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## An Analysis on Education as a Fundamental Right Guaranteed by the Constitution

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AN ANALYSIS ON EDUCATION  
AS A FUNDAMENTAL RIGHT  
GUARANTEED BY THE CONSTITUTION

by

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B.A. University of Central Florida, 2022

A thesis submitted in partial fulfillment of the requirements  
for the Honors in the Major Program in Political Science  
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Thesis Chair: Eric Merriam, JD

## Dedication

This thesis is dedicated to the most hard-working and loving teacher I know, my mom.

## ACKNOWLEDGEMENT

I would like to thank my chair, Professor Eric Merriam, for his continued support through my undergraduate career. Without him, the ideas expressed in this thesis would have never come to fruition. I aspire to walk in his footsteps one day.

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This thesis would not have been possible without my most supportive cheerleaders, my parents. Thank you for always being there to cheer me on in all my endeavors.

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## ABSTRACT

Benjamin Franklin once wrote “An investment in knowledge pays the best interest.”<sup>1</sup> However, nearly 200 years later the United States Supreme Court in *San Antonio Independent School District vs. Rodriguez* found that there was no fundamental right to education for American citizens found in the Equal Protection Clause of the Constitution.<sup>2</sup> For the purpose of this research, the definition of a fundamental right is “... a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment.”<sup>3</sup> Because of this, students in America have different opportunities in education depending on the socio-economic status of the area they live in; a factor that children cannot change. Most believe that the right to education is something that all American citizens have access to from birth.<sup>4</sup> While the ability to attend school is available to most citizens, the quality and opportunities vary greatly because education is not recognized as a fundamental right, allowing for inequity in the system. The author of this thesis will detail the importance that learning plays in the working of a functional democracy, as well as showing how the United States government currently fails to provide an education system that does this. The author will draw upon the Due Process Clause, to argue why education should be considered a fundamental right guaranteed by the Constitution.

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<sup>1</sup> *EU Funds for Malta*, <https://education.gov.mt/en/education/myScholarship/Documents/Endeavour>

<sup>2</sup> *San Antonio Independent School District vs. Rodriguez*, 411 U.S. 1 (1973)

<sup>3</sup> *Fundamental Right*, Cornell Law School, [https://www.law.cornell.edu/wex/fundamental\\_right](https://www.law.cornell.edu/wex/fundamental_right)

<sup>4</sup> *Your Right to Equality in Education*, ACLU, <https://www.aclu.org/other/your-right-equality-education>.

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## CHAPTER 1: INTRODUCTION

Since the beginning of America, it has been expected that the citizens of this nation are educated, to make informed decisions and be an active participate in the democracy. Samuel Adams, Thomas Jefferson, George Washington, Benjamin Franklin, and more expressed the importance of knowledge and learning for America to become prosperous.<sup>5</sup> After all, a democracy can only function with active participation from its citizens. The Founding Fathers recognized the reliance on people to participate in the democracy, thus they saw the importance that education held to upholding the political system that was put into place.

In 1779, Thomas Jefferson proposed *A Bill for The More General Diffusion of Knowledge*, which advocated for basic education for the mass population.<sup>6</sup> This state bill was created as Jefferson saw a lack of a formal education system in Virginia's laws as he was revising them.<sup>7</sup> In the bill, he separated counties into "little republics" and created free elementary schools for boys and girls to attend. Jefferson saw the need for children to learn basic literacy and math so that as they get older, they are better equipped to handle their own affairs. Unfortunately, America ended the Eighteenth century with no real formation of a public school system.<sup>8</sup> Most schools that did exist were private schools meant to serve a private purpose.<sup>9</sup>

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<sup>5</sup> *U.S. Founding Fathers on Education, in Their Own Words*, National Association of Scholars [https://www.nas.org/blogs/article/u\\_s\\_founding\\_fathers\\_on\\_education\\_in\\_their\\_own\\_words](https://www.nas.org/blogs/article/u_s_founding_fathers_on_education_in_their_own_words)

<sup>6</sup> *Common School Movement*, <https://education.stateuniversity.com/pages/1871/Common-School-Movement.html>

<sup>7</sup> *Smith discusses Jefferson's ideas about education and his plan for a decentralized system of public schools.*, Libertarianism, <https://www.libertarianism.org/publications/essays>

<sup>8</sup> *Common School Movement*, *supra* note 6

<sup>9</sup> *Common School Movement*, *supra* note 6

While the Founding Fathers were influential in laying the groundwork for education in America, the idea of public schools that would be available to all children became more popular as Horace Mann, a Massachusetts legislator, began advocating for it in the early 1800's. The school, coined a "common school," emphasized that "investment in education would benefit the whole nation by transforming children into literate, moral, and productive citizens."<sup>10</sup> Through receiving a proper education, Mann believed children would grow to be morally sound adults that are able to enhance civic engagement. Essentially, the "common school" system was created out of the fear that America would self-destruct following its independence from the British unless children were raised to be disciplined and virtuous adults through proper schooling. These schools were funded by local property taxes and advocated for a statewide curriculum.<sup>11</sup> Both girls and boys had the opportunity to attend common schools, nevertheless, sex discrimination was inherent. True coeducation seemed to only occur in communities that could not afford to build two separate learning facilities.<sup>12</sup> Many educational scholars mark the beginning of the 1900's as the end of the common school era because schools shifted from local control to regional.<sup>13</sup> This is seen today through the functionality of school districts.

America has made valiant strides in educational reform since the common school era. *Brown vs. Board of Education* was decided in 1954 and demanded the desegregation of all

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<sup>10</sup> *History and Evolution of Public Education in the US*, Center on Education Policy, <https://files.eric.ed.gov/fulltext/ED606970.pdf>

<sup>11</sup> *Educational Reform: The Example of Horace Mann*, Lumen, <https://courses.lumenlearning.com/teachereducationx92x1/chapter/educational-reforms/>

<sup>12</sup> *History of Gender and Education in the U.S.*, Single-Sex Education, [https://academics.hamilton.edu/government/dparis/govt375/spring97/Gender\\_Equity/singlesex/ge3.html](https://academics.hamilton.edu/government/dparis/govt375/spring97/Gender_Equity/singlesex/ge3.html)

<sup>13</sup> *Educational Reforms*, *supra* note 11

schools in America.<sup>14</sup> Due to a combination of the lack of method for desegregation and the desire of schools to not desegregate, no immediate action occurred. It wasn't until the 1955 ruling in *Brown II* that demanded desegregation "with all deliberate speed," that some schools began the desegregation process.<sup>15</sup> Even with the new ruling, many schools refused to desegregate until the 1970's when most district court judges demanded immediate desegregation of the schools.<sup>16</sup> However, America has begun to see an influx of re-segregation in the public school system due to housing segregation, a key piece of the current unequal financing system.<sup>17</sup> This is a type of de facto segregation, meaning it is not controlled by the government, but rather, outside factors contributing to the segregation in schools. However, school boards are working to combat this by adding localized magnet schools in urban areas and careful siting for future schools.<sup>18</sup>

Another reform seen in America following the Common School movement were Act's and federal legislation aimed at ensuring educational opportunities for underrepresented groups, such as minorities, low-income, disabled, girls, and children with limited English proficiency. Some examples of Act's are the Elementary and Secondary Education Act of 1965 and the Individuals with Disabilities Act.<sup>19</sup>

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<sup>14</sup> *Brown v. Board of Education*, 347 U.S. 483, 490 (1954).

