

# US appeals court rules literacy is “a fundamental right” in Detroit case

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*“Preach a crusade against ignorance; establish and improve the law for educating the common people. Let our countrymen know that the people alone can protect us against the evils [of misgovernment].”* (Thomas Jefferson to George Wythe, 1786).

On April 23, the US Court of Appeals for the Sixth District ruled that students in Detroit “have been denied a basic minimum education, and thus have been deprived of access to literacy.”

The 2-1 decision issued by a panel of the Sixth District Appeals Court reversed, in part, a ruling by US District Judge Stephen Murphy III in June 2018, which said, “As plaintiffs point out, voting, participating meaningfully in civic life, and accessing justice require some measure of literacy,” but these points “do not necessarily make access to literacy a fundamental right.”

Niles Niemuth, the Socialist Equality Party candidate for Congress in Michigan’s 12th District during the 2018 elections, said at the time, “Literacy, like all educational issues, is entirely correlated with income. If parents have low literacy skills, their children have a 72 percent chance of reading at the lowest levels themselves.

“The terrible growth of social inequality, coupled with deliberate government de-funding of education, has dramatically lowered literacy. A 2017 report by the Detroit Regional Workforce Fund found that 47 percent of Detroiters were functionally illiterate. Nearly one-third of those living in nearby working-class suburbs were also unable to use reading, speaking, writing and computational skills in everyday life situations.”

The recent Appeals Court decision has been hailed as a major legal victory by lead attorney Mark Rosenbaum and many in the media. However, as the Appeals Court decision acknowledged, their decision was “narrow in scope.”

The original class action suit pleaded that students in Detroit were “excluded from education” due to the decrepit and dangerous conditions of the school buildings, lack of regular teachers and outdated textbooks, among other appalling conditions. Their central argument was that they

were, therefore, “denied access to literacy.” The suit, based on the Due Process Clauses of the 14th Amendment to the US Constitution, also included claims of the violation of the right to equal protection, arguing that other students in Michigan “receive an adequate education” while the plaintiffs do not. They also argued that by imposing compulsory attendance at “schools in name only,” the state was carrying out “unlawful detention” and could not justify the restriction of the students’ liberty.

The Appeals Court ruled against the plaintiffs on these two issues, citing their failure to detail how students in other school districts received benefits denied those in Detroit, and that through their arguments regarding literacy the plaintiffs were in fact supporting compulsory education.

The majority opinion, written by Judge Eric Clay, says, “While the district court found that Defendants [the state of Michigan] were in fact the proper parties to sue, it dismissed Plaintiffs’ complaint on the merits. ... Though Plaintiffs failed to adequately plead their equal protection and compulsory attendance claims, the same cannot be said for their central theory: that they have been denied a basic minimum education, and thus have been deprived of access to literacy. A review of the Supreme Court’s education cases, and an application of their principles to our substantive due process framework, demonstrates that we should recognize a basic minimum education to be a fundamental right.”

The suit was originally filed in 2016 while the Detroit Public Schools district was under the control of an emergency manager appointed by Michigan Republican Governor Rick Snyder, one of many emergency managers appointed by governors of both political parties beginning in 2009. Judge Murphy’s decision was handed down just months before the mid-term elections of 2018 in which Gretchen Whitmer, a Democrat, replaced Snyder. Whitmer campaigned as a pro-education candidate and was supported by the teachers’ unions.

Whitmer and Michigan’s attorney general, Dana Nessel, also a Democrat, sought to have the case dismissed, claiming

that since the district was no longer under state control, the issue “was moot.” The state now has several choices: the case could be sent back to the original district court and Judge Stephen Murphy, although he will have to abide by the Sixth District Appeals Court decision; the state could appeal directly to the US Supreme Court; or the state could settle with the plaintiffs. This last proposal is what the plaintiffs’ lawyers are hoping for.

Some education advocates want the case to reach the US Supreme Court, in hopes of establishing a nationwide constitutional right to literacy. As it stands, the Appeals Court ruling applies only in the Sixth Circuit, which includes Michigan, Ohio, Kentucky and Tennessee. Should the case go to the US Supreme Court, the Appeals Court ruling would no doubt be overturned.

While the assertion of access to literacy as a “fundamental right” is significant, the “narrow scope” of the Appeals Court ruling needs to be examined. The media has largely picked up on the following section of the legal decision (p. 57), emphasizing the importance of literacy for “participation in our political system”:

“Importantly, the right defined in this opinion is narrow in scope. It does not guarantee an education at the quality that most have come to expect in today’s America (but that many are nevertheless denied). Rather, the right only guarantees the education needed to provide access to skills that are essential for the basic exercise of other fundamental rights and liberties, most importantly participation in our political system.”

On the following page, the decision becomes even narrower:

“Rather, the question is whether the education the state offers a student—when taken as a whole—can plausibly *give her the ability to learn how to read* (emphasis added).” This statement is linked to a footnote that says, “Just because ‘the complaint makes allegations about physics and economics courses too’ (Dissent at 77), *does not mean we agree that those additional areas of study are required* as part of a fundamental right providing access to basic literacy (emphasis added).”

Reiterating that it is up to the state, not the court, the opinion says, “The state is free to fashion its own school system in any number of ways, but however it does so, it must give all students at least a fair shot at access to literacy—the *minimum level of education* required to participate in our nation’s democracy [emphasis added].”

What then, is the content of the “access to basic literacy”? What does it take to achieve a “minimum level of education”? Does it include anything beyond reading comprehension at a third-grade level? Michigan was poised to activate its “literacy law,” which requires students in third

grade to be “proficient in reading” or face grade retention. The school closures due to the COVID-19 pandemic have delayed this miserable program for a year.

The emphasis on participation “in our nation’s democracy” is a red herring. The ruling elite has carried out an unrelenting assault on democratic rights for decades, from the stolen election of 2000 that installed George W. Bush, to the 2020 Wisconsin primaries forcing workers to risk their lives to exercise the right to vote. The educated populace Thomas Jefferson spoke of is today the last thing the capitalist class wants as society becomes increasingly polarized.

The COVID-19 pandemic has wreaked havoc on local and state finances. With the future outlook for tax revenue bleak, whatever funding the state might come up with for a settlement to the Detroit schools will be a pittance. Shortly before Judge Murphy’s ruling in 2018, it was estimated that it would cost \$500 million just to repair the decaying infrastructure of Detroit school buildings. Some estimates put Michigan’s budget deficit over the next two years in the area of \$7 billion or more.

Efforts to reform capitalism through the bourgeois legal system are a political dead-end. In 2016, educators in Detroit organized independently of the rotten Detroit Federation of Teachers (DFT) union and initiated wildcat “sickout” strikes to bring attention to the appalling conditions in the schools, posting images of rat infestations, mold, broken windows and overflowing toilets on social media while marching at the Board of Education in the cold of winter.

Only through such independent initiative, in unison with the growing wave of wildcat strikes by broad sections of the working class, will educators be able to halt and reverse the assault on public education. The Socialist Equality Party demands that the trillions being squandered on the financial oligarchy be utilized for the social needs of the working class, including a vast expansion of public education. The eradication of illiteracy will require the expropriation of the vast wealth currently controlled by the capitalist class to provide the resources needed so everyone can have a quality education, from early childhood through higher education, free of charge.



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