

CORPORAL PUNISHMENT IN THE UNITED STATES: ABOLISHMENT UNDER THE CIVIL RIGHTS ACT OF 1964

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The sound of each blow intensified with each passing moment. We all sat motionless in homeroom as the sound of her cries echoed from the empty classroom next door. A small disagreement with the school administrators on the way to class escalated quickly over something so trivial—a tardy to class. She slowly entered the classroom and returned to her seat with tears welling in her eyes as the male assistant principal trailed into the classroom behind her with a wooden paddle clenched in his fist. “Y’all let this serve as a reminder to stay in line.” This moment seared itself into my memory forever. At the age of sixteen, I recognized that my experience that morning in a public high school in Southeast Texas did not sit well with my conscience. It seemed almost inhumane that government educators could strike blows that students were not even permitted to strike against one another. We continued the school day without batting an eye at the injustice.

INTRODUCTION

The idea of corporal punishment stems from the Victorian Era concept of *in loco parentis*.¹ This common law doctrine explains the role of the state in contexts where government actors stand “in the place of a parent” by exhibiting “guardianship qualities of a parent.”² In the classroom context, corporal punishment is defined as “an educator intentionally inflicting pain on a student

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1. David R. Dupper & Amy E. Montgomery Dingus, *Corporal Punishment in U.S. Public Schools: A Continuing Challenge for School Social Workers*, 30 CHILD. & SCHS. 243, 244 (2008); see generally Anthony E. Conte, *In Loco Parentis: Alive and Well*, 121 EDUC. 195 (2000); Susan Stuart, *In Loco Parentis in the Public Schools: Abused, Confused, and in Need of Change*, 78 U. CIN. L. REV. 969 (2010).

2. Stuart, *supra* note 1, at 970 (“... being supportive, protective, and perhaps disciplinary”). Black’s Law Dictionary defines corporal punishment as “[p]hysical punishment; punishment that is inflicted on the body (including imprisonment).” *Corporal Punishment*, BLACK’S LAW DICTIONARY (11th ed. 2019).

as a punishment to modify behavior.”³ Advocates for and against corporal punishment present differing justifications for the practice. Many opponents argue that such punishment should not be imposed by the state upon students on the basis of legal and moral reasoning. However, many of the arguments in support of corporal punishment stem from parents’, school administrators’, and teachers’ personal “opinions and feelings.”⁴

Public schools that still use this traditional form of punishment typically have a deep-rooted, cultural history of the practice.⁵ Compelling evidence of racial disparities exists in the enforcement of school policies on corporal punishment and physical restraints.⁶ This Note argues that regardless of the offered justifications, corporal punishment inherently discriminates against racial minorities. Therefore, the use of corporal punishment in public education violates the Civil Rights Act of 1964 (“CRA”) and should be abolished for several reasons.

Title VI of the CRA provides that: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁷ Under this provision, essentially all public schools in the United States must abide by Title VI of the CRA because “[t]he U.S. Department of Education gives grants of financial assistance to schools and colleges and to certain other entities, including vocational rehabilitation programs.”⁸ The intent of the CRA

3. AMIR WHITAKER & DANIEL J. LOSEN, S. POVERTY L. CTR. & CTR. FOR C.R. REMEDIES, *THE STRIKING OUTLIER: THE PERSISTENT, PAINFUL AND PROBLEMATIC PRACTICE OF CORPORAL PUNISHMENT IN SCHOOLS* 17 (2019) (citing NAT’L ASS’N OF SCH. PSYCHS., *POSITION STATEMENT ON CORPORAL PUNISHMENT* (2014)).

4. Robert Kennedy, *Corporal Punishment: 2019 Update*, PRIVATE SCH. REV. (Apr. 24, 2020), <https://www.privateschoolreview.com/blog/corporal-punishment-2019-update>.

5. See Jess Clark, *Where Corporal Punishment is Still Used in Schools, Its Roots Run Deep*, NPR (Apr. 12, 2017), <https://www.npr.org/sections/ed/2017/04/12/521944429>; Sarah Gonzalez, *Spanking Lives On in Rural Florida Schools*, NPR (Mar. 13, 2012), <https://www.npr.org/2012/03/13/148521155>; see also Jon Schuppe, *Georgia School Paddling Case Highlights Continued Use of Corporal Punishment*, NBC NEWS (Apr. 15, 2016), <https://www.nbcnews.com/news/us-news/georgia-school-paddling-case-highlights-continued-use-corporal-punishment-n556566> (“Corporal punishment’s strong support in the South seems to be rooted in a number of cultural factors, including a strict interpretation of the Bible, a conservative approach to law and order, and the legacy of using violence to control people . . .”).

6. See Elizabeth T. Gershoff & Sarah A. Font, *Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy*, 30 SOC. POL’Y REP. 1 (2016).

7. 42 U.S.C. § 2000d.

8. *Race and National Origin Discrimination: Overview of the Law*, DEP’T OF EDUC., <https://www2.ed.gov/policy/rights/guid/ocr/raceoverview.html> (last visited Oct. 7, 2021) (listing racial harassment, school segregation, and denial of language services to English learners as examples of discrimination).

explicitly prohibits all forms of discrimination against the enumerated protected classes.

This Note focuses on the significant impact of corporal punishment on the United States public school system—specifically in the South. It argues that because of the discriminatory nature and detrimental effects of these practices, the federal government should abolish corporal punishment in public schools. As background, Part I provides a brief history of corporal punishment in public schools in the United States. Next, Part II evaluates the negative effects of corporal punishment on minority children. Part III then outlines various efforts to ban corporal punishment at different levels of government and the positive outcomes associated with its abolition. Part IV evaluates the contours of Title VI of the Civil Rights Act of 1964. Finally, Part V argues that the federal government should actively address the issue of corporal punishment in public schools, urging that: (1) Congress amend Title VI to allow for a private right of action alleging unintentional discrimination; (2) the Supreme Court overturn the precedent set by *Alexander* barring a private right of action for unintentional discrimination; and (3) the Department of Education, specifically the Office of Civil Rights, adopt a zero-tolerance approach to unintentional discrimination.

Alternatively, Part V further argues that absent federal intervention, the remaining states permitting the practice should: (1) abolish corporal punishment through state legislation or jurisprudence; (2) limit school district discretion by providing a uniform standard; or (3) improve public schools in such a way that would decrease the amount of corporal punishment imposed. The purpose of Title VI calls for the state to protect racial minorities from injustices in the classroom, and corporal punishment is an egregious, discriminatory form of injustice that inhibits racial minorities from fully experiencing a right to education.

