ANALYZING THE HISTORICAL ROLE OF THE COURTS AND THE CONSTITUTION IN 21ST CENTURY EDUCATION ISSUES

by

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Education is of critical importance to our society, shaping the young people who will influence our future and serving as a battleground for the issues that we are wrestling with today. Since it is so important, there has been a considerable amount of debate from the many stakeholders involved in every aspect of education. Many of these debates make their way to the court system, and the decisions that come out of these courts have had serious impacts on education and beyond. This is seen in particular with the areas of school funding, free speech in schools, special education, and school integration and affirmative action. In this thesis, I aim to analyze the role of the courts in each of these content areas in order to understand how the courts have historically impacted education and how they continue to impact it through the legacies of their decisions and through current and future cases.

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Introduction

Education has historically been a political battleground for a wide range of issues, whether those issues were the teaching of German in public schools during the 1920s or debates about public health during the pandemic in 2020. Education is an arena with many stakeholders - parents and guardians, teachers, administrators, government officials, and students - and each of those stakeholders has used the energetic policy area of education as a way to galvanize their advocacy. All of these stakeholders have argued, rightfully so, that education is key to the future of our country and the world. Education is the path that our voters, leaders, and community members have and will continue to take, and through that path, their minds will be shaped and their perspectives will be widened. In other words, education is critical for our society.

However, because so many stakeholders in an increasingly politically divided society understand the critical nature of education, it has become a policy area filled with conflict. This was seen clearly during the pandemic with the many instances of violence at school board meetings (Carr and Waldron). Following the pandemic, there has been an acceleration of conflict and unprecedented actions in the debates around education, such as through Governor DeSantis's Stop WOKE Act, recent attacks on diversity programs in schools, and restrictions on transgender students participating in sports (American Oversight). These sorts of actions are being seen in many states around the country, and are being echoed on federal platforms as well, particularly as the race for the 2024 presidency continues (Astor et al.).

Given all the fervent debate, it is no surprise that the Supreme Court has been asked to weigh in on a number of these education debates. One key example of this has been their recent landmark decision in *Students for Fair Admissions v. Harvard* (2023) that upended affirmative action policies across the country. However, it would be a mistake to think that Supreme Court

involvement in education is a recent phenomenon - in fact, the Court has played a major role in education for more than a century, with many key cases that fundamentally shaped the landscape. Some examples include *Pierce v. Society of Sisters* (1925), *Brown vs. Board of Education* (1954), *Tinker v. Des Moines Independent Community School District* (1969), and *Parents Involved in Community Schools v. Seattle School District* (2007), to name a few. Each of these cases, and the many more during the past century, demonstrated instances in which the Court answered constitutional questions relating to issues in education.

It is noteworthy that so many court decisions in the realm of education represented landmark changes. Many of them opened up previously blocked paths towards justice and equal treatment in a major and decisive way, setting up precedents that protected rights for so many people involved in education, as well as precedents towards justice that expanded beyond education into other policy arenas as well. Many other cases shuttered progress that often built on previous court decisions, going back on precedent and showing a backslide of rights and justice. In any case, the courts clearly have a forceful impact on education issues and have significant power to help or hinder justice in this and many other policy areas.

It is clear that education is important for our society, and it is similarly clear that the court system has a significant impact on education. As explained above, it is a realm in which so many people are involved and are invested in the issues being debated, for a goal of which the importance is not debatable: the future of our country's youth. Relying on the courts to weigh in on these already politically-charged issues tells us a lot about the role of the courts in our society and in our political landscape. Additionally, the issues and situations that necessitate the courts wading into the area of education are important to analyze in order to understand more about the fundamental arena of education. Thus, in this thesis, I aim to analyze the role of the courts in

shaping education policy, as well as the way that the courts have exercised this role throughout history to create the modern educational landscape. By looking at the history of court rulings, as well as looking at the reactions to these rulings by the public, a better insight into the interactions between people, policies, and the Constitution is possible.

Background

In order to best understand the complex landscape of education, an analysis of the background of this issue is helpful to set the stage. The courts have decided issues in the umbrella of education, but under that umbrella there is a wide variety of subjects that they have addressed, from school prayer to funding proposals. Therefore, it is helpful to begin by looking more broadly at the way that courts have acted in these spaces as a whole, before diving into more individual differences. As a whole, the application of constitutional doctrines and judicial principles to the often policy-centered questions of education creates a charged interaction. This is further complicated by the existence of guarantees towards education in state constitutions ("Education Policy Litigation as Devolution"), wherein conflicts between the promises of these clauses and the realities of their implementation are often brought before the federal courts. Even with the guarantees in state constitutions, the reality is often that courts shy away from robust implementation, being "wary of protracted litigation against complicated bureaucracies run by democratically accountable officials" ("Education Policy Litigation as Devolution"). Given "concerns about the separation of powers, local control, and judicial competence," courts focus more on the existence of educational rights, rather than the specifics of policy ("Education Policy Litigation as Devolution").

Yet in education, as in many other areas of policy, specifics can make a significant difference, and broad-scale statements about the existence of rights only go so far, even though they are in many cases vital turning points. To give an example, the broader statement in *Brown v. Board of Education* (1954) about "separate but equal" education doctrines being unconstitutional was vitally important, yet the many levels of involvement in education (state governments, cities, districts, specific schools, etc.) meant that those who were against the ruling

could target many different levels of implementation, resulting in the need to issue *Brown II* (1955) and originating the famous clause of "all deliberate speed." However, not every case about education had a *Brown II*, and the fact that the call for action of "all deliberate speed" became noteworthy demonstrates the potential gap between a judicial decision and the reality of implementation. Requiring "all deliberate speed" was intended to resolve the questions of particularities of implementation as obstructions, and those obstructions were not limited to *Brown* in the broader perspective of education case law. In many situations, the courts are caught between a position of being faced with increasing amounts of cases about aspects of education that are, at first glance, everyday matters, while also needing to avoid overstepping their bounds into the already-existing forms of school governance that are present on a smaller scale (Dunn and West 4). From this divide, tension arises, on top of the fact that there are many other government entities who also are attempting to regulate education, such as governors or elected local government officials, and an already existing bureaucracy.

Another key point about court intervention in education is the fact that many of the key cases that are influencing today's education debates came up in the last few decades. While the constitutional basis for many of the decisions, such as the First Amendment, may be in different time periods, the foundational cases that applied these constitutional matters to the modern educational landscape are comparatively more recent, and across multiple subject areas. Some examples of these include *Brown v. Board of Education* (1954), with a ruling on education that overturned the "separate but equal" standing of *Plessy v. Ferguson* (1896), as well as *Engel v. Vitale* (1962), *Tinker v. Des Moines Independent Community School District* (1969), and *San Antonio Independent School District v. Rodriguez* (1972). Since this time period, courts also made many other foundational decisions in the areas of reproductive rights, the criminal system,

and free press, demonstrating the increased judicial activity in these realms during the time period (Dunn and West 4). Additionally, many of these landmark decisions were made under the Warren Court, which stood out for its protection and reinvigoration of rights (Horwitz 9) and that created a new era for the Court in the methods and constitutional doctrines by which it engaged in this protection and reinvigoration.

However, from recent cases such as *Students for Fair Admissions v. Harvard* (2023) and, beyond education, *Dobbs v. Jackson Women's Health Organization* (2022), it is clear that many of the changes of the previous era are swiftly being rolled back, much to the dismay of many, especially in situations where the rights that these recent cases have attacked were in fact strongly rooted for decades. All of this demonstrates that the precedents set by the courts are not necessarily set in stone, and that they are not immune from the vigorous pressure of outside groups, such as Students for Fair Admissions, that seek to undermine many of the protections provided by the courts.

Importantly, this backsliding is not just limited to the specific situation of one particular case; it is the undermining of the constitutional doctrines that were justifying the ruling of that specific situation. In certain cases, this overturning of constitutional doctrines is necessary, as when the "separate but equal" doctrine of *Plessy v. Ferguson* (1896) was overturned in *Brown v. Board of Education* (1954). Court opinions are quick to cite this example in cases that actually represent a regression of justice; a recent egregious example is seen throughout the opinion of *Students for Fair Admissions v. Harvard* (2023), wherein claims of fighting racial discrimination were used to justify the removal of affirmative action protections that were installed to actually fight against racial discrimination. Similarly, the overturning of the decision in *Plessy v. Ferguson* (1896) was seen throughout the decision in *Dobbs v. Jackson* (2022), and that action

was presented as a justification for the extreme regression of reproductive rights in *Dobbs*. All of this demonstrates the many different outcomes, especially when projected into the future, of court involvement - it is not a guarantee of lasting justice.

