects, under the Due Process Clause, fundamental rights and liberties that are objectively “deeply rooted in this Nation’s history and

¹⁴⁰ *Id.* at 624.

¹⁴¹ *Id.*

¹⁴² *Id.* at 627.

¹⁴³ *Id.* at 621.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 629.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 621.

¹⁴⁸ *Id.* at 643.

tradition.”¹⁴⁹ Usually, the court takes a holistic approach in this historical analysis, but some Justices have adopted a narrower version that considers whether the right in question would have been a protected interest at the time the Fourteenth Amendment was adopted.¹⁵⁰ The second prong of the analysis looks at whether the asserted right is “implicit in the concept of ordered liberty,” such that “neither liberty nor justice would exist if they were sacrificed.”¹⁵¹

In discussing the first prong, the court reasoned that “the history of public education in our country reveals a longstanding practice of free state-sponsored schools, which were ubiquitous at the time of the Fourteenth Amendment’s adoption.”¹⁵² Schools are now so universal that Americans take it for granted that education will be provided as of right.¹⁵³ In addition, there has historically been a substantial relationship between access to education and access to economic and political power, and race-based restrictions on education have been used to limit the ability of certain groups to attain such power.¹⁵⁴ As such, “history establishes that education has held paramount importance in American history and tradition, such that the denial of education has long been viewed as a particularly serious injustice.”¹⁵⁵

On the second prong, the court suggested that those with low or no literacy face disadvantages in both their economic and social lives.¹⁵⁶ To summarize:

Effectively every interaction between a citizen and her government depends on literacy. Voting, taxes, the legal system, jury duty—all of these are predicated on the ability to read and comprehend written thoughts. Without literacy, how can someone understand and complete a voter registration form? Comply with a summons sent to them through the mail? Or afford a defendant due process when sitting as a juror in his case, especially if documents are used as evidence against

¹⁴⁹ *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (quoting *Moore v. East Cleveland*, 431 U.S. 494, 502 (1977)).

¹⁵⁰ *Gary B.*, 957 F.3d at 643–44.

¹⁵¹ *Glucksberg*, 521 U.S. at 721 (quoting *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937)).

¹⁵² *Gary B.*, 957 F.3d at 648.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 652.

him? Even things like road signs and other posted rules, backed by the force of law, are inaccessible without a basic level of literacy.¹⁵⁷

Because the *Gary B.* plaintiffs had alleged conditions that plausibly deprived them of an education that could provide access to literacy, the court felt that the Constitution should provide them with a remedy in the form of a fundamental right to a basic minimum education.¹⁵⁸

B. A.C. v. Raimondo

In *Raimondo*, students brought a case almost identical to *Gary B.*, but this time focused on the adequacy of school civics education rather than literacy.¹⁵⁹ Plaintiffs in *Raimondo* were students enrolled in public schools across the state of Rhode Island who felt that basic reading and math had, in recent decades, taken priority over social studies and civics.¹⁶⁰ In addition to neglecting civics, students argued that their schools presented limited opportunities for student involvement in extracurriculars; had eliminated library media specialists; offered no options for field trips to the state legislature, city council, or courts; gave very few chances for student participation in school governance or newspapers; and had few or no school sponsored speech and debate or moot court activities.¹⁶¹

Citing these grievances, the *Raimondo* plaintiffs asked the district court to “[d]eclairs[e] that all students in the United States have a right under the [Constitution] . . . to a meaningful educational opportunity’ that will adequately prepare them to be ‘capable’ voters and jurors, as well as to exercise all of their constitutional rights and function as ‘civic participants in a democratic society[.]’”¹⁶² The court pointed out that students were asking it to declare rights that had not, until the recent decision in *Gary B.*, been recognized by the Supreme Court or any other federal court.¹⁶³

¹⁵⁷ *Id.* at 652–53.

¹⁵⁸ *Id.* at 661–62.

¹⁵⁹ A.C. v. Raimondo, 494 F. Supp. 3d 170, 174 (D.R.I. 2020).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 174–75 (alterations in original) (quoting Complaint at 45–46, A.C. v. Raimondo, 494 F. Supp. 3d 170, 174 (D.R.I. 2020) (No. 18-645 WES)).

¹⁶³ *Id.* at 175.

Ultimately, the district court refused to recognize a right to meaningful education as requested by students.¹⁶⁴ Characterizing the case as “a cry for help from a generation of young people” and admitting that “American democracy is in peril,” the court commended the plaintiffs for bringing their case and for shedding light on the “deep flaw in our national education priorities and policies.”¹⁶⁵ However, instead of providing a remedy for these flaws, the court hoped that its denial of relief would “add[] its voice to Plaintiffs’ in calling attention to their plea” and expressed its hope that “others who have the power to address this need w[ould] respond appropriately.”¹⁶⁶

Plaintiffs in *Raimondo* have appealed their case to the U.S. Court of Appeals for the First Circuit and are awaiting further decision on the matter.¹⁶⁷ In their appeal, Plaintiffs suggest that while the court in *Rodriguez* held that education was not a fundamental interest, it “left open the question of whether, nevertheless, the specific right to an education that prepares them adequately to exercise important constitutional rights does constitute a fundamental interest.”¹⁶⁸ The *Rodriguez* court protected the “quantum of education” that was needed for providing students with an opportunity to acquire basic minimal skills necessary for enjoyment of speech and full participation in political processes.¹⁶⁹ Thus, while the district court plaintiffs argue that the *Rodriguez* standard cannot be met by an education that is fully lacking in this area.¹⁷⁰

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 175, 197.