I. BRIEF HISTORY OF CORPORAL PUNISHMENT

The United States Supreme Court in *Ingraham v. Wright* held that corporal punishment in American public schools does not violate the Eighth Amendment, therefore allowing its use within certain constitutional bounds.⁹ The Court reasoned that “[p]ublic school teachers and administrators are privileged at common law to inflict only such corporal punishment as is reasonably necessary for the proper education and discipline of the child.”¹⁰ Further, the Court stated that the relationship a student has with the state is not analogous to the relationship a criminal has with the state.¹¹ The Court’s evaluation of *in loco parentis* in *Ingraham* states:

At common law a single principle has governed the use of corporal punishment since before the American Revolution: Teachers may impose reasonable but not excessive force to discipline a child.

9. *Ingraham v. Wright*, 430 U.S. 651 (1977).

10. *Id.* at 670.

11. *Id.* at 669.

Blackstone catalogued among the “absolute rights of individuals” the right “to security from the corporal insults of menaces, assaults, beating, and wounding,” but he did not regard it a “corporal insult” for a teacher to inflict “moderate correction” on a child in his care. To the extent that force was “necessary to answer the purposes for which (the teacher) is employed,” Blackstone viewed it as “justifiable or lawful.” The basic doctrine has not changed. The prevalent rule in this country today privileges such force as a teacher or administrator “reasonably believes to be necessary for (the child’s) proper control, training, or education.” To the extent that the force is excessive or unreasonable, the educator in virtually all States is subject to possible civil and criminal liability.¹²

As applied at common law, *in loco parentis* granted educators vast discretion to use corporal punishment. *Ingraham* essentially serves as the last case in which the Supreme Court addressed the use of corporal punishment in public schools in the United States.¹³ Because the federal government has not addressed the issue, states must make the determination of whether to allow corporal punishment and, if so, what guidelines to impose.

While *Ingraham* addresses the constitutionality of corporal punishment under the Eighth Amendment, the question of discriminatory impact was not at issue in that case.¹⁴ Additionally, there is an unresolved circuit split as to when corporal punishment amounts to a violation of substantive due process.¹⁵ To determine the reasonableness of corporal punishment, courts assess the following circumstances: (1) the child’s age and maturity; (2) the behavior eliciting the punishment; (3) the instrument used; (4) the motivation of the person administering the punishment; and (5) the nature of the child’s injuries.¹⁶ The lack of judicial intervention and jurisprudence on corporal punishment in

12. *Id.* at 661 (footnotes and citations omitted).

13. Two years prior, the Supreme Court affirmed the D.C. Circuit’s finding that a North Carolina corporal punishment statute for public schools was constitutional. The Court recognized that the statute was not in violation of the Eighth Amendment. It further evaluated parental rights under the Fourteenth Amendment, stating that it was not a fundamental right, and the fact that the state had a compelling interest alone in implementing corporal punishment was sufficient justification. *Baker v. Owen*, 423 U.S. 907 (1975); 395 F. Supp. 294 (M.D.N.C. 1975).

14. *Ingraham*, 430 U.S. at 651–52 (addressing the constitutionality of corporal punishment under the Eighth Amendment and Fourteenth Amendment); *see also* Cynthia Price Cohen, *Beating Children is as American as Apple Pie*, 7 HUM. RTS. 24, 25–26 (1978) (“Justice White used a purposive approach in examining whether paddling violates the Eighth Amendment. He explains that the decisive element is . . . ‘whether the purpose of the deprivation is among those ordinarily associated with punishment, such as retribution, rehabilitation, or deterrence.’” (quoting *Ingraham*, 430 U.S. at 686–87)).

15. *See* McCarthy, *infra* note 18, at 236 (noting circuit splits among the following Circuit Courts: Fourth, Tenth, Fifth, and Seventh).

16. *Id.* at 238 (citing NELDA CAMBRON-MCCABE ET AL., PUBLIC SCHOOL LAW: TEACHERS’ AND STUDENTS’ RIGHTS (2004)).

classrooms has created a hole in the education system, leaving vulnerable students at the mercy of the state and its officials.

Additionally, Congress has not actively addressed the disproportionate impact of corporal punishment on racial minorities or how it may conflict with the CRA. Although most states have outlawed corporal punishment in public schools, federal law does not explicitly prohibit the practice.¹⁷ The lack of federal legislative intervention has allowed the practice to continue. As of 2016, the United States joins only one other industrialized nation in permitting corporal punishment in schools.¹⁸ Only nineteen states in America deem corporal punishment as lawful,¹⁹ with a majority of those states located in the South.²⁰ State law regarding corporal punishment varies from jurisdiction to jurisdiction.²¹ For example, some school districts go as far as specifying the dimensions of paddles used or how many times officials may hit the child.²² Table 1 provides relevant legislation in Southern states to illustrate the disparities in guidance that different state legislatures provide public schools.

Table 1

17. GLOB. INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILD., COUNTRY REPORT FOR THE USA 3 (2021), <http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/USA.pdf>.

18. Elizabeth Gershoff & Sarah A. Font, *A Federal Law Banning School Corporal Punishment Is Long Over Due*, UNIV. OF TEX. AT AUSTIN (Oct. 21, 2016), <https://news.utexas.edu/2016/10/21/federal-law-banning-school-corporal-punishment-is-needed/>; see also Martha M. McCarthy, *Corporal Punishment in Public Schools: Is the United States Out of Step?*, 83 EDUC. HORIZONS 235 (2005).

19. GLOB. INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILD., *supra* note 17; see also Christina Caron, *In 19 States, It's Still Legal to Spank Children in Public Schools*, N.Y. TIMES (Dec. 13, 2018), <https://www.nytimes.com/2018/12/13/us/corporal-punishment-school-tennessee.html>; Kennedy, *supra* note 4 (listing Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming as states that have not abolished corporal punishment as of 2019).

20. Tim Walker, *Why Are 19 States Still Allowing Corporal Punishment in Schools?*, NAT'L EDUC. ASS'N (Oct. 17, 2016), <https://www.nea.org/advocating-for-change/new-from-nea/why-are-19-states-still-allowing-corporal-punishment-schools>.

21. See *infra* text accompanying notes 23–27.

22. Gershoff & Font, *supra* note 6, at 3 (“Pickens County, Alabama, recommends that schools use a ‘wooden paddle approximately 24 inches in length, 3 inches wide and ½ inch thick’ that does not have holes, cracks, splinters, tape, or other foreign material” (quoting PICKENS CNTY. BD. OF EDUC., THE PICKENS COUNTY BOARD OF EDUCATION BOARD POLICY MANUAL 27 (2015))); *Should Corporal Punishment Be Used in K–12 Schools?*, BRITANNICA (Nov. 2, 2020), <https://www.procon.org/headlines/should-corporal-punishment-be-used-in-k-12-schools> (“Central Parish in Louisiana states that three swats with a paddle ‘approximately 20 inches long, 4 inches wide, and not exceeding ¼ inch in thickness’ is the appropriate punishment.” (quoting Sarah D. Sparks & Alex Harwin, *Corporal Punishment Use Found in Schools in 21 States*, EDUC. WEEK (Aug. 23, 2016))).

