

***PLYLER V. DOE* 40 Years Later: Undocumented Children and Access to Public Education**

June 2022 marked the 40th Anniversary of the landmark Supreme Court case [*Plyler v. Doe*](#), which guarantees access to a free K-12 public school education for undocumented children in the United States. Just over 40 years ago, the Texas Legislature enacted legislation denying free public-school education to undocumented school children. The Supreme Court in *Plyler* struck down this law, thereby allowing undocumented immigrants to receive a free K-12 public education and ruling that governments cannot punish immigrant children for the actions of their parents or push them to the margins of society. Unfortunately, the protections guaranteed by the *Plyler* decision have been challenged several times, and even 40 years later, access to a free public education remains contested in some areas. In the current political climate, the tensions surrounding immigration issues tend to come to a head around unauthorized immigrants' access to public services and benefits, such as education. Just recently, Texas Governor Greg Abbott expressed his wish to see *Plyler* be overturned by the Supreme Court. In recognition of *Plyler's* 40th anniversary and the case's resurgence in the media, we have put together this document on what the *Plyler* decision is, how it came to be, the challenges it has faced, and its potential future.

What is the background of *Plyler v. Doe*?

In 1975, the Texas Legislature passed a law authorizing school districts to charge tuition for the education of children not legally admitted into the United States, or to deny enrollment in public schools entirely. As a result, a class action lawsuit challenging the constitutionality of this law was filed on behalf of undocumented school-age children of Mexican origin residing in Smith County, Texas (collectively "Doe"). The suit was brought against the Texas Board of Education in the name of the then Tyler Independent School District superintendent, James Plyler. The State of Texas intervened as a party-defendant. In defending against the suit, the State of Texas argued that the law was a necessary financial measure aimed to avoid the financial drain on the state due to the increased public-school population resulting from the increased immigration of Mexican nationals. The U.S. District Court for the Eastern District of Texas granted a permanent injunction against the enactment of the law, and the injunction was upheld by the U.S. Court of Appeals for the Fifth Circuit. The Defendants appealed to the United States Supreme Court.

In a 5-4 decision, the Supreme Court upheld the injunction, ruling that undocumented children had a right to equal protection and treatment under the 14th Amendment of the Constitution, and therefore could not be denied a free public-school K-12 education.

What was the basis for the Supreme Court's Ruling in *Plyler*?

The Supreme Court first confirmed that undocumented immigrants are persons entitled to due process and equal protection as guaranteed by the Constitution. The Court then applied a rational basis review, meaning that they determined whether the Texas law provides a rational solution to a legitimate state interest. Texas argued that undocumented students cost the state a great deal of money, and that money could be better used to benefit lawful residents of the State. The Supreme Court disagreed for three main reasons.

First, there was no evidence that undocumented children cost substantially more to educate than legal immigrant and citizen children. In fact, based on the evidence presented, the Court found that the financial strain born by the state was due to a substantial increase in of lawful resident children. Any savings to the state from excluding undocumented children would be minimal and unlikely to improve the quality of education overall, therefore, the discriminatory effects of the legislation were not rationally based to further the State's goal.

Second, the Court found the law to be in violation of the Supremacy Clause of the Constitution. Historically, immigration policy has been within the exclusive purview of the federal government, and the Supremacy Clause forbids any state or locality from legislating in contravention to federal law. The Court found that the Texas statute usurped federal authority as the exclusive creator of novel immigration policy.

Third, the Court struck down Texas' law because it represented extremely poor public policy. They found that the law would create monumental social costs by intentionally creating a socially handicapped subclass of illiterates with severely limited chances for socio-economic advancement. The Court noted that American values regard education as a matter of utmost importance due to its importance in maintaining basic American institutions and in instilling upon young people the values and skills upon which the social order of the country rests. The law would have created an inestimable toll on the nation adding to the problems and costs of unemployment, welfare, and crime. Moreover, the Court found it to be a miscarriage of justice to punish children for the actions of their parents who entered the U.S. without authorization. The Court specifically found that "condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the . . . child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the . . . child is an ineffectual -- as well as unjust -- way of deterring the parent."

In summary, the majority of the Court did not find it possible to rationalize depriving undocumented children of an education.

What are the implications of *Plyler*?

Plyler means that schools cannot deny enrollment to undocumented children and cannot implement enrollment practices that can have a “chilling” effect on undocumented student enrollment. For instance, schools cannot require documents intrinsically tied to immigration status (i.e. driver’s licenses, social security cards, green cards, etc.). The requirement of such documents can discourage families from accessing public education for their undocumented children. It could also discourage undocumented parents or caregivers from enrolling their U.S. citizen children. Many parents will see it as an extremely risky endeavor to enroll their children in school if such enrollment would require admitting, or alluding to, unlawful presence in the United States, fearing that such a revelation would lead to arrest or deportation.

Did *Plyler* eradicate all barriers to education for immigrant children?

No. Lack of legal status still serves as a barrier to full participation in education, and it places a layer of persistent stress on school children and their parents that is not experienced by their citizen and legal resident peers. [Research](#) has demonstrated that the perpetual fear of deportation among certain undocumented Latino immigrants leads to the avoidance of mainstream institutions that offer important social services, including schools. Even where school attendance is not wholly avoided, fear of deportation, whether for the deportation of themselves or their undocumented parents, causes mental and emotional strain that affects academic performance. Additionally, the tendency of children of undocumented parents to [assume more financial responsibilities](#) than their native-born and legal resident peers has been seen as a possible explanation for the higher dropout rate of undocumented children and children with undocumented parents. Despite *Plyler*, only [60 percent](#) of undocumented students aged 18 to 24 graduate from high school.