<sup>15</sup> *Brown v. Board of Education of Topeka*, 349 U.S. 294 (1955)

<sup>16</sup> *The real history of school desegregation, from 1954 to the present*, Thomas B. Fordham Institute <https://fordhaminstitute.org/national/commentary/real-history-school-desegregation-1954-present>

<sup>17</sup> *The real history of school desegregation, from 1954 to the present*, R. Shep Melnick, *supra* note 15

<sup>18</sup> *The real history of school desegregation, from 1954 to the present*, R. Shep Melnick, *supra* note 15

<sup>19</sup> *History and Evolution of Public Education in the US*, *supra* note 11

The increased importance of schooling in American culture within the past two centuries is evident through the fact that attendance rates have increased from 59% to 94%.<sup>20</sup> Gaining an education in America has never been easier, yet inequalities among these educations is abundant. Achievement gaps between affluent and disadvantaged children are hard to ignore.<sup>21</sup> In a study conducting the difference in standardized math and reading test score between rich and poor students, it was found that the difference is 40 percent greater today than it was three decades ago.<sup>22</sup> One action Congress took to lessen these differences was to pass Title I of the Elementary and Secondary Education Act of 1965, which “requires that schools receiving funds under Title I be comparable in services to schools that do not receive Title I funds.”<sup>23</sup> This act puts some responsibility upon the federal government to ensure that schools are providing equitable educations to all children. In 2020, more than half of America’s school children received Title I funds; even if a student is not low income, if they attend a Title I school, then they will be eligible for supplemental programming.<sup>24</sup> Title I funds are able to be spent on things other than instructional costs; items of clothing, technology, parent literacy and education, substitute pay, professional development conferences, etc. may receive funding through Title I.

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<sup>20</sup> *History of Education: The United States in a Nutshell*, Leader in Me, <https://www.leaderinme.org/blog/history-of-education-the-united-states-in-a-nutshell/>

<sup>21</sup> Sasha Jones, *Achievement Gap Between Rich and Poor Is Unchanged After 50 Years, Study Says*, <https://www.edweek.org/leadership/achievement-gap-between-rich-and-poor>

<sup>22</sup> Susan Dynarski and Katherine Michelmore, *Income Differences in Education: the Gap Within the Gap*, <https://econofact.org/income-differences-in-education-the-gap-within-the-gap>

<sup>23</sup> *The History of Educational Comparability in Title 1 of the Elementary and Secondary Education Act of 1965*, CAP, <https://www.americanprogress.org/article/the-history-of-educational-comparability-in-title-i-of-the-elementary-and-secondary-education-act-of-1965/>

<sup>24</sup> Laura Waters, *Explained: What is Title 1 and How is it Used to Fund our Schools?*, Education Post, <https://educationpost.org/explained-what-is-title-i-and-how-is-it-used-to-fund-our-schools/>

Even with the money from the federal government being given to Title I schools and schoolchildren, achievement gaps are still prevalent. This brings to light the question of whether these funds are a productive way to close the achievement gap and if not, what else can be used?

America finds itself at a crossroads of how to achieve educational equity and at what cost it will be. Educational equity is defined as when “each child receives what they need to develop to their full academic and social potential.”<sup>25</sup> Some find it of the utmost importance to close the achievement gaps found in our current education system, whereas others do not. An uneducated body of citizens would undoubtedly lead to America’s turmoil because there is a proven correlation between education and democracy, meaning if America were to become uneducated, the democracy would begin to fail.<sup>26</sup> The correlation between democracy and education has been shown through student political engagement, the teaching of civic engagement in schools, involvement in socialization, and protection from coups.<sup>27</sup> The General Social Service shows that college graduates are 27% more likely than high-school dropouts to say that they vote in local elections and 29% more likely to say that they help solve local problems.<sup>28</sup>

What is the first step? Challenging *San Antonio Independent School District vs. Rodriguez* under the Due Process Clause rather than the Equal Protection Clause. The precedent set forth by this ruling is that education is not a fundamental right guaranteed by the Constitution

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<sup>25</sup> National Equity Project, <https://www.nationalequityproject.org/education-equity-definition>

<sup>26</sup> Edward L. Glaeser, Giacomo A. M. Ponzetto, Andrei Shleifer, *Why Does Democracy Need Education?*, [https://scholar.harvard.edu/files/glaeser/files/democracy\\_final\\_jeg\\_1.pdf](https://scholar.harvard.edu/files/glaeser/files/democracy_final_jeg_1.pdf)

<sup>27</sup> *Why Does Democracy Need Education?*, *supra* note 27

<sup>28</sup> *Why Does Democracy Need Education?*, *supra* note 27

under the Equal Protection Clause of the Fourteenth Amendment. However, the Justice's failed to examine this case through a Due Process lens.

Simply put, the Due Process Clause protects citizens' rights to life, liberty, and property.<sup>29</sup> Some protections that American citizens hold under this Clause are the right to privacy,<sup>30</sup> right to marry<sup>31</sup>, and right to raise one's children.<sup>32</sup> In *San Antonio Independent School District vs. Rodriguez*, the Court relied upon the Equal Protection Clause to defend its stance that education is not a fundamental right. This Clause is found within the same section as the Due Process Clause; it announces that all states must provide equal protection of the laws.<sup>33</sup>

When using this Clause, the Court uses a scrutiny classification system to help decide cases; rational basis review, intermediate scrutiny, and strict scrutiny. The less stringent of the three tests is the rational basis test, also known as "rational review". To pass this test, the statute or ordinance must have a legitimate state interest, and there must be a rational connection between the statute's ordinance's means and goals.<sup>34</sup> This test is generally used where no fundamental rights or suspect classification are at issue.<sup>35</sup> Intermediate scrutiny is only used when a state or the federal government passes a statute which negatively affects certain protected classes.<sup>36</sup> To pass this level of scrutiny, the challenged law must further an important government interest and must do so by means that are substantially related to that interest.<sup>37</sup> It is used for

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<sup>29</sup> U.S. Const. amend. XIV, § 1.