State	Relevant Legislation
Alabama	Except in the case of excessive force or cruel and unusual punishment, no certified or noncertified employee of the State Board of Education or any local board of education shall be civilly liable for any action carried out in conformity with state law and system or school rules regarding the control, discipline, suspension, and expulsion of students. ²³
Arkansas	A school district that authorizes use of corporal punishment in its discipline policy shall include provisions for administration of the punishment, including that it be administered only for cause, be reasonable, follow warnings that the misbehavior will not be tolerated, and be administered by a teacher or school administrator and only in the presence of a school administrator or his or her designee, who shall be a teacher or school administrator employed by the school district. ²⁴
Florida	Use corporal punishment according to school board policy and at least the following procedures, if a teacher feels that corporal punishment is necessary: 1. The use of corporal punishment shall be approved in principle by the principal before it is used, but approval is not necessary for each specific instance in which it is used. The principal shall prepare guidelines for administering such punishment which identify the types of punishable offenses, the conditions under which the punishment shall be administered, and the specific personnel on the school staff authorized to administer the punishment. 2. A teacher or principal may administer corporal punishment only in the presence of another adult who is informed beforehand, and in the student's presence, of the reason for the punishment. 3. A teacher or principal who has administered punishment shall, upon request, provide the student's parent with a written explanation of the reason for the punishment and the name of the other adult who was present. ²⁵
Louisiana	The governing authority of a public elementary or secondary school shall have discretion with respect to the use of corporal punishment; however, no form of corporal punishment shall be administered to a student with an exceptionality, excluding gifted and talented . . . Each governing authority of a public elementary or secondary school shall adopt such rules and regulations as it deems necessary to implement and control

23. ALA. CODE § 16-1-24.1(g) (2021).

24. ARK. CODE ANN. § 6-18-503(b)(1) (West 2021).

25. FLA. STAT. ANN. § 1003.32(1)(k) (West 2021).

	any form of corporal punishment in the schools under its jurisdiction. ²⁶
Tennessee	Any teacher or school principal may use corporal punishment in a reasonable manner against any pupil for good cause in order to maintain discipline and order within the public schools. ²⁷

Research has shown that students are subject to corporal punishment for several reasons²⁸—many of which arguably should not warrant such punishment. However, as discussed below, public schools can implement alternatives to corporal punishment to ensure the safety of children and their educational development.²⁹ At the federal level, many senators and representatives have advocated for the abolition of corporal punishment. Most recently, Representative Hastings of Florida introduced a bill to the House of Representatives in 2021 that is currently going through the legislative process.³⁰ In a similar attempt in 2019, Representative Hastings urged for his Congressional colleagues to pass the legislation “to make schools safe places where students can learn free from harm.”³¹ The issue of corporal punishment has also been heard before the Subcommittee on Healthy Families and Communities under the direction of the Committee on Education and Labor.³² Members of Congress should understand the issues students face in American public schools.³³ The next Part examines the detrimental effects of corporal punishment on minority children that government actors should consider when creating further judicial precedent and drafting legislation.

26. LA. STAT. ANN. § 17:416.1(2) (2021).

27. TENN. CODE ANN. § 49-6-4103(a) (West 2021).

28. See Walker, *supra* note 20 (listing drunkenness, fighting, bullying, cell phone use, inappropriate language, running in hallways, sleeping in class, and failing to turn in homework as reasons for corporal punishment); see also *Corporal Punishment in Schools Is Used Disproportionately on African-American Children and Children with Disabilities*, UNIV. OF TEX. AT AUSTIN (Oct. 5, 2016), <https://news.utexas.edu/2016/10/05/disproportionate-use-of-corporal-punishment-in-schools> (listing setting off fireworks in school).

29. See discussion *infra* Part III.

30. Ending Corporal Punishment in Schools Act of 2021, H.R. 1234, 117th Cong. (2021).

31. Kevin Derby, *Alcee Hastings Wants Congress to End Corporal Punishment in Schools*, FLA. DAILY (Jan. 24, 2019), <https://www.floridadaily.com/alcee-hastings-wants-congress-to-end-corporal-punishment-in-schools> (“The bill is being backed by several House Democrats including U.S. Reps. Steve Cohen of Tennessee, Eleanor Holmes-Norton of the District of Columbia and Tim Ryan of Ohio.”)

32. Additionally, the ACLU and Human Rights Watch provided a statement before the Subcommittee on Healthy Families and Communities in addressing corporal punishment. *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Fams. & Cmty. of the H. Comm. on Educ. & Lab.*, 111th Cong. (2010) (statement of ACLU & Hum. Rts. Watch) (recommending that Congress “[i]ntroduce and pass federal legislation prohibiting the use of corporal punishment in public schools”).

33. See *id.*

II. DETRIMENTAL EFFECTS OF CORPORAL PUNISHMENT ON MINORITY CHILDREN

The physical consequences of corporal punishment at the hands of the state within public schools vary. In the worst cases, corporal punishment may result in “broken bones, internal injuries, cuts and burns . . . [or] death.”³⁴ In *Garcia v. Miera*, a teacher “held [a nine-year-old student in the third grade] upside down by her ankles while [the principal] struck [her] with a wooden paddle.”³⁵ The Tenth Circuit recognized that while *Ingraham* permits corporal punishment, there is a point at which the punishment “violates the pupil’s substantive due process rights.”³⁶ There, the student bled through her clothes and received a permanent scar from the beating.³⁷ In another instance, a Mississippi student dropped out of school because he woke up on the floor with a broken jaw following a paddling.³⁸ Corporal punishment, as evidenced by *Garcia* and other anecdotes, may have long-lasting physical effects.

Aside from the physical consequences of corporal punishment, the long-lasting psychological effects and discriminatory impact of the practice leaves an impact on the victims’ lives. Much of the research and data regarding the effects of corporal punishment comes from the Department of Education’s Office for Civil Rights and the scholarly work of psychologists and educators dedicated to its abolition. For example, in further analyzing a report from the Office for Civil Rights, Dr. Elizabeth Gershoff argues that “what the adult cannot see is that either the child did not internalize how they should behave in the future, or they are resentful of being physically harmed or emotionally shamed, and days or weeks later they repeat or even escalate their misbehavior.”³⁹ However, this is only one example of the detrimental effects of corporal punishment on both the child and the educational environment.

A. Children’s Mental Health

Infliction of pain at an early age creates situations in which children associate their behavior with such punishment. Research has found that the use of corporal punishment has negative effects on children’s mental health. Such disciplinary action “signals to the child that a way to settle interpersonal conflicts is to use physical force and inflict pain.”⁴⁰ According to the Society

34. *The Negative Impacts of Corporal Punishment*, MEN ENGAGE, http://menengage.org/wp-content/uploads/2014/06/PositiveDiscipline_Factsheet_4.pdf.

