

Detroit literacy case ends with no legal precedent for the right to an education

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On Wednesday, June 10, the Sixth Circuit US Court of Appeals signed an order dismissing the Gary B. v. Whitmer case, commonly known as the Detroit literacy case, legally bringing it to a conclusion. The settlement reached last month between Governor Gretchen Whitmer and the plaintiffs in the Gary B. v. Whitmer case will stand, but a legal precedent for the constitutional right to an education has been vacated.

In a calculated move, all 16 judges of the Sixth Circuit court agreed not to rehear the case en banc, as they had indicated they would in a decision May 19. The unusual decision to rehear the case en banc was initiated by the request of several Republican Michigan legislators to the appeals court seeking to overturn the April 23 ruling of a three-judge panel of that court. The majority opinion of that panel, written by Justice Eric Clay, in overturning a June 2018 ruling in Detroit, allowed that the Detroit plaintiffs had been denied “access to a basic education.”

An attorney for the Republican-controlled Michigan legislature, John J. Bursch, told the press, “The important point is that the en banc 6th Circuit already vacated the opinion, so it has no precedential value. From a legal perspective, it’s as though Judge (Eric) Clay never even wrote it.” Thus, it appears the May 19 decision allowed the court to permit the settlement between the plaintiffs and the state of Michigan to stand, but legally abrogates any precedent declaring a federal, constitutionally-mandated guarantee to education.

The April 23 decision itself emphasized that it was “narrow in scope.” The decision merely recognized the “right to access to basic literacy,” equivalent to a third-grade reading level, in order 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.”

As the WSWs pointed out at the time, the enthusiasm for that narrow scope by the plaintiffs and their supporters expressed the shift to the right of liberalism over the past half century.

The settlement following the April 23 decision, hastily reached on May 14 between the seven plaintiffs representing all students in the Detroit Public Schools Community District (DPSCD) and the State of Michigan, provides for \$280,000 for the seven plaintiffs and merely \$2.7 million to provide literacy initiatives in the district. These funds are available to the governor to distribute without legislative approval.

The settlement also stipulates that the governor will “propose legislation” during her first term for a further \$94.5 million for literacy initiatives in the district. Particularly under conditions of massive budget cuts being fueled by the loss of tax revenue caused by the coronavirus pandemic economic crisis, this money will undoubtedly not be approved.

The class-action lawsuit was originally filed by the seven Detroit students in 2016, alleging that the appalling conditions in the Detroit schools denied them basic literacy skills. The suit sought to set a legal precedent based on the 14th Amendment to the US Constitution for equal protection in regard to education. US District Court Judge Stephen Murphy III dismissed the case in June 2018, sending it to the US Court of Appeals.

The case was seen as a challenge to the prevailing precedent that the federal government has no constitutional obligation to provide access to education for its citizens. That precedent was set in 1973, when the US Supreme Court ruled that “there is no fundamental right to education in the Constitution” in the San Antonio (TX) v. Rodriguez case. The latest

decision by the Sixth Circuit court to vacate the ruling by its own three-judge panel ensured that the Detroit case would proceed no further and set no new precedent.

In 2018, following the denial of the plaintiffs' claims in Detroit, the Center for Educational Equity (CEE) at Teachers College, Columbia University in New York, initiated another class action suit, this time in Rhode Island. This suit, which is awaiting an imminent ruling from US District Court Judge William Smith on a motion to dismiss, was launched by veteran litigator Michael A. Rebell. The CEE chose Rhode Island because it has no requirement for civics courses, and minimal history requirements.

The Rhode Island case takes a different tack than the one in Detroit. Rebell based the current case on the successful outcome of a prior suit against the state of New York, in which the courts agreed that, from a fiscal standpoint, the state of New York was obligated to prepare its students to participate in civic life.

Unlike the Detroit case, which focused on the educational environment preventing basic literacy skills but failed to prevail on appeal on claims of equal protection under the 14th Amendment, the Rhode Island case was launched explicitly to challenge the assertion that the federal government has no obligations for education and that those obligations fall to the states and municipalities.

In a 2019 seminar with *Atlantic* magazine, Michael Rebell said the suit is about "Education that is adequate to prepare [students] to be capable citizens." He explained that in the 5–4 decision in the Rodriguez case, the dissenters left open a loophole by citing the 15th and First Amendments: the right to vote, the right to petition government and "to freely express themselves."

He pointed out that there have been suits in 47 state courts since 1973, some with limited gains, but that 40 percent lost their cases altogether. Many of those cases were launched following the 2009 recession, when states slashed education budgets, tens of thousands of teachers were laid off, class sizes increased and additional pressure was placed on students to pass standardized testing. Most of these cases revolved around "inequitable and inadequate" funding for schools. They were not intended to require federal intervention based on constitutionally-protected rights.

While the April 23 decision in the Detroit literacy case merely ensured the right to a third-grade reading level, which has now been curtailed by the Sixth Circuit, the Rhode Island case makes participation in the political system its foundation.

The thoroughly limited scope and achievements of these and other legal battles over public education underscore the inability to secure even the most basic rights of the working class within the framework of the existing political system.

Mass austerity is on the agenda, with every state planning to impose the economic crisis produced by the pandemic onto the working class. To guarantee the right to a free, high quality public education for all requires a struggle against the broader capitalist system, which subordinates the needs and aspirations of the working class to the profit interests of the capitalists. We urge all educators to sign up for our newsletter to follow developments, and contact us today to take up the fight in defense of public education.



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