

Equal Protection, Immigration, and Education: *Plyler v. Doe*

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When the Texas state legislature passed a law in the 1970s allowing school districts to deny enrollment or charge tuition to illegal immigrant children, the Tyler Independent School District instituted a \$1,000 tuition rate for illegal immigrant children. Sixteen undocumented children from four Mexican families in Tyler filed a class-action suit in 1977 against the superintendent, James Plyler. They won their case when the federal district court judge (with the serendipitous name of William Wayne Justice) ruled that the Texas law violated the Equal Protection clause of the Fourteenth Amendment. Justice's ruling was upheld in the landmark Supreme Court case *Plyler v. Doe* in 1982.

The Fourteenth Amendment, generally given scant curricular attention in our schools, plays a strong role in fram-

ing the present day immigration debate in the United States, and an understanding of its Equal Protection Clause is essential for fostering an informed and engaged citizenry. Part of the Reconstruction Amendments passed after the Civil War, the Equal Protection Clause of the Fourteenth Amendment took effect in 1868 and guarantees equal rights to all citizens. The clause was also used to dismantle racial segregation and was the basis for *Brown v. Board of Education*. The Equal Protection Clause is the last part of Section 1 of the Fourteenth Amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws* [emphasis added].

In *Plyler v. Doe*, the U.S. Supreme Court ruled that the Equal Protection clause of the Fourteenth Amendment guaranteed all children the right to a public education regardless of their immigration status.¹ Yet attempts to deny rights to undocumented immigrants have persisted. In 2011, an Alabama immigration law included a provision, known as

(AP Photo/Jay Reeves, File)



Students sit in the gym at Crossville Elementary School in Crossville, Alabama, in this Aug. 17, 2011, photo. Despite being in an almost all-white town, the school's enrollment is about 65 percent Hispanic. Hispanic students have started vanishing from Alabama public schools following a court ruling that upheld the state's tough new law cracking down on illegal immigration. Several districts with large immigrant enrollments reported a sudden exodus of children of Hispanic parents, some of whom told officials they would leave the state to avoid trouble with the law, which requires schools to check students' immigration status.

Section 28, that required primary and secondary schools to report the immigration status of incoming students and their parents to the State Board of Education. Sponsors of the provision claimed the bill did not intend to deny or deter undocumented immigrants the right to a public education.² However, on August 12, 2012, the 11th Circuit Court of Appeals struck down Section 28 as unconstitutional.³

In 2007, in an interview on his 87th birthday, after 39 years on the bench as a U.S. district judge, the Honorable William Wayne Justice said that he was most proud of his ruling that was upheld by *Plyler v. Doe*. Justice said he still believed that “children raised without any education at all are likely to become burdens on the rest of society” as “they won’t be able to make any real amount of money unless they get into crime, like dope traffic or something of that sort.” Simply put, he argued, “If youngsters get an education, they can make a living.”⁴ In the Supreme Court case, which was decided by a 5-4 vote, Justice William J. Brennan, writing for the majority, argued that public education “has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”⁵ With that, the Supreme Court issued the pivotal decision to provide free public education for undocumented residents under the Equal Protection clause. Thirty years later, as the controversy surrounding *Plyler v. Doe* continues to resonate, studying the court’s ruling provides a genuine educational opportunity for civics and social studies students to critically debate and role play the merits of the case. We decided to use a mock trial activity with high school students to simulate *Plyler v. Doe* to help our students develop a deeper understanding and appreciation of the Equal Protection clause of the Fourteenth Amendment and the immigration issues embodied in *Plyler v. Doe*.

We present resources in this article that provide teachers with background knowledge and tools to run their own mock trial.

***Plyler v. Doe* in the Classroom**

The Constitutional Rights Foundation (CRF) created a lesson plan (see Lesson on pp. 185–187) with a simulation of *Plyler v. Doe*. The lesson includes a summary of the Fourteenth Amendment as well as background information on the court case including the main constitutional questions, central arguments for the appellants and respondents, and discussion/writing questions. In addition, the CRF lesson presents modified procedural rules for a Supreme Court hearing and a summary of the *Plyler v. Doe* decision. While simulation participants may role play, they are not required to research the history of the specific justices, appellants, and respondents. We recommend randomly assigned roles to maintain the integrity of the students’ participation. Through the simulation, students learn about a controversial issue, how to analyze the issue, deliberate with others about solutions, and take a position.