Even with all these factors, educational questions keep coming before the courts. Despite the many stakeholders that are working in the realms of state and federal policymaking, local government, and even within schools themselves, the courts are needed and are often turned to, at times in cases involving these very stakeholders. Therefore, it is clear that the court must provide something, beginning with addressing a need that current systems are unable to address. Given that the courts provide constitutional answers, with many cases citing foundational constitutional doctrines about civil rights and liberties, it is firstly apparent that education is not only a matter of the smaller aspects of the system; rather, put together, these smaller aspects represent broader questions about equality, freedom, and justice in our country. Therefore, the courts, utilizing the larger doctrines of the Constitution that center on these questions, are being sought out in order to draw clear lines of right and wrong, of just and unjust. *Brown v. Board of Education* was an example of this, as the Court clearly stated that by the principles of our Constitution, the doctrine of separate but equal was wrong, and that schools must ensure that their new systems are not violating the necessary standards decreed by the Court. Following this, questions arose regarding implementation at the levels of districts and schools, so much so that *Brown II* was issued, to begin to resolve some of these areas of specifics that, although at first glance seem like logistical specificities, are in reality an equally critical part of the manifestation of *Brown v. Board of Education*, along with the overarching decrees of the constitutional questions.

Courts provide something important - they show that the seemingly smaller-scale elements of the education system represent issues of critical constitutional importance, and at the same time they have the capacity to apply broad decrees of justice and equality. Therefore, it is clear that the subject areas in which courts take up a case contain important issues, and have questions that are important to resolve. It illustrates that these issues are a priority. This was seen in *Brown v. Board of Education* (1954), when the Supreme Court unanimously struck down separate but equal and clearly highlighted the importance of school integration. Later on, the Court's ruling in the case of *Students for Fair Admissions v. Harvard* (2023) demonstrated a shift in the priorities of the Court. As another example, the Court's recent ruling in *Dobbs v. Jackson* (2022) also demonstrated the priorities of the Court, and highlighted the power of their priorities in undermining decades of precedent of reproductive rights. Additionally, higher court decisions ripple through the rest of the courts and also through the realm that their question originated from, showing that a victory in the courts has the potential to be a major step forward in the path towards a particular goal for groups that utilize the courtroom.

But just as there are many advantages to the court system, there are also disadvantages, particularly for an area like education wherein the implementation is critical for the success and longevity of the court's decree. One key issue is that "jurists know plenty about the law, but few know much about schools and the conditions in which those responsible for teaching in and leading them are most apt to succeed" (Dunn and West ix). This poses obvious problems, as the courts may not even necessarily be the best avenue by which to resolve differences of this regard, but if there is a dearth of other options, these problems must go unresolved. In fact, "most contemporary proponents of judicial policymaking do not defend the courts at all," but rather

"accept the criticisms leveled at the judiciary but go on to question the capacity of other institutions" (Dunn and West 10).

Another disadvantage is that the ideological balances of the courts can have a significant impact on their decisions, and though that it is a problem that extends beyond education, it has particular effects in education when the grand rhetoric of protecting kids and ensuring the future is used to obfuscate an unjust decision. Additionally, obfuscation can also occur when courts manipulate the progress of existing decisions in order to justify their ideological regressions of rights, such as through the recent decision in *Students for Fair Admissions* continually justifying their actions as allegedly promoting racial equality through colorblindness, with detrimental effects. In that case, wherein the decision in *Brown v. Board of Education* was exploited to justify the attacks on affirmative action, it became clear that "by erasing the context, [Chief Justice] Roberts turned colorblindness on its head, reinterpreting a concept meant to eradicate racial caste to one that works against racial justice" (Hannah-Jones). Thus, it is clear that the protections from the courts are not set in stone, even in landmark cases, highlighting a significant disadvantage of the courts - it was alarmingly easy for the courts to go backwards on this issue. Beyond education, this is also seen in the concurring opinion of Justice Clarence Thomas in *Dobbs*, in which he casts doubt on any decision based on the principle of substantive due process - a principle that protects the right to contraception, same-sex marriage, and more (Carlisle and Zorthian). These examples illustrate serious shortcomings of relying on the courts for justice.

As decisions such as *Students for Fair Admissions* ripple through the educational world, they join other trends that come together in a destructive and worrying manner. One such example is the attacks on free speech in schools, such as the infamous Stop WOKE Act in Florida which, among other restrictions, severely limits teaching on institutional racism (Mudde),

just as affirmative action is being attacked across the country. Lesson plans from teachers in states across the country are being restricted for fear of legal repercussions in the increasingly hostile landscape of discussion (Little). Another example is the rise of book bans (Creamer), often on books that center around the same content that bills such as the Stop WOKE Act already restrict in schools. In essence, this means that students cannot learn this important content in classrooms, cannot read about it from the school library, and in many cases they cannot openly discuss these matters at home. Given that the students affected by these laws are in many cases beginning their journeys of discovering who they are and understanding the world around them, which education should ideally help facilitate, these bans are particularly harmful.

These are just a few of the major changes that are ushering in a new, and often concerning, era of education. In further sections, I will examine these changes by looking specifically at four critical content areas: school funding, free speech in schools, special education, and school integration and affirmative action. By looking at the history, cases, and reactions of advocacy groups in these areas, I will examine the way that the courts have and continue to affect the realm of education - an area that, historically and in current times, is a battleground for the sociopolitical and economic context of the era.

Education as a Fundamental Right

Rhetoric around the courts often centers on the discussion of a fundamental right, a right that is so central to the tenets and principles of the Constitution that it is a bedrock principle on which future rights are based. Therefore, when groups or activists want to enshrine a right to something that they feel is fundamental, having the courts recognize it as such is the gold standard for protection against the waves of change that may come with changes like new courts, social changes and social regression, new political administrations, and more. Education is one such example. Having been a critical example of the interactions between families, the states, and the federal government, many actors in the education space have looked to the courts to protect education as a fundamental right, a task on which the courts have been largely inconsistent.

The rights of parents are also crucial to understand in this context. Parents' rights have come into play in current debates regarding the teaching of gender identity and sexual orientation in schools, in terms of school vouchers, and much more (Mulvihill). Yet, parents' rights are not just a contemporary debate. The cases of *Meyer v. Nebraska* (1923) and *Pierce v. Society of Sisters* (1925) are two key cases in this realm. Despite occurring a century ago, the discussions and legal logics with these cases remain relevant, particularly in the way that they highlight education as a critical space of fundamental rights.

In *Meyer v. Nebraska*, the Supreme Court held that it was unconstitutional under the Due Process Clause of the 14th Amendment for Nebraska to have a state law that banned the teaching of any language other than English to students - in this case, the contested situation was when a teacher was convicted for teaching German. The Court stated that "evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the

opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own," demonstrating the influence of the rights of parents over state education law. In *Pierce v. Society of Sisters*, the Court unanimously ruled that an Oregon statute requiring parents to send their children to a public school in the district, as opposed to having the option to attend a private school, was unconstitutional. They stated that "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations," again highlighting the way that the rights of parents were prioritized. The role of parents in education shows that the courts have asserted education as a foundational space. This can be seen in terms of state interaction with its residents, as well as how education is tied to concerns regarding creating educated members of society and shaping the country's next generation of political participants. In both of these decisions, the Court addressed factors that influence education beyond the classroom itself, something that it continued to do in future education cases, whether that is the influence of parents in *Meyer* and *Pierce* or later factors such as racial segregation in society in *Brown v. Board of Education* in 1954 or local tax policies and wealth disparities in *San Antonio v. Rodriguez* (1973). In other words, by showing education as a fundamental space worth involvement from the highest body of the court system, the cases of *Meyer* and *Pierce* set a high standard for the importance of education.

The case of *Brown v. Board of Education* (1954) was a landmark case in which education was enshrined as a fundamental right. In this case, which overturned the doctrine of "separate but equal" and ruled that segregation in public schools was unconstitutional, the opinion of the unanimous Court stated that the opportunity of an education "is a right which must be made available to all on equal terms." The Court emphasized the importance of education in creating

educated citizens, towards professional training, and in teaching cultural values. Given the importance of education, and given that segregated schools had less opportunities and resources as well as generated feelings of inferiority in students, the Court decreed that segregated schools were unconstitutional under the Fourteenth Amendment, as the fundamental right to education was not given equally to all children.