<sup>30</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965)

<sup>31</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)

<sup>32</sup> *Santosky v. Kramer*, 455 U.S. 745 (1982)

<sup>33</sup> U.S. Const. amend. XIV, § 1.

<sup>34</sup> *Rational Basis Test*, [https://www.law.cornell.edu/wex/rational\\_basis\\_test](https://www.law.cornell.edu/wex/rational_basis_test)

<sup>35</sup> *Rational Basis Test*, *supra* note 33

<sup>36</sup> *Intermediate Scrutiny*, [https://www.law.cornell.edu/wex/intermediate\\_scrutiny](https://www.law.cornell.edu/wex/intermediate_scrutiny)

<sup>37</sup> *Intermediate Scrutiny*, *supra* note 35

equal protection challenges to gender classifications and some First Amendment cases.<sup>38</sup> The highest level of scrutiny is strict scrutiny, which is used when a plaintiff sues the government for discrimination.<sup>39</sup> To pass this test, the government must have passed the law to further a “compelling governmental interest,” and must have narrowly tailored the law to achieve that interest.<sup>40</sup> This level of scrutiny is often invoked for an equal protection claim and the court can only use strict scrutiny for that claim if the law infringes upon a fundamental right or involves a suspect classification.<sup>41</sup> A suspect classification refers to a class of individuals that have been historically subject to discrimination.<sup>42</sup>

When deciding *San Antonio Independent School District vs. Rodriguez*, the Court denied using strict scrutiny for two reasons. The first is because there is no suspect classification. Some examples of suspect classifications include race, national origin, religion, and alienage.<sup>43</sup> In this case, the identified suspect classification was wealth.<sup>44</sup> However, the Court argued that wealth was not considered a suspect classification because America does not have a history of discriminating against people based on their wealth.<sup>45</sup> The second is because no fundamental interest is implicated, because education is not a fundamental right.<sup>46</sup> Instead, the Court used rational basis review, in which it was found that the state financing system is rationally related to

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<sup>38</sup> *Intermediate Scrutiny*, *supra* note 35

<sup>39</sup> *Strict Scrutiny*, [https://www.law.cornell.edu/wex/strict\\_scrutiny](https://www.law.cornell.edu/wex/strict_scrutiny)

<sup>40</sup> *Strict Scrutiny*, *supra* note 38

<sup>41</sup> *Strict Scrutiny*, *supra* note 38

<sup>42</sup> *Suspect Classification*, [https://www.law.cornell.edu/wex/suspect\\_classification](https://www.law.cornell.edu/wex/suspect_classification)

<sup>43</sup> *Strict Scrutiny*, *supra* note 38

<sup>44</sup> *San Antonio Independent School District vs. Rodriguez*, *supra* note 2

<sup>45</sup> *San Antonio Independent School District vs. Rodriguez*, *supra* note 2

<sup>46</sup> *San Antonio Independent School District vs. Rodriguez*, *supra* note 2

a legitimate government interest: to fund the public schools.<sup>47</sup> It decided that the school financing system used in Texas was not denying schoolchildren of their right to equal protection of the laws. The implications of the decision in this case are evident throughout schools in America today. The financing system clearly leads to achievement disparities among schoolchildren, further solidifying the socioeconomic ladder that has been prevalent for centuries. The upper class will, more than likely, stay the upper class because they are able to educate their children with a wide range of opportunities and the best teachers. While the Court decided education is not a fundamental right guaranteed by the Equal Protection Clause, it should be revisited and reevaluated under the Due Process Clause to ensure that all schoolchildren in America have an equal opportunity to fully live out their lives.

The purpose of this study will be to examine different factors of the education system, such as the financing system, achievement gaps among schoolchildren, longevity of teacher's careers, to determine the current functionality of the American education system and justify making education a fundamental right guaranteed by the Constitution.

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<sup>47</sup> *San Antonio Independent School District vs. Rodriguez*, *supra* note 2

## CHAPTER 2: PAST PRECEDENT

### Brown vs. Board of Education

The most known precedent when speaking on education is *Brown vs. Board of Education*. This case was decided in 1954 and set completely new expectations among schools in America. Prior to this case, schools were completely segregated in terms of race and gender. White males had the most opportunities available in education, while females and African American students were left with less equivalent facilities and overall, less educational opportunities. Chief Justice Earl Warren delivered the opinion and made it clear that segregation in schools was no longer tolerated, and that schools should implement desegregation efforts because separate inherently meant unequal. The Chief Justice explained that “To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”<sup>48</sup> In his opinion, Chief Justice Warren used simple terms so that all Americans could understand the doctrine being set into place.

While *Brown vs. Board of Education* declared that segregation in schools led to unequal opportunities, and that schools should move to desegregate, immediate action did not occur due to the lack of directives on how to complete this process. Some schools acted right away, and others hesitated. It would be years before schools in the south fully desegregated, leading to instances such as the Little Rock Crisis involving nine colored students who enrolled at a previously all white high school in Arkansas.<sup>49</sup>

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<sup>48</sup> *Brown v. Board of Education*, *supra* note 13

<sup>49</sup> Little Rock Nine, <https://www.history.com/topics/black-history/central-high-school-integration>

## San Antonio Independent School District vs. Rodriguez

*San Antonio Independent School District vs. Rodriguez* was brought to the Supreme Court in 1972 after Rodriguez challenged the existing finance system in place in Texas public schools. This financing system is a combination of the minimum educational offering by the state to each school in Texas, plus supplemental aid through property taxes in the given area of a school. The suit was brought on behalf of schoolchildren residing in less affluent areas, who believed that the current financing system in place favors the more affluent and violates the Equal Protection Clause because there were substantial differences in per-pupil spending between districts with different socioeconomic status within Texas.<sup>50</sup> For example, it was recorded that one district raised only \$26 per pupil on a 1.05% tax rate while another district raised \$333 per pupil using a .85% tax rate.<sup>51</sup> This statistic shows a large disparity between two districts found within the state of Texas, with one district able to spend \$307 more per pupil than the other.