35. *Garcia v. Miera*, 817 F.2d 650, 653 (10th Cir. 1987).

36. *Id.*

37. *Id.*

38. *Assessing Whether Corporal Punishment Helps Students, or Hurts Them*, PBS NEWSHOUR (Aug. 23, 2016), <https://www.pbs.org/newshour/show/assessing-whether-corporal-punishment-helps-students-hurts>.

39. Walker, *supra* note 20.

40. AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, *Corporal Punishment in Schools* (Sept. 2014), https://www.aacap.org/aacap/policy_statements/1988/Corporal_Punishment_in_Sch

for Adolescent Medicine, a myriad of psychological harms stem from corporal punishment, such as “difficulty sleeping, suicidal thoughts, anxiety, increased anger, feelings of resentment, and outbursts of aggression.”⁴¹ These psychological harms create a cycle of discipline that results in little improvement within the classroom.⁴² Ultimately, this creates a harmful learning environment.

In *Ingraham*, Dr. Scott Kester testified as an expert on the effects of corporal punishment.⁴³ Dr. Kester’s research found that “corporal punishment can damage a child’s development by engendering anxiety, frustration, and hostility, and by causing sheer pathological withdrawal or hatred of the school environment.”⁴⁴ When *Ingraham* was decided in 1977, courts hearing the issue were aware of the psychological effects of corporal punishment; however, the Court still found it to be constitutional. The only question now is: why should we let this outdated precedent continue when more recent evidence gives weight to its abolition?

B. Disproportionate Impact on Racial Minorities

Research shows that corporal punishment in public schools has disproportionately impacted racial minorities. Based on a Department of Education’s Office for Civil Rights’ report on corporal punishment for the 2013–2014 school year, “Black students, boys and disabled students continue to be physically punished at a greater rate than their classmates.”⁴⁵ Although some argue that the disparate impact stems from school selection, i.e., that

ools.aspx; see also Jonathan M. Purver, *Teacher’s Use of Excessive Corporal Punishment*, 20 AM. JUR. PROOF OF FACTS 2D § 511 (1979).

41. ACLU & HUM. RTS. WATCH, *Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools* (2009) (citing Donald E. Greydanus et al., *Corporal Punishment in Schools: Position Paper of the Society for Adolescent Medicine*, 32 J. ADOLESCENT HEALTH 385, 388 (2003)); see also Marie Falcone et al., *Ending Corporal Punishment of Preschool-Age Children*, BROOKINGS INST. (Oct. 13, 2020), <https://www.brookings.edu/blog/brown-center-chalkboard/2020/10/13/ending-corporal-punishment-of-preschool-age-children> (“Many studies find associations between corporal punishment and negative outcomes such as aggression and antisocial behavior, although the strength of these negative associations and the extent to which they represent causal effects continue to be debated.”).

42. Marc S. Atkins & Angela L. Walden, *The Coercive Cycle: A School to Prison Pipeline?*, PSYCHIATRIC TIMES (Mar. 25, 2020), <https://www.psychiatrictimes.com/view/coercive-cycle-school-prison-pipeline> (citing Jennifer E. Lansford & Kenneth A. Dodge, *Cultural Norms for Adult Corporal Punishment of Children and Societal Rates of Endorsement and Use of Violence*, 8 PARENTING: SCI. & PRAC. 257 (2008) (stating that corporal punishment is ineffective and counter-productive)).

43. Purver, *supra* note 40 (citing *Ingraham v. Wright*, 498 F.2d 248 (5th Cir. 1974)); see also Cohen, *supra* note 14, at 26 (“Dr. Scott Kester declared that he could not think of ‘a renowned or leading authority in psychology, educational psychology, educational research, or psychiatry, who advocates corporal punishment in the public schools or in the schools.’”) (citing *Ingraham*, 498 F.2d at 268).

44. Purver, *supra* note 40.

45. Caron, *supra* note 19.

“Black students [are] attending schools more likely to use [corporal] punishment,” the numbers show that, “White students are more likely to attend these schools.”⁴⁶

In Holmes County, Mississippi, Black students learn from a young age that they will more likely than not be subjected to corporal punishment throughout their primary and secondary education.⁴⁷ In seven states that continue to permit the practice, Black students account for 90% of the reported conduct.⁴⁸ Further, in the South, Black students are 40–70% more likely to be subject to corporal punishment compared to white students.⁴⁹ As such, corporal punishment should be abolished because it disproportionately impacts racial minorities, violating the Civil Rights Act of 1964.

C. School-to-Prison Pipeline

In addition to physical and mental consequences and the disproportionate impact on racial minorities, the use of corporal punishment reinforces the cycle of the school-to-prison pipeline. The current level of punishment leads to “high rates of childhood aggression and delinquency, with strong intergenerational transmission.”⁵⁰ The main culprits contributing to the school-to-prison pipeline are alternative schools where students with behavioral problems, such as drug use or fighting, are sent to for disciplinary reformation. Camelot Education, a for-profit company in states across the nation, had numerous reported incidents of excessive force against their students.⁵¹ Alternative schools run by for-profit companies still receive federal funding,⁵² and should still be held to the same standard to protect children from educators who wield influence and physical force. Additionally, these schools’ students are “overwhelmingly people of color.”⁵³ Due to the detrimental effects of corporal punishment on minority children, advocates against the practice have come together to raise awareness and urge government officials to ban the practice.

46. Walker, *supra* note 20.

47. Sarah Carr, *Why Are Black Students Being Paddled More in the Public Schools?*, HECHINGER REP. (Apr. 14, 2014), <https://hechingerreport.org/controversy-corporal-punishment-public-schools-painful-racial-subtext>. The school administrators who are the strongest proponents of corporal punishment in predominantly Black public schools are Black as well. *Id.*

48. Dick Startz, *Schools, Black Children, and Corporal Punishment*, BROOKINGS INST. (Jan. 14, 2016), <https://www.brookings.edu/blog/brown-center-chalkboard/2016/01/14/schools-black-children-and-corporal-punishment>.

49. *Id.* However, there is also evidence that Texan students have an equal likelihood in being subject to corporal punishment. *Id.*

50. Atkins & Walden, *supra* note 42.

51. Sarah Carr et al., “*That Place Was Like a Prison*”, SLATE (Mar. 8, 2017), http://www.slate.com/articles/news_and_politics/schooled/2017/03/camelot_schools_takes_its_discipline_too_far_say_current_and_former_students.html.

52. *Id.*

53. *Id.* (“Of the close to 900 students who attended Camelot schools in Chicago last school year, zero were white.”).