To organize this lesson, teachers must first divide their students into three groups: attorneys for the appellants (Plyler) and the respondents (Doe), and the justices of the U.S. Supreme Court. Next, all participants should be given the following two constitutional questions: (1) Does the Fourteenth Amendment’s Equal Protection clause apply to school-aged children who have not been legally admitted into the United States, and (2) Does the Fourteenth Amendment’s Equal Protection clause require Texas and the Tyler Independent School District to provide a free public education to school aged children who have not been legally admitted into the United States on an equal basis with children who are legally residing in the state?⁶ Those students assigned the roles of attorneys should be informed that they will need to prepare summary statements at the end of the simulation that

will answer the two constitutional questions in front of the court. Students who play the roles of justices should select a chief justice and read the case overview in order to prepare asking questions of the attorneys for the appellants and the respondents. The entire process will play out according to the rules set forth by the simulation.

The court will open with a reading of the case name and title by the chief justice. The attorneys for the appellants, chosen by the students, should present their arguments first, at which time the justices may ask questions. The attorneys for the respondents, similarly chosen, should not be allowed to interrupt opposing counsel at any time. Once the appellants have finished their arguments, the respondents should be allowed to offer a rebuttal. After the respondents have presented their case, time should be allowed for the appellants to present a rebuttal.

Once this process has been finished the chief justice will call the Supreme Court into recess to discuss the case and deliberate on their decision. We recommend that the Supreme Court be sequestered for approximately 15–30 minutes to openly deliberate the merits of the arguments presented by each side and come to a decision based upon its constitutional merits. While deciding the case, it will be helpful to assign one of the justices to be the note taker to ensure that the verdict is not based on mere opinion. When the justices have reached a decision, the Supreme Court should return to the classroom to issue its ruling. After the court’s decision has been read aloud, the teacher should disclose and discuss the actual Supreme Court ruling in *Plyler v. Doe*.

As a culminating activity, we recommend engaging the students in a Socratic Seminar to debrief the simulation and help them understand their outcome versus that in the actual case. In addition, using a Socratic seminar format will allow students to constructively discuss

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LESSON

This lesson by the Constitutional Rights Foundation originally appeared in *Bill of Rights in Action* 7, no. 4 (Spring 1991), www.crf-usa.org/bill-of-rights-in-action/bria-7-4-c-education-and-the-14th-amendment. It is reprinted with permission.

Education and the 14th Amendment

During the 1970s, a lot of people entered the United States illegally. Many came from Mexico to work for low wages in border states like Texas. Attorney General William French Smith testified before Congress in 1981 that most of the 3 to 6 million illegal aliens were living more or less permanently in this country. This situation led to questions about the legal status and rights of these persons. (They are often referred to as "undocumented workers" or "illegal aliens," because they have not obtained the papers necessary for being in the country.)

The 14th Amendment prohibits any state from denying "to any person within its jurisdiction the equal protection of the laws." The equal protection clause clearly requires that all American citizens must be treated equally by the law. But does the equal protection clause also demand equal treatment for those who are not citizens or who have entered the United States illegally?

In 1982, the U.S. Supreme Court decided the case of a group of children of undocumented workers who had been denied free public schooling by the state of Texas. After reading the background and arguments of this case, your class will have the opportunity to role play the Supreme Court hearing of this case.

The Background of *Plyler v. Doe*

In May 1975, the Texas state legislature passed a law authorizing school districts to deny enrollment to children who had not been "legally admitted" into the United States. Under this law, Texas school districts could either bar from the schools the children of illegal aliens or charge them tuition. The Tyler Independent School District in Smith County chose the second option.