Because the appellants filed their suit based on the Equal Protection Clause, they had to prove that the governing body's action resulted in actual harm to the schoolchildren. While the District Court who first reviewed the case used strict scrutiny, the Supreme Court found that there is neither a suspect classification, nor a fundamental right implicated.<sup>52</sup>

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<sup>50</sup> *San Antonio Independent School District vs. Rodriguez*, *supra* note 2

<sup>51</sup> *San Antonio Independent School District vs. Rodriguez*, *supra* note 2

<sup>52</sup> *San Antonio Independent School District v. Rodriguez*, Case Briefs, <https://www.casebriefs.com/blog/law/constitutional-law>

In regard to a suspect classification, the Court found that the law set in place that allowed for the Texas financing system did not explicitly define a class of people as “poor.” Because the financing system created by the government happened to discriminate against those living in poorer districts than those in wealthier districts, does not create a suspect classification. Additionally, there is not a history of discrimination based on wealth.<sup>53</sup> Therefore, it could not be argued that a suspect classification was identified in this case.

Secondly, the law set in place by the government of Texas does not “impermissibly interfere with the exercise of a ‘fundamental’ right or liberty.” This point is imperative to hit on when dealing with the formation of education as a fundamental right. Justice Powell delivered the Supreme Court decision and stated that the “Equal Protection Clause does not require absolute equality of precisely equal advantages.”<sup>54</sup> Justice Powell was indicating that opportunities in education do not need to be equal across the board. The Court ruled that there is no “constitutional right to an equal education”, therefore, Texas’ financing system did not violate anyone’s Equal Protection of the law.<sup>55</sup>

Therefore, the Court found that rational basis review was the appropriate test to determine if the Texas financing system was constitutional. The Court found that when applying the rational review test, the appellant failed to prove that the state’s financing system did not have a legitimate state interest. The Court ruled that the Texas financing system had a legitimate

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<sup>53</sup> *San Antonio Independent School District vs. Rodriguez, supra note 2*

<sup>54</sup> *San Antonio Independent School District vs. Rodriguez, supra note 2*

<sup>55</sup> *San Antonio Independent School District vs. Rodriguez, supra note 2*

state interest and was thus constitutional and did not violate the children's right to equal protection.

*San Antonio Independent School District vs. Rodriguez* created a strong precedent that education would not be a fundamental right under the United States Constitution, however, the Texas Supreme Court heard another case in 1989 that made the Court rethink the state financing system.

**Edgewood Independent School District vs. Kirby**

*Edgewood Independent School District vs. Kirby* concerned the same state financing system, and approximately seventy-five school districts in Texas were involved. The plaintiffs complaint was that the financing system in place discriminated against poor school districts and stated that the system violated against four principles of the state constitution.<sup>56</sup> As evidence of the disparities in the financing system, the Texas Supreme Court found that one of the poorest districts in the state, Edgewood Independent School District, had \$38,854 in property wealth per student, whereas, one of the wealthier districts within the same county, Alamo Heights Independent School District had \$570,109 per student.<sup>57</sup> The disparities brought on by the difference in spending per pupil, such as ability to hire good teachers, lack of technology, building appropriate facilities, was argued to be in violation of Article VII, section 1 of the Texas Constitution.<sup>58</sup>

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<sup>56</sup> *Kirby v. Edgewood Independent School District*, 761 S.W.2d 859 (Tex. App. 1989)

<sup>57</sup> *Kirby v. Edgewood Independent School District*, *supra* note 37

<sup>58</sup> *Edgewood Indep. School Dist. V. Kirby*, JUSTIA, <https://law.justia.com/cases/texas/supreme-court>

When the case was heard by the Texas Supreme Court, it was unanimous 9-0 decision that sided with Edgewood plaintiffs in that the Texas financing system was unequitable and led to disparities in education due to socioeconomic status of the district in which your school was found that violated the Texas Constitution. This decision led to the Legislature of Texas having only a few months to find a reformative policy that would help mend the disparities currently found due to the financing system in place.

The Texas Legislatures new formula involved consolidating the 1,058 school districts found in Texas to only 188 County Education Districts and setting the tax rate to 72 cents per \$100 valuation at the start, with an eventual increase to \$1.00 per \$100 valuation. However, this plan was found to be illegal after property-wealthy districts challenged the new financing plan. In place, the Texas Legislature created a system containing five methods to help equalize school finance:

(1) merging its tax base with a poorer district, (2) sending money to the state to help pay for students in poorer districts, (3) contracting to educate students in other districts, (4) consolidating voluntarily with one or more other districts, or (5) transferring some of its commercial taxable property to another district's tax rolls.<sup>59</sup>

While this system was not favored by the poorer districts, the Supreme Court of Texas declared that the Legislature still needed to work on improving and equalizing the school facilities in the state.

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<sup>59</sup> *Kirby v. Edgewood Independent School District*, *supra* note 37

## CHAPTER 3: FAILURES OF THE CURRENT EDUCATION SYSTEM

### Inequity of Opportunity

In a statement about the equity of opportunity in American education, the U.S. Department of Education stated that “access to a world-class education can help to ensure that all children in this country with dreams and determination can reach their potential and succeed.”<sup>60</sup> However, as most know, there are a vast number of students who still lack access to the core elements of a quality education, such as a free and quality preschool, challenging standards, engaging teaching and leadership, a well-resourced school, and an affordable, high-quality college degree. In a study done by the U.S. Department of Education, “45 percent of high-poverty schools received less state and local funding than was typical for other schools in their district.”<sup>61</sup>

The difference between opportunities of a school in a wealthier area versus one in a poorer area is blatantly obvious to anyone who looks. This inequity of opportunity leads to the U.S. falling behind all other countries in terms of improving education; other countries are successfully closing achievement gaps while our gap remains persistently wide. In Florida, the 2016 high school graduation for low-income students was 70.3%, while their non-low-income counterparts was 85.6%.<sup>62</sup> A gap of 15 percent exists between low-income and non-low-income students, which equals to be thousands of students in Florida. A child coming from a less wealthy home faces a host of challenges in trying to receive a quality education like their

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<sup>60</sup> *Equity of Opportunity*, Equity of Opportunity | U.S. Department of Education, <https://www.ed.gov/equity>.

<sup>61</sup> *Equity of Opportunity*, *supra* note 59

<sup>62</sup> *Why this Matters*, Florida College Access Network, <https://floridacollegeaccess.org/about/why-this-matters>

wealthier counterparts. The direct effects of wealth are obvious: access to better textbooks, enrollment in summer enrichment programs, upscale educational facilities.<sup>63</sup> One of the most prominent disparities today is the difference in technology between wealthy and poor schools.<sup>64</sup> Being proficient in computer skills is nearly required to be an active citizen in today's democracy, but many students living in poorer areas are not given the opportunities to learn these skills.<sup>65</sup> However, there are indirect effects of wealth that play just as big of a role.