III. EFFORTS TO BAN CORPORAL PUNISHMENT

From local levels of government to Capitol Hill, advocates against corporal punishment in public schools have fought to abolish the practice. Throughout the nation, state legislatures proposed bills to address the issue.⁵⁴ In 2016, the National Women’s Law Center published “An Open Letter to End Corporal Punishment in Schools” urging local and state educational agencies and policymakers to “eliminate the use of corporal punishment” and “ensure that our schools are places where students and educators interact in positive ways that foster students’ growth and dignity.”⁵⁵ The outcry against corporal punishment does not end at American borders.

At the international level, those opposed to the practice argue that there is “evidence of the evolving standards of dignity [that] demonstrate[s] that corporal punishment is cruel and unusual and violates human rights law.”⁵⁶ In 2006, the United Nations Committee on the Rights of the Child addressed the issue of corporal punishment on the international stage, arguing that nations have an obligation to “move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures.”⁵⁷ Efforts to ban corporal punishment can improve the learning environment by reinforcing positive responses to conflict and alternatives to physical violence.

By eliminating violence from the classroom, students and educators may create an environment that is more conducive to learning. In an effort to ban corporal punishment in public schools in the United States, the Southern Poverty Law Center and the Center for Civil Rights Remedies recommend fostering “a relationship of trust and care between students and educators.”⁵⁸ Following the *Ingraham* decision, the National Education Association suggested alternative options to corporal punishment, including: “student-teacher agreements; rest periods, when necessary, for exhausted teachers or students; alternative experiences, such as special projects, for students who are turned off, as well as cooperative measures using the outside help of

54. See Caron, *supra* note 19 (noting that “another statewide ban on corporal punishment” has not occurred since 2011 in New Mexico).

55. *An Open Letter to End Corporal Punishment in School*, NAT’L WOMEN’S L. CTR. (Nov. 21, 2016), <https://nwlc.org/resources/open-letter-calling-for-end-to-corporal-punishment-in-schools> (supported by seventy-eight other organizations).

56. Nicole Mortorano, Note, *Protecting Children’s Rights Inside of the Schoolhouse Gates: Ending Corporal Punishment in Schools*, 102 GEO. L.J. 481, 507 (2014).

57. Comm. on the Rts. of the Child, *General Comment No. 8*, ¶ 2, U.N. Doc. CRC/C/GC/8 (Mar. 2, 2007).

58. WHITAKER & LOSEN, *supra* note 3, at 31–32 (suggesting Positive Behavioral Interventions and Supports (PBIS), restorative justice, mentoring, conflict resolution and peer mediation, and anger management and counseling as alternatives to corporal punishment).

psychologists, social workers, and laymen.”⁵⁹ As evidenced through the abolishment of corporal punishment in a majority of states, there are plenty of reasonable alternatives in disciplinary measures that have fewer negative effects on students and their wellbeing.⁶⁰

In a grassroots effort to abolish corporal punishment, national children organizations and parental movements advocate for “Spank Out Day” to raise awareness about the detrimental effects of corporal punishment and provide reasonable alternatives to the practice.⁶¹ Students have also taken it upon themselves to advocate for the end of this practice through “collecting signatures, lobbying school board members and spreading word of their dissent via social media.”⁶² The next Part will explain the current framework of Title VI in protecting racial minorities.

IV. CIVIL RIGHTS ACT OF 1964, TITLE VI: PROTECTING AGAINST DISPARATE IMPACT

Congress enacted the Civil Rights Act of 1964 in reaction to the discriminatory injustices that many vulnerable populations in the United States faced. Title VI of the CRA, introduced above, addresses race, ethnicity, and national origin discrimination in federally funded programs and institutions.⁶³ The enforcement of Title VI has not yet fully addressed the issues that racial minorities face through corporal punishment in public schools,⁶⁴ as evidenced by the disparate impact of the practice. The different branches of the federal government have supported the CRA’s claims throughout the decades. In 2000, former President Clinton published an executive order stating that “[t]he Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments . . . receiving Federal financial assistance.”⁶⁵ In the year following President Clinton’s executive order regarding Title VI, the Supreme Court addressed the distinction between unintentional and intentional discrimination in *Alexander*.

59. Cohen, *supra* note 14, at 27 (citing NAT’L EDUC. ASS’N, REPORT OF THE TASK FORCE ON CORPORAL PUNISHMENT (1972)).

60. *Id.*

61. Courtney Sperlazza, *National Spank Out Day—Positive Discipline Resources*, APTLY SAID (Apr. 30, 2012), <https://attachmentparenting.org/blog/2012/04/30/national-spank-out-day-positive-discipline-resources>.

62. Carr, *supra* note 47.

63. See 42 U.S.C. § 2000d.

64. See Cory Collins, *Saving Title VI*, TEACHING TOLERANCE MAG., Spring 2019, at 23 (stating that Title VI “requires schools to address any form of racial discrimination, including disparate suspension rates; unfair discipline practices; unequal access to courses; or any action that impairs students’ education because of their race or ethnicity”).

65. Exec. Order No. 13160, 65 Fed. Reg. 39775 (June 23, 2000).

A. Discrimination Under *Alexander v. Sandoval*

Courts have repeatedly refused to recognize a private right of action for individuals alleging unintentional discrimination under the disparate impact theory.⁶⁶ In *Alexander v. Sandoval*, the Supreme Court held that there is no private right of action “beyond intentional discrimination.”⁶⁷ In that case, the Court evaluated a claim of discrimination under Title VI. There, the Court rejected the argument supporting the applicability of disparate impact. In *Alexander*, the Alabama Department of Public Safety driver’s license examination was only administered in English—thus, creating an allegation of discrimination based on national origin.⁶⁸ While the case did not address a public school, it is still relevant in evaluating the statute because Title VI applies to *any institution* that receives federal financial assistance.

Justice Scalia, writing on behalf of the majority, evaluated the congressional intent in the promulgation of Section 601 of the CRA.⁶⁹ The Court recognized that private right of action only existed in cases where there was alleged *intentional* discrimination; however, the Court refused to extend the private right of action to *unintentional* discrimination.⁷⁰ Justice Scalia reasoned that disparate impact regulations fall under Section 602,⁷¹ which does not create a right to private action or any method of doing so.⁷² Absent the creation of such a right by Congress, the Court refused to hold that Title VI allowed for such a remedy for unintentional discrimination for individuals.⁷³

1. Circuit Courts

While the Supreme Court declined to address disparate impact claims of discrimination, circuit courts have recognized the need for a different standard based on circumstances that may present themselves on a factual basis. For example, the Fifth Circuit adopted a “deliberate indifference standard” under Title VI when determining student-on-student harassment.⁷⁴ There, the court provided a four-prong test to determine liability:

66. See *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Bhombal v. Irving Indep. Sch. Dist.*, 809 F. App’x 233 (5th Cir. 2020); *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398 (5th Cir. 2015).