The road to *Brown* began long before the 1954 case was argued before the Court. In the 1930s, Charles Hamilton Houston, the Dean of Howard Law School, created a strategic campaign towards eliminating the doctrine of "separate but equal" that the Court had made law in 1896, in the case of *Plessy v. Ferguson* (LDF). Thurgood Marshall, later a Supreme Court Justice, was the key player in this campaign, along with several other top lawyers and the NAACP and its Legal Defense Fund (LDF). There were many cases that the lawyers focused on to create a strong legal basis for the Court to ultimately overturn separate but equal.

One such case in this context was *Sweatt v. Painter* (1950). In this case, Heman Marion Sweatt applied to the University of Texas School of Law, but his application was denied because he was Black and because the state constitution mandated racially segregated education facilities - his rejection letter suggested that Sweatt could instead be a part of the segregated law school for Black students (Entin). With NAACP attorneys including Thurgood Marshall, Sweatt sued the university, arguing that the allegedly separate but equal Texas State law school for Black students was unequal in terms of resources like a library or moot court program, class size, prestige, alumni, and more (Entin). Additionally, Marshall, on behalf of Sweatt, showed in his argument that having a segregated system prevented students from learning from and about each other and divided society (Entin).

Marshall's plan for his argument has stood out in history, particularly for the way that he shifted attention away from tangible differences between separate but equal facilities, but highlighted, in addition, the many benefits to integration and the many dangers of segregated systems in terms of broader concepts about discrimination and hate (Entin). Marshall showed the unconstitutionality of separate but equal facilities, the ways that segregation generated mistrust and divisions within people, that the particular situation of Plessy regarding transportation was fundamentally different than education, and that the two schools in question were not and could never be truly equal (Entin). Ultimately, the Supreme Court held that the schools were not equal and that making Sweatt attend the segregated law school would violate the Equal Protection Clause of the Fourteenth Amendment - the non-tangible elements highlighted by Marshall were seen often in the Court's opinion (Entin). Thus, the Court's opinion, if not as expansive as hoped, had a significant impact in seriously questioning the "equal" element of "separate but equal," which opened the door for Brown in a significant way (Entin).

In *Brown,* the lawyers, led by Marshall, attacked the separate but equal principle on all sides, using expert testimony to show how segregation in schools denies opportunities to Black children and harms their sense of self, and the lawyers used historians, social scientists, and psychologists to show the harms of segregation and ultimately show how it is unconstitutional under the Fourteenth Amendment (LDF). One example of this was the doll experiment, in which psychologists Kenneth and Mamie Clark found that Black children felt that white dolls were better than Black dolls, despite the dolls being the same in every other aspect except for their color (LDF). The results of this experiment were used in the Court's opinion, which stated that the feelings of inferiority "may affect their hearts and minds in a way unlikely ever to be undone" (LDF). After the arguments were heard, the Justices were still undecided by the end of

the Court's term for the year, and they decided to hear the case again a few months later (US Courts). In these months, Chief Justice Fred Vinson passed away, and the then-Governor of California, Earl Warren, was appointed to Justice Vinson's seat (US Courts). Chief Justice Warren then was famously able to bring the other members of the Court to a unanimous decision that made the doctrine of separate but equal unconstitutional (US Courts).

Unfortunately, the protections offered by *Brown* were cut down significantly in *San Antonio Independent School District v. Rodriguez* (1973), demonstrating the inconsistencies and oscillations of the Court's approaches to education. *Rodriguez* began when parents of Mexican-American students of the Edgewood Independent School District in San Antonio brought suit on the basis of the inequalities in funding of the schools that their children attend ended, due to the differences in the property values of their areas which, under the existing school funding scheme, led to less funding for their schools (Ogletree). They argued that the school funding system was a violation of their Equal Protection rights under the Fourteenth Amendment (Ogletree). The Supreme Court ruled that education was not a fundamental right, and thus that the high standard of strict scrutiny, which would concern violations against a suspect class, is not relevant here (*San Antonio Independent School District v. Rodriguez* 1973). The Court states in *Rodriguez* that the funding system does not "impermissibly interfere with the exercise of a 'fundamental' right or liberty," going on to say that "though education is one of the most important services performed by the State, it is not within the limited category of rights recognized by this Court as guaranteed by the Constitution." By explicitly denying education its high status as a fundamental right that was firmly established in cases such as *Brown*, the *Rodriguez* Court demonstrated one of many instances of fluctuation in protecting education as a fundamental right.

It is also important to consider the influence of state constitutions in the discussion of education as a fundamental right. The constitutions of all states mention the state's role in making and maintaining a public education system, while the federal Constitution does not ensure this right (Parker). The states differ in how they conceptualize the role of the state government in the educational process, with some states declaring more robust systems than others (Parker). The state constitutions also vary regarding questions about religion, accessibility, and more, as well as school funding (Parker). However, the potential for creating a stronger protection of education can be found in the state constitutions, and like many other policy initiatives, transition from success at the state level to success at the federal level. With stronger guarantees of education that is equal throughout the states, the fluctuation of the status of education as a fundamental right will not be as detrimental.

Content Areas

School Funding:

School funding is an important area to consider in the context of court involvement in education because it demonstrates the potential conflict between the daily realities of education and what that means for constitutional questions. In one sense, one might consider funding proposals to be a bureaucratic element of education, not something concerned with larger constitutional questions, but school funding equity is necessary in order to fulfill the promises of quality education that are often a part of state constitutions and in order to fulfill protections in the federal Constitution for equal treatment. This is a key bridge between broader claims that the courts make about constitutional protections and the realities of lived experiences for students in these educational systems. Additionally, as with other areas of educational policy, there are many actors in the arena of school funding as well. This includes federal agencies that oversee distribution of federal dollars, state governments that fund and that manage distribution of dollars to the district and school level, and of course the parents and students advocating for better funded schools with better resources, along with their role as being taxpayers in their communities and being concerned with ensuring their tax dollars do not go wasted. Therefore, as with educational policy as a whole, there are many voices in the discussions about school funding that can get involved at the many levels of educational, legislative, and judicial institutions.

The courts have had varied roles in the school funding landscape. On one hand, equal protection clauses on the state and federal levels have bolstered the ability of courts to be involved in this area, but courts have also seen debate against them as effective agents in overseeing these policies (Dunn and West 96-97). Importantly, the areas in which the courts of

intervened on school funding did not only focus on the specifics of distribution; instead, court intervention showed that school funding is not just about dollars, but was also about other factors such as racial equity and emphasizing that all students, regardless of their socioeconomic backgrounds, should have the opportunities afforded by equality education. However, school funding was a major area in which education was no longer considered a fundamental right, particularly through the case of *San Antonio v. Rodriguez* (1973), which was a major turn away from the precedent set in *Brown*. This shift, only twenty years later, shows the fluctuation in the Court's position on giving education this important status, which also raises interesting parallels given that education is given this higher protection in many state constitutions.

Serrano v. Priest

There have been many important cases in the realm of school funding, which continue to shape school funding debates today. One such example is the California Supreme Court decision in *Serrano v. Priest*. *Serrano* was actually three decisions, and in *Serrano I* (1971), the court found that the existing school financing system, which focused on local property taxes, was in violation of the 14th Amendment's Equal Protection Clause. In this case, John Serrano, the parent of a student in one of the underfunded districts, brought this case during a movement for civil rights protections for the Mexican-American community in California, and highlighted the way that wealth inequality was translating into inequality of education for students due to the differences in taxes of the areas they lived in (Jimenez-Castellanos and Picus). Due to the fact that students in different districts could have better funded schools because of the wealth of the surrounding area, the financing structure led to "substantial disparities" per student in these districts (*Serrano*). The court stated that "the commercial and industrial property which augments a district's tax base is distributed unevenly through-out the state," and that "to allot

more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments," which they described as "the most irrelevant of factors" for a school funding scheme (*Serrano*). In *Serrano I*, the court applied the strict scrutiny test, and found that the school financing scheme dealt with the fundamental interest of education, affected suspect class by differentiating by wealth, and did not have a compelling state interest for their existing financing structure, and therefore violated the Equal Protection Clause.

Serrano I showed an important connection between federal protections such as the 14th Amendment and district-level educational involvement. Importantly, however, the court in *Serrano I* based its decision on both the federal Constitution's 14th Amendment as well as protections offered by the California state constitution. This became critical following the decision in *San Antonio Independent School District v. Rodriguez* (1973) in which the US Supreme Court struck down a similar decision to that of *Serrano I* and stated that the case of the Texas school financing system in question was not one in which strict scrutiny could be applied, because there was not a suspect class that was properly defined and because education is not a fundamental right according to the federal Constitution (Ladd et al.). Thus, the element of *Serrano I* that emphasized protections from the 14th Amendment of the federal Constitution was no longer valid. However, since the *Serrano* case used protections from the California state constitution, the court could assert the claims they made in that case despite the decision in *San Antonio Independent School District v. Rodriguez* (Jimenez-Castellanos and Picus). Additionally, in *Serrano II*, the court emphasized that a more robust legislative response to their decision was

needed, and asserted the trial court's timeline and specifics to do so, and these specifics were also confirmed again in *Serrano III* in 1977 (Jimenez-Castellanos and Picus).