The first indirect effect is the lack of opportunity of human capital. This refers to the skills or knowledge of individuals, usually based on their education and experience.<sup>66</sup> Students whose parents are wealthy in human capital, specifically in the form of education, are more likely to impart that knowledge onto their children.<sup>67</sup> This creates the reoccurring cycle seen in America today: families who are educated stay educated, and those who are not educated, stay uneducated. This is a cycle that predates all educational systems today; it began in the 16<sup>th</sup> century when only white boys were allowed to attend school and receive an education.<sup>68</sup> While de jure segregation is not as prominent as it was back in the 16<sup>th</sup> century, our current education system has allowed for de facto segregation to create similar cycles as those back in the day.

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<sup>63</sup> *Another Advantage for Wealthy Students*, US News, <https://www.usnews.com/news/education-news/articles/2018-09-19/the-gpa-gap-rich-students-have-grades-inflated-more-often-than-poor>

<sup>64</sup> *Digital Divide: The Technology Gap between the Rich and Poor*, Digital Responsibility, <http://www.digitalresponsibility.org/digital-divide-the-technology-gap-between-rich-and-poor>

<sup>65</sup> *Digital Divide: The Technology Gap between the Rich and Poor*, *supra* note 63

<sup>66</sup> Daniel T. Willingham, *Why Does Family Wealth Affect Learning*, <https://www.aft.org/sites/default/files/periodicals/Willingham.pdf>

<sup>67</sup> Daniel T., Willingham, *supra* note 41

<sup>68</sup> Tim Lambert, *Education in Ancient Egypt*, <https://localhistories.org/a-history-of-education>

The second indirect effect is the lack of opportunity for social capital. Social capital refers to beneficial connections in social networks to those with financial or human capital.<sup>69</sup> The benefits of this type of capital are plentiful: summer internships, placement in better schools, advocacy for children when dealing with problems in school, so on and so forth.<sup>70</sup> Connections to people with power always provides an upper hand.

### Socioeconomic Status

Financial, human, and social capital each go together to create a composite measurement called socioeconomic status (SES).<sup>71</sup> This measures family income, parental education, and parental occupation and provides explanations on why low-SES students tend to perform at a lower rate than high-SES students; this starts with childbirth.<sup>72</sup> Because low-SES families have less adequate access to healthcare, babies born into these families have a higher risk for low birth weight, which is a risk factor for cognitive impairment.<sup>73</sup> Before the child even steps into a school, they are disadvantaged. Students coming from a low-SES area are more likely to be exposed to lead, which leads to higher blood lead levels, due to the physical conditions around them. The Center for Disease Control reported that children in low-income households and those who live in housing built before 1978 are at the greatest risk of lead exposure.<sup>74</sup> Due to children in low-SES families often sharing a room, they are more likely to live in a less orderly home,

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<sup>69</sup> Daniel T., Willingham, *supra* note 41

<sup>70</sup> Daniel T., Willingham, *supra* note 41

<sup>71</sup> Daniel T., Willingham, *supra* note 41

<sup>72</sup> Daniel T., Willingham, *supra* note 41

<sup>73</sup> Daniel T., Willingham, *supra* note 41

<sup>74</sup> *Childhood Lead Poisoning Prevention*, Center for Disease Control, <https://www.cdc.gov/nceh/lead/prevention/populations.htm>

which makes it hard to concentrate.<sup>75</sup> This lack of ability to concentrate will be carried with the student as they go through their K-12 education.

The SES of a family plays a huge role in determining the quality of education a child will receive. Wealth affects where a child will live, therefore, where the child will spend their K-12 education, as well as college.<sup>76</sup> Since the 1970's, economic segregation of neighborhoods has been steadily increasing.<sup>77</sup> This is a type of de facto segregation, where segregation occurred without any government action causing it. It is more likely for a child from a high-SES family to live in an area with superior school districts, than a low-SES child.<sup>78</sup> The American Psychological Association reported that "The school systems in low-SES communities are often under resourced, negatively affecting students' academic progress and outcomes."<sup>79</sup> For example, a child's initial reading competency correlates to the number of books owned in a household and the parent's distress.<sup>80</sup> Additionally, there is a positive correlation between a teacher's years of experience and quality of training and a child's academic achievement.<sup>81</sup> Children from low-SES households tend to attend schools where teachers are not as well-qualified as high-SES counterparts.<sup>82</sup>

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<sup>75</sup> Daniel T., Willingham, *supra* note 41

<sup>76</sup> Matt Barnum, *The Wealth Gap*, Chalkbeat, <https://www.chalkbeat.org/2020/9/29/21493981/wealth-gap-race-schools-education-research>

<sup>77</sup> Fabian T. Pfeffer, *Growing Wealth Gaps in Education*, <https://fabianpfeffer.com/wp-content/uploads/Pfeffer2018.pdf>

<sup>78</sup> Daniel T., Willingham, *supra* note 41

<sup>79</sup> *Education and Socioeconomic Status*, American Psychological Association, <https://www.apa.org/pi/ses/resources/publications/education>

<sup>80</sup> *Education and Socioeconomic Status*, *supra* note 54

<sup>81</sup> *Education and Socioeconomic Status*, *supra* note 54

<sup>82</sup> *Education and Socioeconomic Status*, *supra* note 54

## CHAPTER 4: PROPOSAL FOR CHANGE:

To allow all children in America to enjoy their basic right to Due Process, there must be changes in the current education system in America. Largely due to the funding systems in America, children in less affluent districts are subjugated to poorer education than children in affluent school districts. Every American citizen is guaranteed the right to life, liberty, and property through the Fourteenth Amendment, therefore, if children are not raised to have a firm understanding on how to read, they will never be able to live up to the rights listed under the Fourteenth Amendment.<sup>83</sup>

Students should be guaranteed fair and opportunistic access to education up until the end of their 5<sup>th</sup> year of elementary school. It has been proven that students are fluent in reading by the age of 7 or 8.<sup>84</sup> Students are usually in the 2nd or 3rd grade level by this age, but to account for any learning disabilities or at-home causes that would cause a child to fall behind in their abilities, students across America should be given equal opportunities up until the 5<sup>th</sup> grade. The importance of reading is explained under the “ARGUMENT” chapter of this thesis; essentially, reading is an ability that is key to all aspects of education. By allowing for two extra years of opportunity past the average age of reading fluency, this will account for children who may have fallen behind for whatever reason and give them the same opportunity that their neighbor has to succeed.