67. *Alexander*, 532 U.S. at 285.

68. *Id.* at 278–79.

69. *Id.* at 284; see also 42 U.S.C. § 2000d.

70. *Alexander*, 532 U.S. at 284.

71. 42 U.S.C. § 2000d-1 (“Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action.”); *Alexander*, 532 U.S. at 288 (“Section 602 authorizes federal agencies ‘to effectuate the provisions of [§ 601] . . . by issuing rules, regulations, or orders of general applicability.’”).

72. *Alexander*, 532 U.S. at 289–90.

73. *Id.*

74. *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 408–09 (5th Cir. 2015).

- (1) If the harassment was “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to educational opportunities or benefits provided by the school” and the district,
- (2) Had actual knowledge,
- (3) Had “control over the harasser and the environment in which the harassment occur[ed],” and
- (4) Was deliberately indifferent.⁷⁵

The main goal was to ensure that students have access to educational opportunities. Circuit courts have considered allowing some sort of judicial interpretation to provide a remedy for unintentional discrimination. This “deliberate indifference” standard provided by the Fifth Circuit may be adopted by other circuits or the Supreme Court to better provide remedies for those directly impacted by corporal punishment. Without judicial intervention, we must rely on the Department of Education to faithfully enforce Title VI.

B. Department of Education, Office of Civil Rights

Although the Supreme Court has not recognized a private right of action for individuals under Title VI, claimants alleging discrimination may present their grievances to the Department of Education’s Office for Civil Rights.⁷⁶ The Department of Education under the Obama administration acknowledged the issues of unlawful disparate impact on the basis of race.⁷⁷ Former United States Secretary of Education, John B. King Jr., issued a call to action for state officials to address the use of corporal punishment in public schools.⁷⁸ In the same year, the Assistant Secretary for Civil Rights, Catherine E. Lhamon, issued a “Dear Colleague” letter to “remind States, districts, and public schools, including charter schools, of their obligation under Title VI.”⁷⁹ Individuals may file a

75. *Id.* (quoting *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 644, 650 (1999)). The standard of deliberate indifference has been applied to Title VI cases against school boards as well. See *Sewell v. Monroe City Sch. Bd.*, 974 F.3d 577 (5th Cir. 2020); *Bhombal v. Irving Indep. Sch. Dist.*, 809 F. App’x 233 (5th Cir. 2020).

76. The Office for Civil Rights “directs, coordinates, and recommends policy for activities that are designed to . . . [a]dminister the provisions of legislation and Departmental policy prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or age.” U.S. DEP’T OF EDUC., OFF. OF C.R., *US Department of Education Principal Office Functional Statements*, https://www2.ed.gov/about/offices/list/om/fs_po/ocr/intro.html.

77. Letter from John B. King, Jr., Sec’y, U.S. Dep’t of Educ., to Governors and Chief State School Officers (Nov. 22, 2016), <https://www2.ed.gov/policy/gen/guid/school-discipline/files/corporal-punishment-dcl-11-22-2016.pdf>.

78. *Id.* (urging states to “eliminate this practice from [their] schools, and instead promote supportive, effective disciplinary measures”).

79. Letter from Catherine E. Lhamon, Assistant Sec’y for C.R., U.S. Dep’t of Educ., to Colleagues (Dec. 12, 2016), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf> (addressing Title VI and its relationship with Title II and IDEA in creating equal opportunities in education for students of color with disabilities).

discrimination complaint with the Office for Civil Rights for further investigation.⁸⁰ The Office for Civil Rights, in determining whether there was a Title VI violation, follows a three part test:

- (1) Whether the criterion, policy, practice, or procedure has an adverse effect on students of a particular race as compared with students of other races.
- (2) Whether there is sufficient evidence to show that the school's criterion, policy, practice, or procedure is necessary to advance a legitimate, nondiscriminatory educational goal.
- (3) Whether there is a comparably effective alternative criterion, policy, practice, or procedure that would achieve the goal with less adverse impact.⁸¹

If a Title VI violation is found, the Department of Education may withhold federal funds or the Attorney General may bring a lawsuit.⁸² Title VI, however, explicitly prohibits discrimination on its face, and should be treated as such—regardless of whether it is intentional or unintentional. Therefore, corporal punishment should be abolished as a practice in the United States as it is inherently at odds with the Civil Rights Act.

V. ABOLISHMENT OF CORPORAL PUNISHMENT

The conversation of national education disciplinary reform should have the abolishment of corporal punishment at the top of its agenda. Title VI must wholly protect racial minorities from the discriminatory impact of corporal punishment given the history, data, and current social climate surrounding race relations in the United States. Evidence from experts and various professional organization show that the highly unregulated practice is inherently discriminatory.⁸³ Americans should not continue to turn a blind eye to the realities of such physical punishment on our youth—ignoring the detrimental

80. U.S. DEP'T OF EDUC., OFF. OF C.R., *Education and Title VI*, <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html> (“Complaint letters should explain who was discriminated against; in what way; by whom or by what institution or agency; when the discrimination took place; who was harmed; who can be contacted for further information; the name, address and telephone number of the complainant(s) and the alleged offending institution or agency; and as much background information as possible about the alleged discriminatory act(s).”); see also CONG. RSCH. SERV., *Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of 1964* (Apr. 4, 2019) (listing disparate treatment, retaliation, and racial harassment as the three major categories of complaints filed with the Office for Civil Rights); see also Collins, *supra* note 64 (“The role of the OCR, Lhamon says, ‘is to investigate every complaint over which it has jurisdiction [and] ensure that the office gets to the bottom of where facts actually are and whether schools need to take steps to address that student’s rights.’”).

81. Letter from Catherine E. Lhamon, *supra* note 79, at 9.

82. CONG. RSCH. SERV., *supra* note 80, at 4.

83. See *supra* Part III.

effects that may influence future outcomes—because the United States is an industrialized nation, among other reasons.⁸⁴

Similar to other controversial issues in the United States such as capital punishment, individuals may not be able to create an informed view on the issue based on their own personal experiences because they may lack understanding and perspective without direct impact.⁸⁵ Corporal punishment, although not always at odds with the substantive due process rights of children so long as it is not “arbitrary, capricious, or wholly unrelated to the legitimate state purpose of . . . maintaining an atmosphere conducive to learning,”⁸⁶ directly influences the educational experiences of racial minorities and other students who experience it secondhand. In a nation where the state may not impose corporal punishment on criminals,⁸⁷ the same protections should be extended to young children in public schools. Educators should always aim to provide a safe, nurturing environment for the future of America.