Following the *Serrano* case, there were significant changes in the school finance realm, with increased lawsuits and legislative responses, though these legislative responses were complicated by the changes in Proposition 13 (Jimenez-Castellanos and Picus). Today, many states have had their finance systems analyzed more closely because of *Serrano* (Ladd et al.). Overall, *Serrano* shows an interesting example of the rules and influences of state and federal courts, especially since many states have provisions in their constitutions for educational protections, and yet this is still not consistent across the nation, raising concerns for potential inequalities.

San Antonio Independent School District v. Rodriguez (1973)

In the case of *San Antonio Independent School District v. Rodriguez* (1973), the Supreme Court ruled that the case concerning the school financing system of Texas should not utilize strict scrutiny because the federal Constitution does not contain a fundamental right for education and since the Texas system did not truly disadvantage a suspect class. In other words, wealth was not a suspect class in the eyes of the Supreme Court. The Court stated that "we are unable to agree that this case… may be so neatly fitted into the conventional mosaic of constitutional analysis under the Equal Protection Clause," and that the Court "find[s] neither the suspect classification nor the fundamental interest analysis persuasive" (*Rodriguez*). They argued that since there were some wealthy households in the poorer areas and vice versa, the issue of unequal funding was not due to the same kind of suspect class discrimination that would warrant the use of strict scrutiny. The Court recognized the importance of education as a duty of the state, but that it is not a part of the rights of the Constitution. Additionally, the Court stated that even

against claims that some protection of education should be a part of the Constitution, in order to ensure other protected rights, the Texas system does not fail to comply with the necessities of those protected rights.

This was a significant blow to the success of cases like *Serrano v. Priest*, and weakened the standing of federal constitutional protections for education, something that *Serrano I* had indicated could be a possibility. Though cases like *Serrano I* utilized state constitutional protections, those protections are not consistent across states and thus as a whole, the ruling in *San Antonio Independent School District v. Rodriguez* weakened claims for equality within the school finance system. In particular, this was done through not using the high standard of strict scrutiny to evaluate the Texas system, making it so that the protections afforded to suspect classes within the judicial doctrines of the 14th Amendment could not apply, even in the face of visible inequality in educational institutions in Texas and other states.

An important element to highlight in this case is the fact that the Supreme Court stripped the protections of a suspect class, obfuscating the truth of the issue as if it was only a matter of applying different judicial doctrines. By making it so that the students being affected by the Texas funding policies were not considered a suspect class and by claiming that education is not considered a fundamental right, the Court opens the door for the continuation of unequal funding policies and the detrimental impact that that has on education. The majority opinion goes on to state that "this is an inappropriate case in which to invoke strict scrutiny, since it involves the most delicate and difficult questions of local taxation, fiscal planning, educational policy, and federalism, considerations counseling a more restrained form of review" (*Rodriguez*). In this quote, it is clear that the court is ignoring the connection that these "delicate and difficult questions" have with equal protection.

Justice Marshall stated in his dissent in *Rodriguez* that "majority's holding can only be seen as a retreat from our historic commitment to equality of educational opportunity and as unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens," adding that it may not be successful to rely on "the vagaries of the political process" for a solution to this issue. This dissent shows the importance and significance of the Court's majority opinion, as it emphasizes that education is paramount for setting children up for future success and yet, because of the wealth of their neighborhoods, their quality of education is not guaranteed. Additionally, the dissent claimed that education was "far too vital to permit state discrimination" on the conditions of this case, showing that the outcome of this case was not a matter of disagreement with the specifics of a funding structure. The funding structure designed by the state creates discriminatory outcomes, and thus is much more than just a debate over the best method by which to achieve a shared goal of education, as the shared goal should be concerned with the quality, beyond just the presence, of education.

Rose v. Council for Better Education (1989)

The Kentucky case of *Rose v. Council for Better Education* (1989) is another important school funding case to examine in this context, as this case affirmed the fact that education is a fundamental right of the state's constitution, as well found the existing school funding structure unconstitutional. This case is significant because there was already a clear provision for education in the Kentucky constitution, which stated that the General Assembly was responsible for providing an "efficient system of common schools" in Kentucky. Therefore, the outcome of this case, and the emphasis on reifying any potential abstractness about the meanings of these terms, is noteworthy, especially in the context of cases like *San Antonio Independent School*

District v. Rodriguez that devalued these claims in the constitutional arena. They focus entirely on the Kentucky constitution, finding it "unnecessary to inject any issues raised under the United States Constitution or the United States Bill of Rights" in this case. Therefore, the standing of the guarantees for education in the state constitution was powerful. This was also true in the context of whether or not this was an issue for the court to decide. The Kentucky Supreme Court was abundantly clear in the correctness of their weighing in on this question. In fact, they state that "to avoid deciding the case because of 'legislative discretion,' 'legislative function,' etc., would be a denigration of our own constitutional duty," and that "to allow the General Assembly (or, in point of fact, the Executive) to decide whether its actions are constitutional is literally unthinkable." Thus, this decision asserts the role of the courts in areas of education, despite the emphasis on specifics in creating educational policies and despite calls to bring these issues into the political arena rather than the judicial one. Additionally, this case highlights the way that an explicitly-stated protection for education in a constitution is vital. Lastly, this decision shows how impactful a state constitution can be, given that so much of education is governed on a state level.

Continuing the Debates to Today's Times

Of course, the battle of school funding is far from over. Since the ruling in *San Antonio Independent School District v. Rodriguez*, the location of the battle has shifted significantly to the states, utilizing state equal protection claims as well as state constitutional clauses relating to education, as occurred in *Rose*. Additionally, advocacy groups are continually working in this area to make school funding more just. One such group, Brown's Promise, is fighting against inequalities in areas of funding and school segregation, seeing that there are important connections between the two areas.

One member of the group stated that "there are advocates focused on moving money and resources around, and then another group focused on moving kids around. Very rarely are we strategically talking about how to do those things together" (Lieberman). As the cases of *Serrano* and *San Antonio Independent School District v. Rodriguez* highlighted, the question of a suspect class is very significant in debates about school funding.

Additionally, wealth disparities and other socioeconomic inequities are often the legacy and result of racist policies and injustices, so addressing these issues together can potentially lead to better outcomes. A member of Brown's Promise states that litigation of school finance and desegregation have, in many cases, "run its course" (Lieberman) and therefore, "both of those types of litigation are kind of calling out for new ideas" (Lieberman). In strategizing the best legal argument for combining these issues, members of this group highlight the importance of analyzing state obligations in education and "push the boundaries" of interpretations relating to those clauses (Lieberman). Additionally, groups like the Center for American Progress analyze issues in education like school funding and highlight the issues in these policy arenas through their publications as well as propose programs, such as their proposed Public Education Opportunity Grants (Sargrad et al.) in order to work for a more equitable path forward in school funding.

It is clear that the issue of school funding is a multifaceted and important one, involving stakeholders from across the educational and judicial landscape. Importantly, the area of school funding also demonstrates the different effects of federal constitutional clauses, state constitutions, judicial doctrines, funding schemes, taxation systems, and wealth disparities on the realm of school funding.

In the more than 50 years since *San Antonio Independent School District v. Rodriguez*, schools are still not all adequately funded, and significant disparities in school funding still exist, highlighting the importance of continuing the emphasis and focus on this area and the significance of this area to issues of equality for the future of the children in these schools.

Free Speech in Schools:

The area of free speech in schools is one that demonstrates the influences of multiple actors, as well as shows the extension of broader constitutional principles into the education arena. The fact that many actors are involved in free speech cases – such as students, teachers, administrators, and the courts, to name a few – shows a major role of the courts in applying constitutional principles in fiery and contested issues. However, if the courts are inconsistent in how education is prioritized, particularly in considering education a fundamental right, the constitutional rights of actors involved, often students, may be in jeopardy.

Additionally, free speech is a broader constitutional concept of great importance in education and beyond, yet other free speech questions may not consider the free speech rights of young people who are under the protection and guardianship of schools for a large portion of the day, a question that has been further complicated by technology that pushes the school day beyond the famous "schoolhouse gate." Therefore, questions of free speech in schools have the potential to expand free speech for non-education actors as well, by relying on precedent that comes from these education cases.

