

## ***Cook v. Raimondo: Summary of Legal Issues in Complaint***

The 2016 presidential election campaign underscored some very troubling trends in the present state of our democracy: the extreme polarization of the electorate; the dismissal of people with opposing views; the failure of many voters (and, quite often, the candidates) to focus on substantive policy issues; and the widespread acceptance and circulation of one-sided and factually erroneous information. Other disturbing factors have been present for decades: the proportion of eligible voters who actually vote is substantially lower than in most other developed countries, the number of citizens who actively participate in local community activities has dramatically declined, and Americans are increasingly neglecting basic civic responsibilities like jury service.

These trends raise the question of whether the schools have been fulfilling their critical civic mission to prepare young people to be good citizens, capable of safeguarding our democracy and stewarding our nation toward a greater realization of its democratic values. The ability of the schools to carry out their historical civic preparation role has been further undermined by the disparities in opportunities for effective civic preparation that are available in many schools; this opportunity gap has resulted in a large “civic empowerment gap” between middle-class and affluent white students and many students in poverty and students of color.

Overall, the highest courts in at least 32 states have explicitly stated that preparation for capable citizenship is a primary purpose or the primary purpose of the education clause of their state constitutions<sup>1</sup> but none of them have acted on this understanding. The United States Supreme Court has also recognized that “[S]chools are where the “fundamental values necessary for the maintenance of a democratic political system” are conveyed. *Plyler v. Doe*, 457 U.S. 202, 221 (1982.)

The state courts should now enforce their pronouncements regarding the primacy of education for citizenship in order to ensure that the schools effectively meet their civic preparation obligations. The impact of any state court litigations and the long-term sustainability of any reforms they may order is tempered, however, by the U.S. Supreme Court’s failure to declare that there is a national right to education. As Jonathan Kozol has put it,

[N]o matter what the state in which a case takes place, the most important disadvantage advocates for equal education or for adequate education have to face is that attorneys are unable to incorporate within their pleadings claims deriving from the U.S. Constitution -- the only constitution that has truly elevated moral standing in the eyes of most Americans -- and cannot, as a consequence, defend the rights of children in these cases *as Americans*.<sup>2</sup>

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<sup>1</sup> This does not mean that the other 18 state highest courts have denied this proposition; rather, they just have not spoken to the issue.

<sup>2</sup> JONATHAN KOZOL, *THE SHAME OF THE NATION: THE RESTORATION OF APARTHEID SCHOOLING IN AMERICA* 249 (2006.)

In its 1973 decision in *San Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1, a case that focused on equity in school funding, the U.S. Supreme Court held that education is not a “fundamental interest” under the U.S. Constitution, essentially because education is nowhere mentioned in the federal constitution. Justice Marshall, in a strong dissent, took issue with this position. Even though education is nowhere mentioned directly in the federal constitution, he argued that education must be deemed a fundamental interest because of “the unique status accorded public education by our society, and by the close relationship between education and some of our most basic constitutional values.” *Id* at 111. Specifically, he stressed the importance of education for exercising First Amendment rights, “both as a source and as a receiver of information and ideas” and the importance of education for exercising the constitutional right to vote and to participate in the political process. *Id* at 113-114.<sup>3</sup>

Justice Powell, writing for the majority, accepted Justice Marshall’s basic perspective. Summarizing the dissenters’ arguments on this point, and he indicated that he had no disagreement with this perspective, stating that “[w]e need not dispute any of these propositions,” *Id* at 36 because the plaintiffs, who had focused on the funding inequity issues, had not presented any evidence that the plaintiff students in that case were not receiving such an adequate education.

In short, then, in *Rodriguez*, all of the Justices agreed that some basic level of education is necessary for students to obtain the essential knowledge and skills that they will need for “full participation in the political process.” Because plaintiffs in that case had not specifically raised this issue, and had not presented arguments or evidence on what that basic level of education should be, the majority decision did not confront those issues. The Court also specifically reiterated in a later case that it still had not definitively settled the question whether a minimally adequate education is a fundamental right and whether a statute alleged to infringe that right should be accorded heightened equal protection review. *Papasan v. Allain*, 478 U.S. 265, 284 (1986.)

The *Cook* Complaint also claims that students in Rhode Island have been denied additional constitutional rights under the due process and privileges and immunities clauses of the Fourteenth Amendment and under the Republican Guarantee Clause of Art. IV, § 4 of the U.S. Constitution.

Because of the increasing polarization of our national politics and the accelerating assault on the underpinnings of the nation’s basic democratic institutions in recent months, it is both appropriate and necessary to launch a federal litigation at this time to raise the civic preparation issues that the *Rodriguez* court left open for another day. Although a majority of the justices on the Supreme Court have expressed some skepticism about the appropriateness of the involvement of the courts in institutional reform litigations, a case that can provide the Court an opportunity to emphasize the importance of civic engagement in maintaining our democratic

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<sup>3</sup> See also, *id* at 63 ( Brennan, J dissenting):“ Here, there can be no doubt that education is inextricably linked to the right to participate in the electoral process and to the rights of free speech and association guaranteed by the First Amendment.”

culture may at this time be favorably considered by justices of both a liberal and a conservative bent.