What challenges have there been to *Plyler*?

Plyler has had its fair share of resistance. For instance, the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA) strengthened immigration enforcement, increased penalties for unauthorized entry, and stripped federal courts of the authority to hear challenges to deportations. During the Congressional debates over IIRIRA, Representative Elton Gallegly (R-CA) proposed an Amendment that would allow states to charge tuition to undocumented students or completely exclude them from public schools, effectively overturning *Plyler*. Gallegly believed that, while *Plyler* blocked the implementation of similar state laws, *Plyler* could not stop the federal government from acting. However, *Plyler*’s rationale proved to be compelling and held substantial clout in the political arena. Backlash was swift and the Gallegly Amendment drew heavy opposition in Congress and the media, both of which relied heavily on the public policy arguments of *Plyler*.

California's Proposition 187, a ballot initiative, also included a provision to deny education to undocumented children. Proposition 187 proposed to restrict undocumented immigrant access to all public services, including education, with the exception of emergency health care. The Prop 187 passed, but was enjoined and struck down by the U.S. District Court.

Other states passed measures restricting educational access in a more indirect way, testing the limits of *Plyler* without directly challenging it. Arizona and Georgia passed legislation restricting immigrant access to enrollment in public colleges and adult education programs. Alabama passed legislation mandating that public schools check and report on the legal status of their students and parents. The U.S. Department of Justice intervened and wrote a letter to the Alabama state superintendent reprimanding these provisions. Additionally, numerous school districts across the country have imposed documentation requirements that discouraged the enrollment of undocumented children. These practices prompted the U.S. Departments of Justice and Education to issue a "Dear Colleague Letter" which reinforced *Plyler* and explicitly informed school districts nationwide that such documentation and restrictionist enrollment practices were prohibited.

Could a law restricting undocumented immigrants' access to a free public K-12 education stand today?

Possibly. Although *Plyler* confirmed that undocumented students should have access to free public education, the Court held that education is not a fundamental right, undocumented persons are not a "suspect class" whose interests warrant the utmost protection, and that any legislation that differentiates between, or disparately impacts undocumented persons, only need to serve a rational basis to a legitimate state goal. Importantly, the *Plyler* decision was a deeply divided 5-4 vote amongst the justices. The four justices joining in the dissent agreed with the majority on the potentially detrimental public policy implications of the 1975 Texas legislation. However, the dissent insisted that the majority opinion was an overstep of judicial power. The dissent asserted that the decision of whether undocumented children should be afforded free public K-12 educational access should be left to Congress because the decision is a policy issue and not a constitutional one. As with any deeply divided Supreme Court case, *Plyler's* holdings are very susceptible to political attack. Accordingly, future proposed legislation can argue that denying education to undocumented children is rationally related to a legitimate state concern.

However, *Plyler* affirmed that budget constraints are not a sufficient basis to justify such restrictions. Fortunately, *Plyler's* guarantee of educational access for undocumented students was endorsed by Congress through [8 USC § 1643\(a\)\(2\)](#). This means that even if a state would like to challenge *Plyler* and argue that a rational basis exists for denying undocumented students' enrollment into public schools, they will be forbidden from doing so under the supremacy clause due to the existence of federal legislation.

However, while 8 USC § 1643(a)(2) does acknowledge that Federal laws restricting immigrant access to public benefits cannot be construed as interfering with Plyler's guarantee of alien eligibility for basic K-12 public education, the statute does acknowledge that this guarantee is intertwined with the Supreme Court's determination on the matter. Further, Congress has not affirmatively recognized a guarantee of public education for undocumented school children outside of the *Plyler* decision. Given the current make-up of the Supreme Court and the nature of several recent rulings, it is possible that the Court could overturn *Plyler*.

The Supreme Court's recent overturn of abortion rights with the issuance of *Dobbs v. Jackson Women's Health Organization*, potentially laid a foundation for an impending *Plyler* challenge. The Court in *Dobbs* heavily relied on an 'originalist' interpretation of the Constitution which defers to the intent of founders at the time of the constitution's drafting. Opponents of originalism highlight that there have been fundamental changes in our society and that we should not defer to the intent of founders from an era where only adult White males were afforded the full rights and privileges that the Constitution offered. Importantly, the courts have used the Constitution to secure rights not explicitly mentioned therein, for many marginalized groups also not explicitly mentioned such as women, minorities, LGBTQ+ individuals, and immigrants. Accordingly, the trend of the Court towards originalism, coupled with a strong *Plyler* dissent and the *Plyler* majority's refusal to acknowledge education as a fundamental right, means that *Plyler*'s protections are more vulnerable than it has ever been.

Where can I find more information about *Plyler v Doe*?

- [Dias, Isabela. 2022. "First Roe, Then Plyler? The GOP's 40-Year Fight to Keep Undocumented Kids out of Public School." *Mother Jones*.](#)
- [American Immigration Council. 2012. "Public Education for Immigrant Students: Understanding *Plyler v. Doe*."](#)
- [U.S. Department of Justice, and U.S. Department of Education. 2014. "Dear Colleague Letter On The Rights Of All Children To Enroll In Public Schools."](#)
- [MALDEF. 2022. "MALDEF Statement on the 40th Anniversary of *Plyler v. Doe*."](#)
- [Barnum, Matt. 2022. "What You Should Know about the *Plyler* Case." *Chalkbeat*.](#)