Free speech cases in the education context are also important for understanding how the courts understand the purposes and impacts of education. In these cases, the courts have highlighted the role of education in generating discussion and shaping political participation, as well as being an institution to teach right and wrong and condemn vulgarity. They have discussed the varying roles of parents and teachers in the school context, shaping the doctrine of *in loco parentis* and defining the line of where school ends and home begins. The courts have shifted in their understandings of free speech in schools, often dependent on the particular facts of the case before them, but having a ripple effect that goes far beyond individual cases.

Therefore, free speech is a critical lens by which to understand the way that the courts connect the education and the Constitution.

Tinker v. Des Moines Independent Community School District (1969)

In this case, five Des Moines students wore black armbands to school in order to protest the Vietnam War and were faced with a policy at their school that banned wearing armbands with the penalty of suspension. When the students were suspended, the families ultimately brought the case to the Supreme Court, which found that the First Amendment protected their actions as speech, and that it was unconstitutional for the school to restrict their use of the armbands. The Court also called attention to a facet of the decision by the Court of Appeals for the Fifth Circuit in *Burnside v. Byars* (1966) that protected students' right to "free and unrestricted expression" as long as "the exercise of such rights in the school buildings and school rooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." Importantly, the Court highlighted that "state operated schools may not be enclaves of totalitarianism" and that "school officials do not possess absolute authority over their students," which is especially true with regards to their parent-supported political speech. This case was also significant for originating the quote that "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

This case was incredibly significant in the area of free speech in schools because it brought First Amendment protections to students that are not adults, emphasizing that despite being in the school institution, they still retain their First Amendment rights. The Court highlighted that a viewpoint being uncomfortable is not enough to justify restricting expression of that opinion at school, and that free speech provisions in the Constitution exist

beyond only principle - they must be applied and protected. This case was an example of a situation where the Court took an explicitly stated and highly protected concept - political speech - and extended the groups that could be protected by these judicial doctrines. The Court in this case connected the larger claims about the importance of protecting political speech in the country's conversations, and addressed that with the specifics of implementation of a particular school's policy. Of course, the element of the case that affirms the importance of maintaining discipline in the school against interferences opens up possibilities or unjust interpretations of what those interferences may be, and what exactly constitutes discipline at the school, where those interferences may be legitimate actions by students and the discipline may just be the status quo. However, *Tinker*'s affirmation that free speech rights apply to students and not just adults is of tremendous importance, especially when students call attention to issues within their own education system. Those systems are foundational in shaping the minds of future members of the political process, and the system which may be a microcosm of these broader issues in society.

The ACLU highlighted some of the many instances of student protest in which *Tinker* was relevant, such as 2018 student protests following the shooting in Parkland, Florida, and the Black Lives Matter protests that mobilized countless students across the world (ACLU). The American Bar Association report reflecting on *Tinker* highlighted the way that the Court's decision was not just in relation to speech rights, but it also extended to improving the educational system by allowing students to be able to express themselves openly in the informal parts of school, such as conversations with friends during the school day about events going on in the world and expressing views with their fellow students at informal events (Raskin). The ABA says that a teacher could have "picked up on [the armbands] to teach about everything from war powers to post-World War II American foreign policy to free speech itself" as one example

of the way that the *Tinker* children's actions "enriched" education (Raskin). Though future cases have cut back on some of the protections offered in *Tinker*, the emphasis on protecting constitutional rights beyond the schoolhouse gate still remains an important part of the discussion of free speech in schools.

Bethel School District v. Fraser (1986)

The case of *Bethel School District v. Fraser* was one case that limited the broad scope of protections offered by *Tinker*. In this case, a student was penalized for giving a speech that used many sexual innuendos, with the penalties including a suspension and no longer being able to speak at graduation. The reason for these penalties was that the student had violated the school's policies against vulgar speech and disruptive behavior. In other words, the students' speech was considered vulgar by the school, and thus not something that should be a part of the protected speech that cases like *Tinker*. When the case was brought to the Supreme Court, the Court found that the school administration was allowed to restrict the student speech because of its vulgar content, and that though *Tinker* did protect speech in schools, the speech in question in *Fraser* was not the political speech of *Tinker* and thus was not afforded the same protections. The Court claimed that it is a "highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse," and that it was in fact a necessary function of schools to teach this distinction.

This case was one of the famous restrictions of *Tinker* through the separation of vulgar speech from the kinds of speech that are protected in schools. However, just as the stipulation in *Tinker* that said that schools can still restrict some speech for the purposes of maintaining discipline in schools can lead to a restrictive interpretation of what discipline is, the designation of vulgar speech as something that is not protected by the First Amendment allows for the

possibility of the definition of vulgar to be exploited. *Tinker* highlighted that just because an opinion causes discomfort does not necessarily mean it cannot be expressed in schools. However, it would not be difficult for a party to claim that speech is vulgar even if it is only a cause of discomfort to that party. In a particular facet of the case in *Bethel*, the vulgar statements involved obvious sexual innuendos, and it is difficult to argue that those have a legitimate purpose to the discomfort that the school administration claimed was felt by the other students in the audience. Therefore, this case became a helpful tool for those who wanted to restrict the protections of speech in *Tinker* with case facts that at first glance support that decision. Yet, leaving the door open for defining what a vulgar statement is can very easily be a cause for concern and something that an administration, or court, hoping to restrict particular statements or opinions and expression by certain groups can twist to fit their purposes. Additionally, the varied use of the terms vulgar, offensive, lewd, and indecent throughout the opinion makes this potential for differing interpretations even more dangerous.

Soon after the decision in *Fraser* was announced in 1986, the Washington Post published an article with the headline "Student Free Speech Is in Trouble," claiming that "for 17 years, [superintendents and principal's] authority has been dangerously diminished, many of them claim, by a previous Supreme Court decision, *Tinker v. Des Moines Independent School District*" (Hentoff). The Post called attention to the fact that the lower courts in the *Fraser* case could not find a significant disruption in the school following the speech, and that Justice Burger's claim in the case that teenage girls who were listening to the speech would have been offended by its sexual innuendos was an unproven claim (Hentoff). Despite that, the outcome of *Fraser* "has added a new, large, fog-like category to the kinds of speech, very much including student journalism, that can be prohibited in school" (Hentoff). Fraser's ACLU lawyer emphasized that

the outcome of this case would weaken protection offered by appeals courts and protection offered by *Tinker*, and *Fraser* stated that a school official "harangued by student criticism and dissent" could interpret "offensive" in a variety of ways (Hentoff), and this statement remains true today.

In analyzing the application of *Fraser* in lower courts, scholar David L. Hudson found that while some lower courts have utilized a narrow application of the case, others have loosened its limitations, in particular the context of the speech or the specific vulgar interpretations of individual words as it relates to disruptiveness (Hudson and Ferguson). Yet, other courts have "interpreted the *Fraser* decision as providing school officials with carte blanche power to censor any student speech that they find offensive-even if the expression is not vulgar or lewd" (Hudson and Ferguson 197). Hudson questions who the authority is to decide what is considered offensive, given the fact that the lens of teaching "socially appropriate behavior" in schools is also often brought into the discussion as well, even though that can very easily conflict with the precedent of *Tinker*. As Hudson states, the lack of clear definitions in this context "binds the student to the sensitivities of the particular school administrator they happen to be before" (Hudson and Ferguson 202). As with other areas of education, this debate involves multiple levels of stakeholders, from the court system to administrators and teachers, and thus deciding what is acceptable for the status quo of schools has many opportunities for unjust inconsistencies to multiply.

It is also important to consider the case of *Hazelwood School District v. Kuhlmeier* (1988) in this context, having occurred only two years after *Fraser*. In this case, articles discussing teen pregnancy and how divorce has affected students in the school community were removed by the principal from a high school newspaper. The students working at the newspaper

claimed that their First Amendment rights were violated. The case went to the Supreme Court, which began its majority opinion by quoting *Tinker's* famous line about the schoolhouse gate, and then immediately referencing *Bethel School District v. Fraser* and stating that "We have nonetheless recognized that the First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings,'" highlighting already the Court's actions in limiting the protections of *Tinker*. Ultimately, the Court held that the stipulations of *Tinker* are not necessarily applied in the same way if a school does not want to associate its name or resources with the expression in question. Thus, school officials can engage in "editorial control" over the student expression in "school-sponsored expressive activities" if the control by school officials is "reasonably related to legitimate pedagogical concerns." This case demonstrated one of many situations in recent years of the courts chipping away at rights and liberties that the Court itself had protected in previous decisions, and it is noteworthy that this case occurred only two years after *Bethel School District v. Fraser*.