Several federal court lawsuits were filed against the Texas law. The first was a class-action suit filed in 1977 by legal defense attorneys on behalf of "certain school-age children of Mexican origin residing in Smith County, Texas, who could not establish that they had been legally admitted into the United States." A federal district court ruled in 1977 and again in 1980 that the state law violated the equal protection clause of the 14th Amendment. An injunction (court order) barred the state and the Tyler school board from denying free public schooling to the undocumented immigrant children. A federal appeals court in 1981 agreed with the lower court rulings. The Tyler school board and school superintendent, James Plyler, appealed to the U.S. Supreme Court.

The Constitutional Questions

In preparing their briefs for the Supreme Court hearing, the attorneys for the Tyler school district, as well as the attorneys for the undocumented immigrant children, had to address two basic constitutional questions:

- Does the 14th Amendment's equal protection clause apply to school-age children who have not been legally admitted into the United States?

- Does the 14th Amendment's equal protection clause require Texas and the Tyler Independent School District to provide a free public education to school-age children who have not been legally admitted into the United States on an equal basis with children who are legally residing in the state?

The Arguments of the Appellants

Attorneys representing the Tyler Independent School District, the appellants in this case, answered "no" to both of the constitutional questions. To support their position, the appellants offered the following arguments:

- The children in this case are not "persons" within the state's jurisdiction. They are unlawfully living in the state and are subject to deportation.
- Undocumented immigrants should not be protected under the equal protection clause to the same degree as citizens and others living legally in the country.
- By denying free public schooling to children of undocumented immigrants, the Texas law serves a "substantial state interest," which justifies an exception to the equal protection clause. The "substantial state interest" in this case is based on:
 - a. It will cost Texas over \$62 million per year to educate the estimated 20,000 children of undocumented immigrants now living in the state. This money could better be spent on the children of legal residents.
 - b. A free public education for the children in this case will encourage the continued influx of undocumented immigrants into Texas.
 - c. The children of undocumented aliens place "special burdens" on the Texas education system such as the hiring of additional bilingual teachers.
- The U.S. Supreme Court has earlier held that a free public education is not a "fundamental right" under the Constitution. [*San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)]
- Requiring free public schooling for these children will lead to other cases in which those who have entered the country illegally will demand equal access to such public benefits as food stamps, unemployment insurance, and a free college education. Congress and the federal government should be held responsible for the education of illegal immigrant children since this is a national, not a state problem.
- The Supreme Court has no constitutional authority to strike down state laws simply because they may be unwise.
- The Supreme Court has no constitutional authority to create rights when they do not exist in the Constitution.
- The Supreme Court should not attempt to solve social problems. This is the job of Congress and the state legislatures.
- It is not fair for Texas taxpayers to be held responsible for educating the children of the world.

The Arguments of the Respondents

The attorneys representing the undocumented immigrant children, the respondents in this case, answered “yes” to both of the constitutional questions. To support their position, the respondents offered the following arguments:

- The U.S. Supreme Court has previously ruled that the equal protection clause of the 14th Amendment applies not only to citizens but to “any person” including aliens [*Yick Wo v. Hopkins*, 118 U.S. 356 (1886)]. The children in this case are “persons” living within the “jurisdiction” of the state since they reside in Texas and are subject to its laws.
- Discrimination against the school-age children in this case is not justified by any “substantial state interest”:
 - a. The children in this case represent only 1 percent of the school-age population in Texas. Spending some state funds by educating these children will not reduce the quality of schooling of the other children.
 - b. There is little evidence that undocumented immigrants come to Texas seeking educational benefits for their children. Most come looking for jobs.
 - c. Most of the state funds used for bilingual education and related special needs are spent on pupils who are legal residents.
- While education may not be a “fundamental right” under the Constitution, the equal protection clause of the 14th Amendment requires that when a state establishes a public school system (as in Texas), no child living in that state may be denied equal access to schooling.
- Failure to educate these children will lead to higher future social costs related to unemployment, welfare, and crime.
- Children should not be penalized for the illegal acts of their parents.
- Undocumented immigrant children could later become legal residents or even citizens as a result of marriage or changes in the law.
- Denying a free public education to the children of undocumented immigrants now will keep them forever in the lowest socio-economic class.
- Some children of undocumented immigrant parents were born in this country. These children are already full citizens of the United States and are entitled to an education. Their brothers and sisters born in Mexico, however, are still in the U.S. illegally. Is it fair for some children in a family to have access to public education while others are denied?
- The Texas law presents the danger of creating a permanent class of undocumented immigrants encouraged to stay as cheap labor but denied any benefits of society.
- Texas will be better off having these children in school rather than roaming the streets.