¹⁶⁶ *Id.* at 197.

¹⁶⁷ *Cook v. Raimondo*, CENTER FOR EDUC. EQUITY (2021), <http://www.cookvraimondo.info/> [<https://perma.cc/DEH3-PET6>]. In the time between writing and publishing this note, the First Circuit affirmed the district court’s decision, and the deadline to seek certiorari has passed. A.C. by Waithe v. McKee, 23 F.4th 37 (1st Cir. 2022). Relevantly, the First Circuit held that adequate civics education in public schools was not a fundamental constitutional right and that Rhode Island’s approach to civics education satisfied rational basis review for due process and equal protection claims. *Id.* at 43–44, 47 (“We conclude by echoing the district court’s observations in dismissing this case, that the Students have called attention to critical issues of declining civic engagement and inadequate preparation for participation in civic life at a time when many are concerned about the future of American democracy . . . [n]evertheless, the weight of precedent stands in the Students’ way here, and they have not stated any viable claim for relief.”).

¹⁶⁸ Brief of Appellants at 4, A.C. v. Raimondo, No. 20-2082 (1st Cir. Jan. 25, 2021).

¹⁶⁹ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37 (1973).

¹⁷⁰ Brief of Appellants at 4, A.C. v. Raimondo, No. 20-2082 (1st Cir. Jan. 25, 2021).

VI. THE FUTURE OF EDUCATION RIGHTS: A DISCUSSION

It is clear that the *Rodriguez* standard has proven ineffective in preserving adequate education rights and that change must occur with respect to such rights in the United States. As discussed, the issue with deferring to legislators, scholars, and educational authorities in each state, as opposed to recognizing a nationwide, constitutional standard is that every state and locality has a different idea of what a minimum quality education should look like. Unfortunately, it is unlikely that *Rodriguez* will be overturned, given that the Supreme Court has only overturned 1.8% of decisions in the last seventy years.¹⁷¹ Also unlikely is a new amendment to the Constitution, because the document has only been amended twenty-seven times since its drafting in 1787 (which includes the first ten amendments found in the Bill of Rights).¹⁷² As such, one of the only practicable ways to secure uniform educational rights is for the Court to set new precedent by ruling positively on unique legal arguments like those presented in *Gary B.* and *Raimondo*.

The arguments in *Gary B.* and *Raimondo* are unlike previous, failed theories holding that education is so important to an individual's life chances that the Constitution must protect it. Instead, *Gary B.* and *Raimondo* illustrate the idea that there is no democracy without education; the focus is on benefits to society, rather than to individuals. Uniformity in education is essential because it means that every child is being given a chance to legitimately participate in and preserve democracy. The preservation of democracy is a value that dates back to the origins of our nation and is one that the Founders certainly intended to uphold.

In a society where schools fail to provide individuals with basic civics and literacy skills, the people become unable to perform important democratic tasks such as informed decision making in elections and active participation in political life as a whole. When the people are unprepared to undertake these functions, they develop a sense of apathy or neutrality toward government. Apathy among the people means, in turn, that government is no longer run "by the people" or "for the people," but

¹⁷¹ Data from the United States Government Publishing Office shows that between 1946 and 2016, there were 8,809 decisions made by the Supreme Court. Only 75 of those decisions were overturned. Amanda Shendruk, *Fewer Than 2% of Supreme Court Rulings Are Ever Overturned*, QUARTZ (May 22, 2019), <https://qz.com/1326096/despite-its-pending-hard-right-turn-the-supreme-court-is-unlikely-to-overturn-roe-vs-wade/> [https://perma.cc/WA8C-84Y2].

¹⁷² Brenda Erickson, *Amending the U.S. Constitution*, NCSL (Aug. 2017), <https://www.ncsl.org/research/about-state-legislatures/amending-the-u-s-constitution.aspx> [https://perma.cc/XRG2-MEAR].

rather by and for those in positions of power who have been fortunate and privileged enough to learn and understand what others never had access to.

What are the next steps? Having already achieved a positive decision in *Gary B.*, this author hopes to see the same result in *Raimondo* in the near future.¹⁷³ Regardless it is essential that courts, especially at the federal level, continue to rely on *Gary B.* (and, hopefully, *Raimondo*) as precedent in cases related to education rights. The more that we see litigation based on the idea that education is essential to democracy, the more legitimacy that argument gains and the more likely it becomes that the Supreme Court will eventually adopt this view. Of course, this argument will later need to be codified through legislation, but this will become a much more realistic task if and when there are favorable rulings from the nation's highest court on the issue.

¹⁷³ Although this was not the case for *Raimondo*, the sentiment remains. It is undoubtedly difficult to overturn decades of precedent, but with time and continued effort, change is always possible. This author hopes that readers see the First Circuit's decision in *Raimondo* not as a defeat, but as a step in the right direction and as motivation for the future of education litigation.