Advocacy groups in support of student free speech and free press denounced the decision in *Hazelwood* and began working to protect student rights in the face of this decision. For example, the Student Press Law Center launched their #CureHazelwood campaign, including the Hazelwood Day of Action and other efforts to call attention to the issues with the Hazelwood decision and to work towards better protection for student journalists ("Hazelwood @ 30"). Additionally, calls for change and better protections have led to legislation such as the John Wall New Voices Act, a North Dakota law that protects press freedoms (SPLC).

Mahanoy Area School District v. B.L. (2021)

The debates around free speech in schools have continued to the present day, such as through the case of *Mahanoy Area School District v. B. L.* (2021). In this case, B.L. posted on

Snapchat about being frustrated that she was not picked to be on the varsity cheerleading squad at her school, using some mature language. Importantly, she made this post while off school grounds. When the posts were shared with the school and the coach, B.L. was suspended from the squad for a year. She brought the case to court as a violation of her First Amendment rights, and the Supreme Court agreed that her rights had been violated, but still emphasized that schools have an interest in protecting off-campus speech in certain scenarios, such as serious bullying or threats against students or faculty, as well as during instances such as remote learning or during off-campus school credit events. Yet, given the rise of computers in schooling, among other changes or variations by school and situation, the Court did not specifically designate the line between on-campus and off-campus.

The Court emphasized that the doctrine of in loco parentis does not usually apply to off-campus speech, as the conduct of children is usually the responsibility of parents when the student is off-campus, rather than the school. Importantly, the Court also called attention to the fact that off-campus regulations, along with existing on-campus speech regulations, will result in full-time regulations of student speech, which may easily lead to compete restriction of the kind of speech in question, and that this will be particularly difficult to accept with regards to political or religious speech. Additionally, the Court stated that "America's public schools are the nurseries of democracy," and therefore there is "a strong interest" for schools to have students understand the importance of protecting even unpopular speech. The Court also stated that, even with *Fraser*'s stipulations about school officials restricting student speech, B.L. made her statements off campus and in a relatively limited way, without excessive specifics and to a limited audience, and thus that makes the arguments of school officials less powerful to justify punishing her. The Court also decreed that the school intent of "teaching good manners" is not

enough to justify the punishment, nor the risk of her statement affecting team morale. Lastly, the Court highlighted that even though the specifics of B.L.'s message may not seem important in the grand scheme of the First Amendment, the fact is that "sometimes it is necessary to protect the superfluous in order to preserve the necessary," demonstrating the significance of this case and its many potential applications for future issues.

Youth activists involved in this case were very happy with the decision from the Court, both for the specifics of this case and also for what it meant for the future of student free speech going forward. Some advocates emphasized the importance of this ruling and the potential dangers to free speech that would have emerged if the Court ruled differently (Rosenblatt). Additionally, groups such as the National Council of Teachers of English emphasized that ruling with the school officials would harm student self-expression, which is a goal of schools, and would intrude on parent aims in raising their children (NCTE). Also, activist groups such as Kentucky Student Voice Team and the March For Our Lives Action Fund stated in their amicus brief that social media is critical to student activism and that students are critically important messengers about public schools, and stated that applying restrictions on student speech to off-campus speech as proposed by school officials would be in violation of student First Amendment rights (Student Voice).

The National Women's Law Center highlighted the importance of the Court's ruling, stating that the ruling "is an important victory for the rights of girls, particularly Black, brown, queer and disabled students, and LGBTQ students, who face well-documented disparities in school discipline." The NWLC stated that "arming schools with unrestricted power to punish student speech outside of school would have put these students in jeopardy in their daily lives," and also highlighted that these students more often face bullying and harassment outside of

school by students, and so considering the way that this decision may impact those off-campus issues is also important.

Yet, many advocacy groups disagreed with the Court's decision. Advocacy groups such as the National School Boards Association stated in their amicus brief to the case that the *Tinker* standard was has historically not been interpreted to only cover on-campus speech, and that *Tinker's* standards about protecting speech because of its content is enough of a protection against the risk of overreach. Additionally, they claim that in this increasingly online age, the content of the speech is much more important than its location. They also claim that the ruling the way that the Court did would harm efforts to address bullying and violence issues that schools face, and that the authority of school officials under the *Tinker* standard is necessary for these protections.

Role of the Courts

It is clear from these cases that the courts have taken varied approaches to the issue of free speech in schools. On one hand, speech, particularly political speech, is clearly protected by the First Amendment. On the other hand, there are other considerations and questions regarding free speech in schools, such as students being minors and the role of the schools in protecting and shaping them. Speech in these cases ranges from clear political protest in *Tinker* to vulgar language in *Fraser*, and in all cases the dual importance of protecting student expression and the specifics and necessities of the school environment were considered. As *Fraser* and *Hazelwood* quickly weakened *Tinker*, new cases such as *Mahanoy Area School District v. B.L.* may indicate potential new paths forward for the *Tinker* standard - if the ruling in *Fraser* was to be closely followed, B.L.'s speech may not have been protected because of its obscenity, and yet that was

not the outcome, and the Court did not side with the school officials. In essence, the role of the courts in addressing these issues while balancing them with the rights of students is a complex one, particularly as the speech landscape changes in the growing online environment.

Special Education:

Special education is a content area that shows how the courts have wrestled with the intricacies of policy and the larger legal questions about what constitutes a true education. In some cases, the courts asserted the importance of a robust education beyond what would be passable by policy standards, and in other cases the courts have essentially delegated their role to those who craft specific policies, even when court intervention would have been the better path to ensure a quality education to a student. This interaction demonstrates a potential drawback to looking to the courts to resolve educational issues. Since education often involves particular standards and extensive policies that can differ by states, districts, and schools, the courts may shy away from making a clear stance for fear of overstepping judicial boundaries. However, in other cases, the capacity for the courts to make a broad decree in favor of higher quality education can be useful to override bureaucratic delays and restrictions in educational policy. The tendency of the courts do this often resides in whether or not the court in question is operating under the framework of education as a fundamental right, which would lead to more robust educational protections. The continual oscillation of this status demonstrates the complexities of looking to the courts to resolve these issues.

PARC v. Commonwealth of Pennsylvania (1971) and *Mills v. Board of Education of District of Columbia* (1972)

There have been many important cases in the area of special education in recent years, particularly the cases of *PARC v. Commonwealth of Pennsylvania* and *Mills v. Board of Education of District of Columbia*. In *PARC*, the U.S. District Court for the Eastern District of Pennsylvania approved the consent decree in the case, resulting in a ruling that the state could not deny the right to an equal access to education as a result of intellectual or developmental

disability (Ross). The *PARC* case was brought by families who were denied an education for their children on the condition of their child's disability, as a part of state laws that denied education to children who do not reach the mental age of five by the time they start first grade (Ross). The plaintiffs in PARC utilized a similar judicial argument as in *Brown v. Board of Education*, stating that the existing Pennsylvania structure was not permissible under the Due Process Clause of the Fourteenth Amendment, and that by due process rights, students were entitled to a proper hearing if their right to accessing education was denied on the basis of their disability status (Ross). Following the consent agreement, the state agreed to give free and appropriate public education to students with intellectual disabilities aged six to twenty-one, to provide the chance for a hearing before a classification based on the student's disability is made, and to re-evaluate that classification every two years at a minimum (Ross).

This case was significant as it decreed that children with disabilities are entitled to the same educational access as their peers without disabilities. The *PARC* case also created a foundation of better processes for the education of students with disabilities. There was a significant amount of legislative action surrounding *PARC* that lead to increased federal guarantees for equal education access, such as the Education for All Handicapped Children Act of 1975 which eventually became the Individuals with Disabilities Education Act (IDEA), which included provisions for a right to a free appropriate public education, or FAPE.

A case that was similar to the *PARC* case, *Mills v. Board of Education of District of Columbia* (1972), was a case in which the U.S. District Court for the District of Columbia decided that students with disabilities have a right to an education that cannot be denied because of the additional cost of providing accommodations to ensure educational access ((Mills) Ross). Similar to *PARC*, the *Mills* case utilized precedent from *Brown v. Board of Education*, as well as

the case of *Hobson v. Hansen* (1967). which held that separating children into different "tracks" was barring them from equal opportunities in their education and was thus a violation of their due process rights under the Fifth Amendment ((Mills) Ross). The judge in this case decreed that the Board of Education must provide public education to all students and cannot use claims of a lack of funds as a reason for not doing so, and must do so within thirty days for the plaintiffs in the class ((Mills) Ross). Also, the Board must inform any student who had been denied these opportunities to education of the ruling, and the Board could not suspend a student for a time period of more than two days without a hearing to ensure due process ((Mills) Ross). *Mills* differed from *PARC* in that it included more kinds of disabilities and emphasized the funding aspect, and like *PARC*, *Mills* had a significant impact on legislation such as the future Individuals with Disabilities Education Act ((Mills) Ross).