ACTIVITY

Plyler v. Doe

1. Divide the class into three groups to take on the roles of attorneys for the appellants, attorneys for the respondents, and justices of the U.S. Supreme Court.
2. The attorney groups should again read the constitutional questions in the case and the arguments for their side. Each attorney should be responsible for presenting to the Supreme Court at least one of the ten arguments. Attorneys should be prepared to explain and answer questions on their arguments, not merely read them word for word from the article.
3. One or two attorneys from each side of the case should additionally prepare to make summary statements. These statements will come at the end of the Supreme Court hearing and should directly answer the two constitutional questions.
4. The students role-playing justices of the Supreme Court should again read the entire article. They should prepare questions to ask the attorneys about their arguments. The justices should also choose a “chief justice” who will preside at the hearing and recognize attorneys who wish to speak.

Rules of Procedure

These rules modify actual Supreme Court procedures for the purpose of conducting this class simulation:

- a. The chief justice reads the name of the case and the constitutional questions that both sides must address.
- b. The chief justice asks the appellants to present their arguments. Each attorney for the appellants will have a turn to present his or her argument. The justices (but not the attorneys on the other side) may interrupt and ask questions at any time.
- c. The chief justice recognizes individual attorneys for the respondents who wish to make rebuttals or ask questions.
- d. The attorneys for the respondents have their turn to present arguments. When they are finished, the attorneys for the appellants will have the opportunity to make rebuttals or ask questions.
- e. At the end of the hearing, the chief justice recognizes attorneys for the purpose of presenting summary statements. The attorney(s) for the respondents goes first.
- f. When the hearing has been concluded, the Supreme Court justices meet privately to discuss their answers to the two constitutional questions. A separate vote should be taken on each question with a simple majority deciding each issue.
- g. Finally, the chief justice announces the vote on the two constitutional questions and each justice gives reasons for his or her votes.

For Discussion and Writing

1. In your opinion, who does the equal protection clause of the 14th Amendment protect?
2. Research the Immigration Reform and Control Act of 1986.

Did this law seem to justify or not justify the idea of providing free public schooling to the children of undocumented immigrants?

3. Do you think any of the following public benefits should be available to undocumented immigrants or their children? Why?
 - public college education
 - public housing
 - food stamps
 - welfare
 - public schooling
 - unemployment benefits

U.S. Supreme Court Decision in *Plyler v. Doe*, 457 U.S. 202 (1982)

By a 5-4 vote, the Supreme Court decided:

1. The equal protection clause of the 14th Amendment applies “to anyone, citizen or stranger” residing within a state’s boundaries. The children in this case were within the jurisdiction of the state and were thus protected by the 14th Amendment.
2. The equal protection clause of the 14th Amendment requires Texas and the Tyler Independent School District to provide free public schooling to the children of undocumented immigrants on an equal basis with the other children in the state and school district.

Writing for the majority, Justice William Brennan concluded: “We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”

Writing for the four dissenters, Chief Justice Warren Burger stated: “By definition, illegal aliens have no right whatever to be here, and the state may reasonably, and constitutionally, elect not to provide them with governmental services at the expense of those who are lawfully in the state.”

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their thoughts and feelings about the case while they are no longer in their assigned roles.