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<sup>83</sup> U.S. Const. amend. XIV, § 1.

<sup>84</sup> *What Age Should a Child Read Fluently*, Reading Eggs, <https://readingeggs.com/articles/2019/04/10/what-age-should-child-read-fluently/>

As discussed under the sections “PAST PRECEDENT” and “FAILURES OF THE CURRENT EDUCATION SYSTEM”, children in schools that receive less funding tend to lack the opportunities given to children who attend schools where the price spent per pupil is higher. The effects of wealth on opportunities for children in schools is very apparent, and results in achievement gaps between the wealthy and poor.<sup>85</sup> Therefore, the Supreme Court should overturn *San Antonio Independent School District vs. Rodriguez* when a new case occurs to challenge it by using the Due Process Clause, instead of the Equal Protection Clause.

By overturning the case under the Due Process Clause, the Court can recognize that educational opportunities up to the 5<sup>th</sup> grade are a fundamental right that all citizens should be given. This right is essential and directly correlated to a citizen right to life, liberty, and property.

#### Fundamental Right Approaches

To determine a fundamental right, the Court has created two separate approaches for determine what constitutes as a fundamental right.

The first approach is the Glucksberg approach, which was created in the Supreme Court case *Washington vs. Glucksberg*. This case focused on whether physician aid suicide is a fundamental right for terminally ill patients guaranteed by the Due Process Clause. The Court decided that it was not a fundamental right because assisted suicide is offensive to our Nation’s history and traditions. Assisted suicide has never been rooted in our Nation’s traditions, meaning it has never been an accepted practice in the country. Additionally, the Court found that the right to physician aid suicide was not a liberty that “neither liberty nor justice would exist if they were

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<sup>85</sup> *Achievement Gap Between Rich and Poor Is Unchanged After 50 Years, supra note 21*

sacrificed."<sup>86</sup> From this decision, the Court created a two-prong test to determine if something is considered a fundamental right:

1. Is the right deeply rooted in the Nation's history and traditions?
2. Is the right implicit in the concept of ordered liberty, such that "neither liberty nor justice would exist if they were sacrificed."

If the right to education was examined under the Glucksberg approach, it would be determined a fundamental right. Education, as explained under the section "INTRODUCTION", has been an important piece of discussion since the establishment of the country. The practice of learning is deeply rooted in the Nation's history and traditions. Starting with the common school, children were encouraged to be excellent learners and to attend school in hopes of one day being an active citizen of the democracy. Additionally, without people educated on the rights of citizens and the justice that comes with that, neither liberty nor justice would exist if the right of education was sacrificed.

The second approach to determine fundamental rights is the Obergefell approach. This approach is rooted in the Supreme Court case *Obergefell vs. Hodges*, which was a 2015 Supreme Court case which dealt with the fundamental right to same-sex marriage.<sup>87</sup> Obergefell was decided using a much broader concept of freedom that is more common to the concurrent opinion of the Glucksberg case. Justice Kennedy wrote in the opinion of Obergefell "history and tradition guide

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<sup>86</sup> *Washington v. Glucksberg*, 521 U.S. 702 (1997)

<sup>87</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015)

and discipline the inquiry but do not set its outer boundaries.”<sup>88</sup> The Obergefell approach balances the importance of the right and the government’s justification. This test leaves a lot more room for individual interpretation.

By using the Obergefell approach, the right to education would be a fundamental right. The importance of being educated and the opportunity to learn has been explained to be essential to the American democracy. If the government were to overturn *San Antonio Independent School District* when the question of education as a fundamental right was brought into question, the branches government has substantial justification for enacting this change.

By creating a fundamental right to education up to the 5<sup>th</sup> grade level, this ensures that all students in schools will have equal opportunities to succeed. Equity would be seen through all areas that wealth disparities are prevalent in schools today: facilities, access to technology, quality of teaching. Every child would start the race at the same starting line; no child would be advantaged or disadvantaged due to socioeconomic status.

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<sup>88</sup> *Obergefell v. Hodges*, *supra* note 87

## CHAPTER 5: ARGUMENT

The current education system in America disproportionately assists students coming from higher socioeconomic statuses than those from lower. Action must be taken, or the same cycle will continue; those with money will continue to have a better education than those who do not.

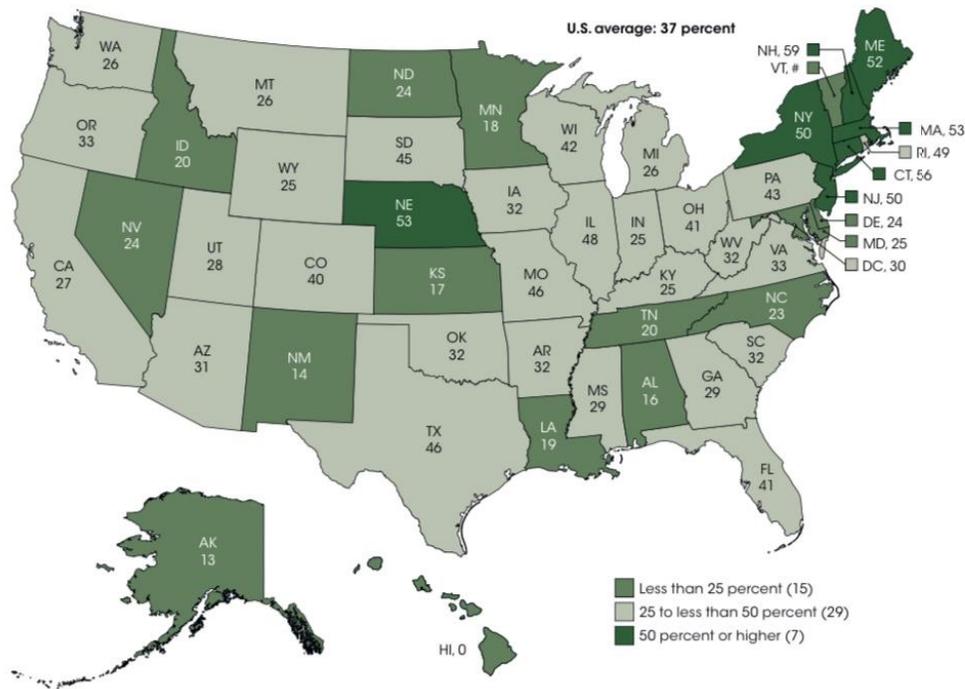
### Finance System

The first problem that must be addressed is the financing system that many schools in America use. In the 2016-2017 school year, elementary and secondary public-school revenues totaled \$330 billion from local sources; this is approximately 45 percent of the total school revenue.<sup>89</sup> Out of the 45 percent of local funding, an average of 82 percent of that comes from local property taxes.<sup>90</sup> Figure 1.1 details property tax revenues in the 2016-2017 school year for public elementary and secondary schools as a percentage of total public-school revenues, by state. With this information, it shows a reliance many states have on local property taxes that directly affect a student's education.