Both *PARC* and *Mills* were foundational cases in the area of special education, and they paved the way for protecting equal educational opportunities for students who had previously been denied such access as a result of disability status. These cases also were important for showing the way that cases such as *Brown v. Board of Education* are significant beyond the area of school integration alone. Additionally, both of these cases were crucial for the creation of federal legislation on special education rights, which continues to impact students today.

Board of Education of Hendrick Hudson Central School District v. Rowley (1982)

This case was about the education of a child, Amy, a deaf student at a school in the Hendrick Hudson School District. In her regular kindergarten class, Amy was given a hearing aid, and she finished the year. For first grade, her IEP stated that she should use the hearing aid, a tutor, and a speech therapist, but Amy's parents wanted her to have a sign-language interpreter in her classes instead. During a trial period, Amy had an interpreter, but he claimed that Amy did

not require his services, and school administrators agreed. Amy's parents had a hearing on this issue, and an examiner found that since Amy was successful without an interpreter, one would not be needed. The Rowleys claimed that this was not the free appropriate public education that Amy was entitled to, and that therefore she was being denied an opportunity to reach her full potential, an opportunity that the other students in the class were not denied.

The Supreme Court acknowledged the important role of *Mills* and *PARC* in the creation of The Education of the Handicapped Act, but stated that these cases only required giving access to education as opposed to no access at all. The Court stated that "neither case purports to require any particular substantive level of education," and that the need to provide special education to students did not also involve a need to make sure the services allow each student to reach their highest potential. In fact, the Court stated that "the requirement that States provide 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons," given the many other reasons for individual student differences.

In addition, the Court stated in Rowley that the definition of successfully reaching the requirements of the Act meant that "such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP," and therefore meeting these standards would constitute a FAPE. Additionally, the Court emphasized that its role would be limited and that looking at the specifics of evidence in a case of this kind "is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review," highlighting that courts should defer instead to the specifics of the IEP for the student. Thus, the Court did not decide a specific test for

educational quality under the Act, and therefore lower courts have had to make these rules, such as the meaningful benefit standard (which holds that programs must allow for a student to get a meaningful benefit and make tangible progress), seen in decisions such as those in *Polk v. Central Susquehanna Intermediate Unit 16* (1988) that required IEPs to generate more than trivial benefits (35).

Advocacy groups were concerned about the use of Amy's situation to address this question of The Education for All Handicapped Children Act, because Amy was very bright and she was already given some services at her school (Yell). While these facts do not justify her not receiving the interpretation services, some advocates feared that these facts would cause the Court to weaken or strike down the Act (Yell). On this point, the fact that the Court focused on the point that she had received at least some services, in comparison to no services at all, is questionable and worrisome. Setting the bar to zero in order to determine educational access is not a just foundation on which to begin improving special education systems. Just because a student is able to access some education and get some advantage out of it does not necessarily mean that the educational rights of the student are not being violated.

Luna Perez v. Sturgis Public Schools (2023)

Recent cases such as *Luna Perez v. Sturgis Public Schools* (2023) continue the discussion of the rights and interactions of the different stakeholders in this discussion. In this case, Mr. Perez, who is deaf, was a student in Sturgis Public School District, where he was assigned sign language aides. He made good grades and moved successfully through the school years, but when it came time for him to graduate, he learned that he would not be getting a diploma. Upon investigation, it was found that his aides were extremely unqualified and that his grades were misrepresented to his family during his time in the district. Thus, his family went to court with

Sturgis and stated that they violated the responsibilities they had under IDEA and other associated legislation, and the two parties settled, with the settlement terms stating that Sturgis would give Mr. Perez forward-looking relief, such as education at another school.

Despite this, in a lawsuit wherein Mr. Perez filed for compensatory backward-looking damages under the ADA because of the district's actions, Sturgis claimed that Section 1415(l) of IDEA prevents Mr. Perez from filing his ADA claim until he has exhausted all the procedures to make claims under IDEA. Section 1415(l) states that IDEA should not be interpreted to stop people from using the ADA or other legislation to make claims, but that the pathways under IDEA to do so must be completed first. However, since Mr. Perez was bringing the ADA suit to get remedies for the district's actions, which IDEA does not provide for, the Supreme Court ruled that Mr. Perez can proceed with his ADA suit.

Many disability rights advocacy groups, such as The Arc of the United States, The Coelho Center for Disability Law, Policy and Innovation, and Communication filed an amicus brief in the case, arguing that the decision from the Court of Appeals (which the Supreme Court would overturn) was not what Congress intended with passing such legislation and the remedies of IDEA claims are different than claims from legislation such as ADA, and thus Section 1415(l) cannot apply in the same way (Katz). These organizations praised the outcome of the case, stating that the Court's decision will reduce the obstacles to getting relief and justice under the legislation, and that the decision provided clarity and an affirmation of student rights (Katz).

Overall Reflections on Judicial Involvement

These cases demonstrate the way that the courts can both help and hurt the rights of students with disabilities. This is especially true as it pertains to the complexities of both existing regulations for schools around special education programs as well as existing legislation in this

context. These cases show the court going in two types of directions. On one hand, cases like *PARC* and *Mills* show the courts willing to be involved in the specifics of programs and policies, in order to ensure that the rights of students do not get lost in generalizations. On the other hand, cases like *Rowley* show the court choosing not to get involved on these very specifics, as well as setting the bar on what is considered proper educational access very low. In cases such as *Rowley*, the courts show deference to schools and IEP programs, while cases like *Perez* highlight that schools may not always create and implement these programs properly. Thus, the *Rowley* Court both did not get involved in specifics and also lowered the standard for educational access. However, recent cases such as *Perez v. Sturgis* show that the courts may be moving in a better direction by allowing students and families to utilize more of the legislation available to them. Yet, it is still important to understand that the competing forces of general claims and specifics, as well as the influence from the different stakeholders and the presence of existing legislation and judicial precedent can complicate this area even further, and thus vigilance on these issues to ensure proper educational access is necessary.

School Integration and Affirmative Action:

Cases in the area of school integration and affirmative action have had huge impacts on the realm of education and many other areas of law. They have set foundational precedents and continue to affect cases and policies today. These examples clearly show the fluctuations of the courts. While cases such as *Brown* created hope for a more just path forward, subsequent cases in this content area cut down the protections of *Brown* and created a completely different situation in affirmative action cases today. Additionally, though the Supreme Court established education as a fundamental right in *Brown*, the legal situation quickly changed, again showing the dangers of court fluctuations. This example demonstrates the way that courts may not be a safe place to consistently rely on for protecting education, as legal doctrines from precedent and from the Constitution have been interpreted in vastly different ways in only a few decades, and the future of this part of education law remains increasingly uncertain.

Brown v. Board of Education of Topeka (1954)

The case of *Brown v. Board of Education* is one of the most important cases in the area of education and in the history of the Supreme Court. *Brown* was noteworthy for a number of reasons, from the influence of Chief Justice Earl Warren to the unanimous holding to the many doors that it opened after abolishing the doctrine of "separate but equal" in the context of education. In this case, which was comprised of cases from Kansas, South Carolina, Virginia, Delaware, and Washington D.C. that all centered on the question of segregated public schools, Black children had not been allowed to attend particular schools because of their race, which they argued was a violation of the Fourteenth Amendment's Equal Protection Clause. The existing legal doctrine was "separate but equal," which came from the 1896 case of *Plessy v. Ferguson*.

The Court ruled in *Brown* that separate but equal educational facilities were in violation of the Equal Protection Clause of the Fourteenth Amendment. Citing precedent from previous cases that were a part of the NAACP legal campaign in the preceding decades to chip away at the separate but equal doctrine (National Archives), the Supreme Court focused on "the effect of segregation itself on public education" in the modern context, emphasizing that "education is perhaps the most important function of state and local governments," a statement that became foundational in areas beyond school integration as well. The Court also addressed modern social science, particularly the way that segregation, especially segregation under the law, can create "a sense of inferiority" in children. Ultimately, the Court held that "separate educational facilities are inherently unequal" and that segregation was a violation of the Equal Protection Clause.

Many organizations, newspapers, and publications praised the outcome of *Brown*, emphasized its significance, and expressed hope for the future following the ruling (Orlowski). The NAACP also prepared for the implementation efforts following the case. Soon after the decision in *Brown*, they held a meeting with close to one hundred representatives attending where they planned the best strategies for implementation, utilizing the national, state, and local branches of the organization, which included working with school boards and also connecting with labor unions, civic groups, churches, and educational organizations (Daugherity). Much of the reaction in the north and west of the United States was positive and found the decision to be rational and necessary (Daugherity).