The most important objective of a Socratic seminar is for teachers and students to understand that it is student-led and allows the students to process events and information in order to better understand each other’s point of view. To facilitate a well-conducted Socratic seminar, students must prepare by engaging the materials to be discussed. Next, they must understand that the seminar should be a non-accusatory dialogue that is reflective and critical of the information presented. Socratic seminars should be facilitated by a series of critical questions. We recommend that in the *Plyler v. Doe* simulation, these questions pertain to the similarities and differences between the students’ and the actual ruling. In addition, students should be asked to reflect upon their roles, thoughts, and beliefs about social justice and right to public education. When conducted well, a Socratic seminar is a wonderful method to help students explore controversial issues of social justice and their implications for citizenship.

Student Responses

To gain a deeper understanding of students’ responses to the simulation, we selected a high school in a large urban area in the midwest to conduct interviews with 10 purposively selected students, three of whom were immigrants themselves and therefore able to provide distinct insights relevant to undocumented immigrants. Akeem (pseudonym), who is a legal African immigrant with Somali roots, expressed empathy and “respect” for undocumented immigrants.

... I have always believed that illegal immigrants that come here should get as much respect as possible and that the government should side with them. And always treat them

with respect and make things easier for them and not necessarily difficult. I think what the lesson did for me is that it has kind of made me ... become more aware about the issue, because before I didn’t know much about what illegal immigrants faced. And after studying this thing, I am more sympathetic towards them because I see more of the hardships and what they go through.

Moreover, Akeem showed an acute awareness regarding what he learned by participating in the mock trial.

I believe the purpose of our lesson was to help the students become more aware of the issue...what immigration is in general and to help students looking at issues that are facing the country today so that they might be better prepared as students and in the future.

Marie (pseudonym) who was born in the United States expressed how she changed her perspective as a result of the *Plyler vs. Doe* simulation. She indicated that the role play allowed her to develop a much deeper understanding of the issues and, compounded by her personal experiences, helped her to better articulate her personal perspective.

My views on immigration have not changed but they have gotten deeper than they already were because I now have a better understanding. I already had an idea of where I stood on immigration because I have witnessed the effects of deportation and illegal citizenship status. I have been around my best friend’s family when they found out a family member had gotten shot shortly after he was deported back to Mexico. I have been with her family late nights when they were waiting for family members’ phone call(s) to assure them they were safe and saw the



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stress and pain immigration has caused.

Marie's response brings to the surface how simulations help students make connections between the knowledge they gain and their own personal lives. The fact that Marie had friends who were directly impacted by immigration does not make her unique but rather affirms the extent to which this issue permeates American society. The experiences of undocumented workers and their children are having a significant impact on our country's social, educational, legal, and political landscape.

Suggestions

Having facilitated the *Plyler v. Doe* mock trial several times, we recommend sharing a copy of the Fourteenth Amendment with students prior to conducting the mock trial. Taking a few minutes to examine and discuss the wording and historical significance of the Fourteenth Amendment will help students to better understand the U.S. Constitution and the significance of the Equal Protection clause. Moreover, teachers should consider how this landmark decision connects with the current debate about immigration and the challenges lawmakers face. Some may argue that *Plyler v. Doe* did not go far enough because it did "not successfully dismantle blockades obstructing social, economic, or political agency that students inherit with their undocumented status."⁷ However, for example, a classroom dialogue about Obama's decision on June 15, 2012, to stop deporting undocumented immigrants who met some of the provisions of the Development, Relief, and Education of Alien Minors (DREAM) Act, will further enhance students' understanding of *Plyler v. Doe* and the repercussions of not providing equal protection under the law to undocumented immigrants. Helping students make connections with current issues, such as the DREAM Act, will allow them develop an informed personal perspective.

With civics and social studies marginalized across the nation, it is even more important to engage students in the democratic process by helping them become informed, active citizens. Based on our experiences with facilitating the *Plyler v. Doe* mock trial, we find that students need more significant exposure to activities with accurate and relevant information that emphasize civic education. 🌍

Notes

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3. Campbell Robertson and Julia Preston, "Appeals Court Draws Boundaries on Alabama's Immigration Law," *The New York Times* (August 21, 2012), www.nytimes.com/2012/08/22/us/appeals-court-limits-alabamas-immigration-law.html?_r=0; *United States of America v. State of Alabama*, www.ca11.uscourts.gov/opinions/ops/201114532.pdf
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