The goals of the state to maintain “an atmosphere conducive to learning” no longer outweigh the civil rights of the vulnerable populations that should be protected in our public schools. In fact, the use of corporal punishment may be more disruptive to the learning environment by taking the student away from the learning environment or inserting higher levels of authority into the classroom where it may not be necessary. The reasoning provided by the Supreme Court in *Ingraham* is antiquated and no longer applicable to modern understandings of the protection students should have in the classroom.⁸⁸ No child should have to go to school unsure if their actions will result in physical responses at the hands of their educators. As such, the Court should revisit the issues raised in *Ingraham* to better reflect the national and international consensus regarding corporal punishment.

Students should not be subject to violence by those who are entrusted to nurture their minds as educators. School officials simply cannot create a conducive learning environment based on a fear of violence and infliction of pain. Further, although not all students are directly subject to corporal punishment, observing the act in the classroom can cause the same chilling effect. If students experience their classmates who are racial minorities disciplined repeatedly at school, they might associate that experience to all racial minorities—even years after leaving the classroom. The doctrine of *in loco parentis* should also exhibit the grace and forgiveness a parent has for their child when they have done something wrong rather than going directly for an extreme form of punishment.

84. See Gershoff & Font, *supra* note 18.

85. See Cohen, *supra* note 14, at 26.

86. *Ingraham v. Wright*, 525 F.2d 909, 916–17 (5th Cir. 1976).

87. See NAT’L ASS’N OF SECONDARY SCH. PRINCIPALS, *Corporal Punishment* (July 2018), <https://www.nassp.org/corporal-punishment-2/> (“[C]orporal punishment is no longer tolerated in the military, prisons, or mental institutions.”).

88. *Ingraham*, 430 U.S. 651, 683 (1977).

Title VI of the CRA explicitly prohibits discrimination.⁸⁹ Therefore, individuals experiencing these unfair practices should not have to argue about whether or not discrimination exists when the data clearly shows that racial minorities experience corporal punishment at disproportionate rates as compared to their white classmates.⁹⁰ Further, school districts may be underreporting their disciplinary actions and minority students may not know that they have these rights.⁹¹ The power dynamic between a child and an educator may influence whether a resolution is ultimately reached. Without the abolishment of this practice, institutional racism will continue to fester in our public schools by allowing discrimination at the hands of the state. The abolishment of corporal punishment in public schools will not only protect racial minorities, but all children, from this form of modern-day child abuse. However, if the federal government chooses not to address the issue, alternatives for individuals to achieve legal redress for the violation of this civil right should be considered.

A. Alternatives to Abolishment at the Federal Level

As evidenced through the efforts to ban corporal punishment, the practice in public schools can be addressed at several levels of governance. The best course of action to protect the civil rights of racial minorities in public schools is at the national level because it will have the greatest impact as opposed to allowing for states to determine such regulation, or even individual school districts. A uniform standard will allow for widespread protection and enforcement by the Department of Education and educators across the country. Such a standard also has implications for other federally funded institutions. There are several strong paths forward to ensure the protection of minority children in the educational environment: (1) Congress should amend Title VI to allow for private actions for disparate impact; (2) the Supreme Court should overturn the precedent set by *Alexander*; or (3) the Department of Education should adopt a zero-tolerance approach to unintentional discrimination.

First, Congress should amend Title VI to grant a private right of action for individuals who are disproportionately impacted by corporal punishment based on their race. Evidence clearly shows that racial minorities are significantly impacted by corporal punishment policies in public schools.⁹² Congressman

89. 42 U.S.C. § 2000d.

90. See *supra* Part II.

91. See Falcone et al., *supra* note 41 (“While it’s hard to know the extent to which corporal punishment might be underreported, the U.S. Government Accountability Office identified evidence of underreporting in CRDC data of disciplinary incidents involving students with disabilities.”); see also U.S. GOV’T ACCOUNTABILITY OFF., GAO-19-551R, K-12 EDUCATION: EDUCATION SHOULD TAKE IMMEDIATE ACTION TO ADDRESS INACCURACIES IN FEDERAL RESTRAINT AND SECLUSION DATA (2019) (providing background on underreporting in disciplinary actions by public schools); Collins, *supra* note 64 (“[N]either educators nor families knew what responsibilities public schools held under Title VI, let alone the processes for holding schools accountable.”).

92. See *supra* Part II.

Hastings introduced the Ending Corporal Punishment in Schools Act of 2021;⁹³ however, this is not enough to address the overall issues that racial minorities face in our public school system. The implications of amending Title VI to allow individuals to bring forth their own actions will signal to the nation that Congress is aware of the ongoing institutional racism in education. Further, the amendment process should involve a bipartisan effort⁹⁴ because of the nature of the issue; it is one of basic human rights.⁹⁵ Granting the private right of action will only strengthen the CRA by addressing the racial discrimination.

The Office for Civil Rights under the Department of Education is uniquely situated in its ability to carry out the protections of Title VI and investigate allegations of discrimination.⁹⁶ Similar to the use of federal spending to enforce compliance with antidiscrimination laws combatting intentional discrimination in the era of desegregation,⁹⁷ federal funds should be used to limit unintentional discrimination as well. Members of Congress recognized “that administrative action alone could not solve the entire problem,”⁹⁸ and that Congress had more flexibility in using its power to eliminate discrimination in public schools.⁹⁹ Members of Congress must rally together to find innovative, yet practical, solutions to this issue. Additionally, they should voice their opinions on the national level to spread awareness to the American public.

Second, the Supreme Court should overturn their decision in *Alexander* because its holding is inherently at odds with the intent of the CRA. In *Alexander*, the Court held that individuals do not have a private right of action on the basis of unintentional discrimination.¹⁰⁰ However, other provisions under the CRA allow for disparate impact claims.¹⁰¹ As such, the same approach should be allowed under Title VI. Under the current framework, circumstantial evidence that “some . . . racial animus was likelier than not” can be provided in order to prove a violation of Title VI.¹⁰² Because of the difficulty

93. Ending Corporal Punishment in Schools Act of 2021, H.R. 1234, 117th Cong. (2021).

94. See Park, *infra* note 116.

95. See *supra* notes 55–91 and accompanying text.

96. CONG. RSCH. SERV., *supra* note 80, at 1 (“Title VI continues to play a central part in OCR’s mission of protecting civil rights on campuses at all educational levels, and in institutions both public and private.”) (citing U.S. DEP’T OF EDUC., OFF. FOR C.R., *Race and National Origin Discrimination: Frequently Asked Questions*, <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html>) (“All public school districts are covered by Title VI because they receive some federal financial assistance. All public colleges and universities and virtually all private colleges and universities are covered because they receive such assistance by participating in federal student aid programs.”).

97. *Id.* at 2–3 (“[The] basic premise [is] that federal dollars should not go to support programs or institutions that discriminate based on race.”).

98. *Id.* at 3 (quoting 110 CONG. REC. 7065 (1964) (statement of Sen. Ribicoff)).