At the same time, there was intense backlash in the South, with political leaders denouncing the decision and refusing to comply with its outcome. Southern whites attacked the social science used in the case, the actions of Chief Justice Warren, and the way that the decision affected states' rights (Daugherity). Ultimately, of course, the white backlash in the South was

pure racism, and also included racist beliefs such as a "fear of miscegenation" (Daugherity). Some governors from the South attended a meeting in which they decided not to adhere to the rules of *Brown*; these states looked to Virginia as a state respected by many of these anti-*Brown* governors and as a part of the geographic Upper South, where they believed implementation plans for the case would be focused (Daugherity). Another form of white backlash to the decision in *Brown* was that those against *Brown* worked to close Black schools in order to hurt Black educators by taking their jobs away, often replacing them with white teachers with much worse qualifications (Fenwick). Overall, the white backlash to Brown was intense, but so was the commitment to justice and robust implementation of *Brown's* decrees by groups such as the NAACP.

However, the Legal Defense Fund highlights how the fight of *Brown* is not yet complete, despite the call for "all deliberate speed" in *Brown II* (LDF). LDF explains that future wins in cases like *Green v. County School Board* (1968) and *Swann v. Charlotte-Mecklenburg* (1971) furthered the specifics of implementation of the promise of *Brown*, but there is still much more to be done.

Parents Involved in Community Schools v. Seattle School District (2007)

The case of *Parents Involved in Community Schools v. Seattle School District* (2007) demonstrates that the full promise of *Brown* has not been held up by the Court. In this case, the school districts involved in the case (districts in Seattle and Jefferson County, Kentucky) offered a school choice program that allowed students to select the school they wanted to attend, but since certain schools were more popular, the district had to create a system by which to balance the number of students. In this system, the second consideration that the district makes is a racially conscious one, so as to maintain the same racial balance within the school as exists in the

rest of the district. Parents of students who were not accepted in their choice schools claimed that the existing tiebreaker system is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

The Supreme Court, divided in its decision, ultimately held that the district's system was unconstitutional, as racial diversity in the way that the district was utilizing was not a compelling state interest, and that it is not narrowly tailored to achieve the objective, and therefore that it does not pass strict scrutiny. Justice Kennedy's important concurring opinion asserted that while the district's method of using race was not permissible, schools can still consider race in their policies. Additionally, the Court was asked if the holding in *Grutter v. Bollinger* (2003), which allowed for the use of race in undergraduate admissions given the compelling interest of diversity at the school, applied in *Parents Involved*. The Court held that *Grutter* did not apply in this case on the basis that the system in *Grutter* used race in a way that focused on the individual as a whole, which the district in *Parents Involved* did not do.

Parents Involved was noteworthy for being a split decision, with Justice Kennedy's concurring opinion being the deciding factor in the outcome of the case. The case also utilized the standard of strict scrutiny, with the plurality finding that the district's plan was not a compelling interest nor narrowly tailored, and with Kennedy arguing that while the district's actions in this case were not narrowly tailored, the aim of having a diverse group can still be a compelling state interest. This decision also shows a significant change from *Brown v. Board of Education*, and acts as one of the major reductions to the holding in *Brown*. This case acts as a block to the attempts to ensure more racially-diverse schools, making adherence to *Brown* and implementation of its holding much more difficult. Unfortunately, *Parents Involved* was not the only significant attack on *Brown* that would come.

Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (2023)

This case, which covered the admissions processes of Harvard College as well as the University of North Carolina, ruled that race-based affirmative action programs were unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The Court decreed that the admissions programs at these universities did not have measurable objectives to justify the use of race, that they use racial stereotyping, and that they do not have a necessary end point. The Court claims that the goals of the university affirmative action programs, such as creating future leaders and learning from diverse perspectives, is not clear enough for the standards of strict scrutiny. Additionally, the Court states that these affirmative action programs use race as a negative, particularly for Asian-American students. Though the Court still offered that race can still be an element of an applicant's story or character, such traits can be considered by the admissions programs, but not in a manner similar to the way that the Court is deeming unconstitutional.

The Court held that the existing affirmative action policies are not acceptable under the Fourteenth Amendment's Equal Protection Clause, something that is particularly questionable given that affirmative action programs were themselves designed to protect the equal protection rights of students. The Court in *Students for Fair Admissions* states that "eliminating racial discrimination means eliminating all of it," and thus any policy, even those intended to promote racial diversity and equality in schools, and intended to allow students a chance at the many future successes that an education at these elite universities can offer, that considers race is deemed by the Court to be unconstitutional. This case represents a clear fall from the holding and intent in *Brown v. Board of Education*, demonstrating the backslide of rights protections by the Court. It is not just the actual backsliding of the rights that is significant (although that in and of

itself is incredibly destructive to justice) but it is also the language that the Court uses to justify their decree - the corruption of equal protection arguments to destroy policies that have been put in place to ensure that very equal protection is particularly deplorable. In essence, this case shows an important aspect of the role of the court: it shows the outcome of a court that has incrementally destroyed the vital protections that it had created, leading to the finale of destruction in *Students for Fair Admissions*.

The reaction from advocacy groups to *Students for Fair Admissions* was understandably significant. The ACLU issued an amicus brief that argued for diversity as a compelling interest, both for student body diversity and for academic freedom of universities ("Students for Fair Admissions v. Harvard; Students for Fair Admissions v. UNC."). They also state that the claim by the group Students for Fair Admissions is in fact a serious misunderstanding of the Fourteenth Amendment and of court precedent regarding colorblind policies. They highlight how considering race in a narrowly tailored manner is an important part of considering a holistic perspective of an applicant, as race is a significant part of identity.

On the other hand, the group Students for Fair Admissions itself acknowledged that "yes, the decision will likely dramatically reduce the racial diversity of incoming classes at highly selective institutions like Harvard, Stanford and the University of North Carolina," but they go on to egregiously state that "even with affirmative action in place, most students of color did not go to elite colleges, and last week's ruling does nothing to change that," which they claim is because students want to go to schools near their families (Students for Fair Admissions). They explicitly ignore the myriad reasons why a student might not be able to go to an elite university, such as the skyrocketing costs of education at these schools, the myriad inequalities at the K-12 level that unequally prepare students for higher education, and the impact of privilege and

connections on the college admissions process. Furthermore, they implicitly assert that affirmative action automatically eliminates bias in education for students of color, when in reality that bias still existed even with affirmative action in place, and thus the remedy to that is certainly not to eliminate affirmative action altogether. The fact that the Supreme Court's opinion in this case, one of the most significant cases in the area of school integration and affirmative action, was aligned with a group making such statements is concerning. These sorts of issues demonstrate the importance of continuing the fight for justice in this area, particularly given the dangerous trends of how the courts are treating this subject.

Conclusion

It is clear that the courts have had a varied and complex role in the realm of education. Across different cases in the content areas of school funding, free speech in schools, special education, and school integration and affirmative action, the courts have protected rights and liberties through their decisions and have also attacked those very decisions. Analysis of these content areas illuminates how the courts operate in both the specifics of individual issues and in the broader constitutional questions of these important cases. In every case, however, the courts have affirmed the importance of education for opening and shaping the minds of young people, who will go on to shape the future as members of their communities and as political participants.

The courts have also had varied interactions with the many stakeholders in the area of education, such as parents, school officials, and legislators of all levels of government. There are many voices in the area of education and education policy, and all of those voices want the same thing - to do what is best for the young people being educated by the institutions in this country. However, the definition of what the "best" is differs significantly across these stakeholders, and thus the area of education is not without fiery controversy.

Despite this, courts continue to serve an important purpose. In any issue, people look to the courts to provide justice through proper understanding of the law and through fair judgments. Issues of education do the same thing. Yet education often has an additional layer of specifics and complexities that courts have not necessarily dealt with in consistent terms. Educational issues are involved with some of the most important legal foundations being debated by courts. Education is also an arena that concerns other rights that extend far beyond the classroom, relating to inequalities and discrimination concerning race, class, ability, and more. The precedent that comes from the constitutional interventions in education issues has the potential to

affect law, policy, and justice in any area. The fundamental rights that come out of education, and the fluctuation of the status of these rights under different eras of the courts, shed light on the impact of this system and the benefits and drawbacks to relying on the courts for consistent and guaranteed protection. With these many facets to education, it is continually important to understand the history and future of court involvement in education, as well as how to keep fighting for justice in education both inside and outside of the courtroom.

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