

# Detroit literacy case enters legal quagmire

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23 May 2020

In a highly unusual and partisan move, the federal Sixth Circuit US Court of Appeals has decided “*sua sponte*” (of its own accord) to rehear what has become known as the Detroit “right to read” legal case. The court issued its ruling on Tuesday, May 19, five days after Democratic Michigan Governor Gretchen Whitmer settled the case with the plaintiffs.

The settlement was intended as the final outcome of the case *Gary B. v Whitmer* (formerly *Gary B. v Snyder*), following the decision by a three-judge panel of the Sixth Circuit court in Cincinnati, which ruled on April 23 that the plaintiffs had been denied “access to literacy.” The decision has been seen as a milestone in a class action suit that began in 2016 when seven students sued the state of Michigan. The original *Gary B. v Snyder* case detailed truly horrendous conditions in the Detroit Public Schools district, which at the time was overseen by an emergency manager appointed by Republican Governor Rick Snyder.

The suit maintained that the rat-infested buildings lacking heat, with crumbling ceilings, mold growing in the classrooms, 10-year-old textbooks and a scarcity of permanent teachers prevented Detroit students from receiving “a basic minimum education,” and that they “thus have been deprived of access to literacy.” In late June 2018, US District Court Judge Stephen Murphy III dismissed the case, propelling it to the US Court of Appeals.

The case has now become a legal and political hornet’s nest. When the three-judge panel ruled that the plaintiffs had been denied access to literacy they were quite explicit that the definition of this access was very “narrow in scope.” The majority opinion asserted that “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.”

However, even the recognition of a fundamental right

to read well enough to “participate in the political system” is too much for the right-wing forces currently unleashed by Donald Trump. So, despite the settlement between the state of Michigan and the plaintiffs, a legally binding document, the Sixth Circuit Court decided on its own to hear the case “*en banc*.”

The Sixth District court is currently composed of 11 judges appointed by Republican presidents and five by Democrats. Notably, six of the current judges have been appointed by President Trump between 2017 and 2019.

Mark Rosenbaum, lead attorney for the seven plaintiffs in the *Gary B. v Whitmer* case, insists that settling the case renders it moot. He will argue that under the settlement, it cannot be reheard by the full Sixth Circuit Court of Appeals. The full court will likely decide to press ahead and rehear the case despite this legally sound and time-honored argument.

Speaking of the court’s decision to rehear the case, Rosenbaum told the press: “It’s certainly disappointing, but the case is moot,” he said. “There is no case any longer. The case was settled, so there’s no case to adjudicate. Federal courts do not adjudicate cases that have been settled.” If the court decides to ignore the settlement, it would be unprecedented.

The settlement, agreed on May 14, is a pittance and a promise. It calls for \$2.7 million to be provided immediately to the Detroit Public Schools Community District for literacy initiatives and \$280,000 to be distributed to the seven plaintiffs to further their education. The lion’s share, \$94.5 million to address furthering literacy in Detroit, would not even be brought to the legislature until sometime near the end of Whitmer’s term in 2022, and there are as yet few details. Whitmer has also proposed establishing two task forces to oversee the literacy initiatives in the city and state-wide.

Rosenbaum has called the settlement “a first step, it

doesn't pretend to be more.”

While the decision of the Court on April 23 was deliberately extremely narrow, it nevertheless was the first time a court has ruled that a state is obligated to provide any level of education to students. No court has ever before ruled that education is a constitutionally protected right since 1973, when the US Supreme Court, in *San Antonio v Rodriguez*, ruled explicitly that there is *no* fundamental right to education in the Constitution.

Supporters of the Detroit plaintiffs had hoped the landmark Sixth Circuit panel ruling would initiate similar legal actions nationwide. Lawyers for a parallel case, currently pending before a US court in Rhode Island, were buoyed by the decision in favor of the Detroit students, but hope the outcome of their own case will broaden the scope of educational quality. The likely decision by the full Sixth Circuit court to vacate the panel's ruling will undoubtedly affect the Rhode Island case as well.

Right-wing forces fear that the Detroit case would set a legal precedent, and they are now counting on the thuggish majority of the Sixth Circuit court to quash any move that would guarantee any constitutional rights, or state funding, to provide basic literacy skills.

The dissenting judge from the Sixth Circuit panel, Eric Murphy, asserted in his opinion: “Should states fix the problem of failing schools by sending more money into them? . . . Or should they fix the problem by giving children the choice to attend other schools?” This is the right-wing argument to destroy public education altogether and adopt the universal voucher system promoted by Education Secretary Betsy DeVos.

Unquestionably, Detroit students, along with millions of students from impoverished areas of the US, are denied not only a minimum right to literacy, but a quality education. Slashing funds for public education and the drive toward privatization have been cornerstones of bi-partisan government policy for decades, from George W. Bush's “No Child Left Behind” to Barack Obama's “Race to the Top.”

The Detroit plaintiffs, their supporters and legal representatives have hailed the decision by the three-judge panel as a great victory. It is proving to be a Pyrrhic one at best.

Regardless of the outcome of the case, the coronavirus pandemic is ravaging state and municipal

budget forecasts, which will lead to savage budget cuts that will offset the limited funds attained in the settlement. Michigan legislators project cutting up to 30 percent of K-12 budget allocations in the coming fiscal year alone.

Hoping that the courts or the legislatures on any level will resolve the dire conditions facing education in America is a pipe dream. The legal system functions in the interests of the capitalist system and the ruling elite—a system that cannot even tolerate ensuring that students can read well enough to vote.

To adequately provide a true quality education to all children requires an entire overhaul of the social order, including jobs, housing, health care as well as schools. This requires the organization of the working class as an independent political force, to demand that hundreds of billions of dollars be allocated to provide clean, well-maintained school buildings; train and hire thousands more teachers to create smaller classes; restore art, music and after-school programs that have been eliminated; and pay all educators a decent wage. Only through a socialist policy for education will true literacy and an elevation of human culture be guaranteed.



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