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<sup>89</sup> Public School Revenue Sources, [https://nces.ed.gov/programs/coe/pdf/coe\\_cma.pdf](https://nces.ed.gov/programs/coe/pdf/coe_cma.pdf)

<sup>90</sup> *Public School Revenue Sources*, *supra* note 89



# Rounds to zero.  
 NOTE: All 50 states and the District of Columbia are included in the U.S. average. Categorizations are based on unrounded percentages.  
 SOURCE: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "National Public Education Financial Survey," 2016-17. See *Digest of Education Statistics 2019*, table 235.20.

Figure 1: Property tax revenues in the 2016-2017 school year<sup>91</sup>

## Commerce Clause

To offset any effects of property taxes, Congress should utilize the Commerce Clause found in Article 1, Section 8, Clause 3 of the U.S. Constitution. This Clause grants Congress the power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.”<sup>92</sup> In 1887, Congress passed the Interstate Commerce Act, which applied the Constitution’s Commerce Clause, to regulate railroad rates, as small businesses and farmers were

<sup>91</sup> *Public School Revenue Sources*, supra note 89

<sup>92</sup> U.S. Const. art. 1, § 8, cl. 3

complaining that they were being charged more than larger corporations.<sup>93</sup> By passing the Interstate Commerce Act, it was shown that the Commerce Clause can be applied more expansively to national issues if they involved commerce across state lines and that it is a powerful tool to combat national problems.<sup>94</sup> Because these young children will be the ones handling interstate commerce in the future, their education should be seen as an issue that can be addressed by the Commerce Clause.

Jimmy Carter created the Department of Education under his presidency, as the Congress found that education was fundamental to the development of citizens and the Nation and that there was a need to ensure equal access to education to all Americans.<sup>95</sup> The Department was created in public interest and “promote(s) the general welfare of the United States”.<sup>96</sup>

Congress can pass legislation using the Commerce Clause that can act as a leveler to ensure that all schools up to the 5<sup>th</sup> grade that would balance out the use of property taxes. If states decide that using property taxes is no longer in their best interest, then that legislation can provide powers to the federal government to fund public education. While education is currently a state power, if states are unable to balance their financing systems alone, the federal government should be given the right to intervene to ensure that all students are not denied their right to Due Process.

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<sup>93</sup> *The Interstate Commerce Act is Passed*, United States Senate, [https://www.senate.gov/artandhistory/history/minute/Interstate\\_Commerce\\_Act\\_Is\\_Passed](https://www.senate.gov/artandhistory/history/minute/Interstate_Commerce_Act_Is_Passed)

<sup>94</sup> *The Interstate Commerce Act is Passed*, *supra* note 61

<sup>95</sup> Public Law 96-88 96th Congress

<sup>96</sup> Public Law 96-88 96th Congress, *supra* note 95

## Due Process Clause

The purpose of balancing the financing system is to ensure that all children have an equal opportunity to receive an education that will allow them to not be deprived of life, liberty, or property, as protected in the Due Process Clause of the Fourteenth Amendment.<sup>97</sup> The current education system, allows for disproportionate funding which leads to lower socioeconomic families to receive poorer educations. Students living in disadvantaged neighborhoods will be more likely to experience having less experienced instructors, less access to high level STEM and advanced placement courses, and lower spending on instructors and instructional material.<sup>98</sup> Students in disadvantaged neighborhoods are being deprived of their right to Due Process because they are lacking the same level of education as their counterparts.

To counteract this, it is important to address how the right to Due Process will affect a child's life. Being able to read and write is an ability that would allow children, and future participants of the democratic process, to teach themselves whatever they might want to learn. This will allow them the right to life, liberty, and property. The two abilities go hand in hand; "reading and writing in general helps absorb information and enhance leisure or school related writing tasks."<sup>99</sup> The ability to read and write is absorbed both in school and outside of the classroom. Children are exposed to these skills at a very young age; through interactions with adults and exposure to texts, children become familiar with the patterns of words and phrases

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<sup>97</sup> U.S. Const. amend. XIV, § 1.

<sup>98</sup> *Unequal Opportunities: Fewer Resources, Worse Outcomes for Students in Schools with Concentrated Poverty*, The Commonwealth Institute, <https://thecommonwealthinstitute.org/research/unequal-opportunities-fewer-resources-worse-outcomes-for-students-in-schools-with-concentrated-poverty/>

<sup>99</sup> *The Importance of Reading and Writing*, <https://www.bartleby.com/essay/The-Importance-of-Reading-and-Writing>

that will allow for fluency in both reading and writing.<sup>100</sup> Students coming from disadvantaged homes are more likely to have a risk of reading failure.<sup>101</sup> This is because children coming from disadvantaged homes are less likely to be exposed to as much literature or dialogue as a child from an advantaged home.<sup>102</sup> The consistent exposure and engagement in language play that develops an awareness of sound and structure is lacking within poor readers.<sup>103</sup> They often do not have someone reading out loud to them, a simple task that can make all the difference.<sup>104</sup> Because schools in disadvantaged neighborhoods receive less funding, it is likely that their library is not as full as a school receiving more funding. An important factor of children building understandings and skills essential for reading success is the reading of high-quality books.<sup>105</sup>

If a child can read and write, they will be capable of learning other abilities. A child who can read, is able to read about science. A child who can write, can write out math equations. However, a child that is only able to add and subtract will not have the skills necessary to read. Immigrants looking to become U.S. citizens are required to take the citizenship test, which consists of reading and writing questions, as well as a civics portion.<sup>106</sup> There is no math or science sections on the exam, which means that it is not a requirement that immigrants who are looking to become an integral part of the American democracy have proficient math or science

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<sup>100</sup> *Learning to Read and Write: What Research Reveals*, Reading Rockets, <https://www.readingrockets.org/article/learning-read-and-write-what-research-reveals>

<sup>101</sup> *Why Some Children Have Difficulties Learning to Read*, Reading Rockets, <https://www.readingrockets.org/article/why-some-children-have-difficulties-learning-read>

<sup>102</sup> *Why Some Children Have Difficulties Learning to Read*, *supra* note 65

<sup>103</sup> *Why Some Children Have Difficulties Learning to Read*, *supra* note 65

<sup>104</sup> *Why Some Children Have Difficulties Learning to Read*, *supra* note 65

<sup>105</sup> *Why Some Children Have Difficulties Learning to Read*, *supra* note 65

<sup>106</sup> *The U.S. Citizenship Test, Explained*, <https://www.boundless.com/immigration-resources/u-s-citizenship-test-explained>

skills. With the ability to read and write comes bountiful opportunities as the child grows into an adult participant of the democracy. However, at what level are children adequately able to read and write?

### Reading Fluency

While most children have the ability to read at 4 or 5 years of age, many children do not adopt the skill of fluency until the ages of 7 or 8.<sup>107</sup> Reading fluency is defined as when the child has developed the knowledge and skills to recognize words automatically, accurately, and quickly.<sup>108</sup> This ability allows the students to retain information effectively and with increased speed.<sup>109</sup> Some underlying causes of difficulty with reading fluency may be problems with phonics, insufficient time and practice reading connected text with accuracy, insufficient exposure to and practice with fluent, expressive oral reading, and a core problem with processing speed/orthographic processing which affects speed and accuracy of printed word recognition.<sup>110</sup> These causes may be presented in a multitude of ways: slow and labored reading, lacking expression appropriate to the meaning of words, insufficient or inaccurate decoding of unfamiliar words, lack of memory of words that have been read and practiced previously, poor comprehension, and automatic recognition of few words.<sup>111</sup> If a child cannot meet the reading fluency standards of their grade level, they will fall behind the standards set in place.<sup>112</sup> Not only

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<sup>107</sup> *What Age Should a Child Read Fluently*, Reading Eggs, <https://readingeggs.com/articles/2019/04/10/what-age-should-child-read-fluently/>

<sup>108</sup> *What Age Should a Child Read Fluently*, *supra* note 71

<sup>109</sup> Lucy Hart, *Cognitive Factors That Affect Reading Comprehension*, <https://education.seattlepi.com/cognitive-factors-affect-reading-comprehension>

<sup>110</sup> *Mass Literacy*, Massachusetts Department of Elementary and Secondary Education, <https://www.doe.mass.edu/massliteracy/reading-difficulties/automaticity>

<sup>111</sup> *Mass Literacy*, *supra* note 77

<sup>112</sup> *Fluency*, Reading Rockets, <https://www.readingrockets.org/helping/target/fluency>

will this affect them academically, but falling behind will also cause them to lose motivation to read. If students fall behind at a young age, they will likely not be able to meet the demands of reading in the upper elementary grades.<sup>113</sup> If a student cannot effectively read, they will fall behind in the other subjects that demand the ability to read such as word problems in math and science and analyzing a document in history. Reading fluency is the key to being able to successfully grasp other subjects.

### School Facilities

The ability to read comes at an early age, as mentioned previously, and the lack of adequate school facilities in disadvantaged areas can have a profound impact on the child's educational outcome. The facility can affect health, behavior, engagement, learning, and growth in achievement.<sup>114</sup> Additionally, adequate facilities also affect teacher recruitment, retention, commitment, and effort.<sup>115</sup> Therefore, having adequate school facilities allows for success of both the student and teacher. With the current financing system, which relies heavily upon property taxes, schools in disadvantaged neighborhoods are more likely to lack in overall infrastructure when compared to schools in affluent areas. In a study conducted in the U.K., 16 percent of variation in primary students' academic progress was caused from environmental and design elements of school infrastructure.<sup>116</sup> While this research was conducted in the U.K., similar statistics have been found in research done in America. The U.S. Department of Education found that there is a 5 to 17 percentile point difference in academic achievement

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<sup>113</sup> *Fluency*, *supra* note 79

<sup>114</sup> *The Importance of School Facilities in Improving Student Outcomes*, Penn State, <https://sites.psu.edu/ceepa/2015/06/07/the-importance-of-school-facilities-in-improving-student-outcomes/>

<sup>115</sup> *The Importance of School Facilities in Improving Student Outcomes*, *supra* note 81

<sup>116</sup> Peter Barrett, Fay Davies, Yufan Zhang, and Lucinda Barrett, *The Holistic Impact of Classroom Spaces on Learning in Specific Subjects*, <https://docs.wixstatic.com>

between above-standard buildings and substandard buildings.<sup>117</sup> The National Center for Education Statistics reported that half of all public schools in the United States need at least one major facility repair.<sup>118</sup> This statistic disproportionately affects schools found in less affluent schools districts. A study conducted in Texas and California found that less affluent school districts raised significantly less facility funding from local and state sources than affluent school districts.<sup>119</sup>

Less funding for facilities can lead to a multitude of expensive problems. A lack of regular access to capital dollars will lead to schools having more expensive emergency repairs, that end up being more short-term to immediately fix a problem.<sup>120</sup> Local school districts are responsible for 82% of their capital budget, which covers renovating existing facilities, and 45% of their annual operating budget, which pays for teachers and staff, materials, and facility maintenance.<sup>121</sup> Facilities in less affluent districts are also more susceptible to natural disasters because they are less well-maintained and tend to be older.<sup>122</sup> For example, after Hurricane Katrina hit Louisiana in 2005 nearly 372,000 students were relocated after their school facilities were damaged or destroyed.<sup>123</sup> The relocation of students can have drastic effects on their ability to learn; instability and uncomfortableness will deter from a child's ability to stay focused in school.

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<sup>117</sup> Mary Filardo, *How crumbling school facilities perpetuate inequality*, Phi Delta Kappan <https://kappanonline.org/how-crumbling-school-facilities-perpetuate-inequality>

<sup>118</sup> Mary Filardo, *supra* note 84

<sup>119</sup> Mary Filardo, *supra* note 84

<sup>120</sup> Mary Filardo, *supra* note 84

<sup>121</sup> Mary Filardo, *supra* note 84

<sup>122</sup> Mary Filardo, *supra* note 84

<sup>123</sup> Mary Filardo, *supra* note 84

## CHAPTER 6: CONCLUSION

Since the beginning of schooling, the goal of education has stayed the same. Through the addition of Common Core standards, standardized tests, physical fitness exams, and so on and so forth, the goal has remained to groom children into being productive members of the democracy. Through the ability of living out their right to life, liberty, and property, children will be able to accomplish this goal. They will have the right to start a family, the right to open a business, the right to vote, the right to be represented in the court of law, the right to own property and build upon that property. If it is expected that American citizens are active members of the democracy, then education should be a fundamental right given to everyone to ensure that the right to Due Process is protected for all.

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