99. *Id.*

100. *Alexander*, 532 U.S. 275, 293 (2001).

101. See, e.g., 42 U.S.C. § 2000e.

102. CONG. RSCH. SERV., *supra* note 80, at 7 (citing *Rashdan v. Geissberger*, 764 F.3d 1179, 1182 (2014)).

of establishing animus, there is a lack of access to justice for racial minorities who wish to seek legal redress under Title VI in court. Further, those who experience discrimination as a result of corporal punishment must rely on the Department of Education to address these issues. Individuals should have the right to personally hold the state accountable for discriminatory actions.

Legislative intent as interpreted by the Court alone should not determine the availability of civil rights protections that should be afforded to those who Title VI clearly intended to protect. Although *Alexander* has been the controlling law of Title VI for almost twenty years, the Supreme Court had previously addressed the use of disparate impact theory under Title VI in *Lau v. Nichols* in 1974.¹⁰³ In *Lau*, the Court overturned the Ninth Circuit and held that a public school violated Title VI when they did not provide adequate meaningful opportunity for education when it unintentionally discriminated against the student on the basis of national origin.¹⁰⁴ The Court reasoned that the respondent school district in this case “contractually agreed to ‘comply with title VI of the Civil Rights Act of 1964 . . . and all requirements imposed by or pursuant to the Regulation.’”¹⁰⁵ The Court further illustrated congressional intent by quoting Senator Humphrey: “[s]imple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”¹⁰⁶ Clearly, congressional intent has previously been interpreted in such a way that would protect racial minorities, and the Supreme Court may overturn such precedent to increase access to justice and protect vulnerable students from corporal punishment.

Third, the Department of Education should adopt a zero-tolerance approach to unintentional discrimination through increased enforcement by the Office for Civil Rights in regulating criteria, policies, practices, or procedures and resolving cases.¹⁰⁷ Increased enforcement will pressure school districts to implement disciplinary measures that do not disproportionately impact racial minorities. The Department of Education should also provide more guidance to school districts by providing examples of what may be considered violations of Title VI.¹⁰⁸ The current lack of uniformity has created inequities in policing corporal punishment across the nation.¹⁰⁹ Regulation of the obligations under

103. *Id.* at 7–10.

104. *Lau v. Nichols*, 414 U.S. 563, 569 (1974).

105. *Id.* at 568–69 (quoting 45 C.F.R. § 80.3 (1973)).

106. *Id.* at 569 (quoting 110 CONG. REC. 6543 (Sen. Humphrey, quoting from President Kennedy’s message to Congress, June 19, 1963)).

107. *See* Collins, *supra* note 64 (“Only a fraction of cases reported to the OCR are ever resolved. In 2016, that number was 57—out of 2,439 complaints covered by Title VI.”).

108. *See, e.g.*, CONG. RSCH. SERV., *supra* note 80 (providing examples of violations of Title VI).

109. *See* Carr, *supra* note 47 (“But students complain that teachers sometimes stray from both the letter and the spirit of the regulations: administering the paddle without permission of the principal, failing to find a female staff member to paddle older girls, or adding embellishments—holes in the wood, wrapping two paddles together with tape—that make the blows hurt more.”).

Title VI need to be upheld through a more accurate reporting system and increased federal government intervention to protect vulnerable populations. The Department of Education should exercise its power to withhold funds to public schools that fail to comply with the obligations they have under Title VI to weed out bad actors.

Under the current process, the Department of Education addresses alleged discriminatory disciplinary methods by sending a letter to the superintendent of the accused school district regarding the Office for Civil Rights' findings in an overview.¹¹⁰ The school district then enters into a Voluntary Resolution Agreement which provides action items and reporting requirements.¹¹¹ However, the use of these letters and agreements are not sufficient in enforcing compliance with Title VI.¹¹² The Department of Education should implement more accountability measures for the purposes of combating discrimination.¹¹³ The agency should have the ability to reach down into localities in instances where there is clear evidence of discrimination—intentional or otherwise. Because the quality of education citizens receive is of absolute importance to all state actors, the American public relies on the Department of Education to provide more accountability and guidance.

The national effort in addressing the issue of corporal punishment has been acknowledged by every branch of the federal government; however, there is still hesitation in full enforcement of the CRA as evidenced by the continued presence of corporal punishment in our public schools.¹¹⁴ In reality, the federal government must identify corporal punishment as a form of modern-day child abuse of racial minorities by the state. The federal government—whether that be the executive branch through executive order, the judiciary through overturning precedent, or the legislature through amendment—should use the same force that was required of the federal government during the initial implementation of the Civil Rights Act to desegregate schools. The current status quo does not recognize the detrimental effects that these practices have on children and the nation as a whole. Absent any increased federal oversight or regulation, the federal government should at the very least provide strict limitations on corporal punishment. However, there is a lack of similarly situated countries that the United States could look to in creating a standard for corporal punishment.¹¹⁵ This further evidences the international consensus of industrialized nations against the use of corporal punishment.

110. U.S. DEP'T OF EDUC., OFF. FOR C.R., *Discriminatory Discipline*, <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/roi-issue02.html> (click "Case Resolutions" tab) (last visited Oct. 7, 2021).

111. *Id.*

112. See Collins, *supra* note 64 ("Families seeking justice for children who have been victimized by discrimination or harassment may not find it.")

113. Instead of a trickle-down approach, it may be more effective to implement a grassroots approach similar to initiatives against bullying or drug use.

114. See Collins, *supra* note 64 (as of 2019, there are over 1,500 pending cases with the Office for Civil Rights regarding Title VI violations).

115. See Gershoff & Font, *supra* note 18.

B. Efforts to Ban Corporal Punishment at the State Level

Alternatively, individual states that permit corporal punishment should: (1) abolish corporal punishment through legislation; (2) provide a uniform standard to lessen the disproportionate impact on racial minorities; or (3) improve public schools in such a way that would decrease the amount of corporal punishment. The role of the states can further influence other jurisdictions to follow suit and create a forum in which advocates can create impactful judicial precedent, legislation, and policies.

First, state legislatures should adopt legislation that ends the practice of corporal punishment. With the lack of activism in both the federal and state judiciaries, the state legislature must amend their current education codes to abolish the practice. The remaining jurisdictions that permit corporal punishment should look to recent legislative amendments to ban it. New Mexico serves as the most recent state to formally abolish the practice.¹¹⁶ Although the most recent formal abolishment of corporal punishment occurred in 2011, North Carolina called for a de facto ban on the practice in 2018.¹¹⁷

Second, short of abolishment, states should provide school districts with a strict, uniform standard to lessen the disproportionate impact on racial minorities. Increased accountability and reporting will, at the very least, decrease the amount of abuse in the classroom. With the issues surrounding the frequency of paddling in classrooms, disparities in requesting permission from both parents and school administrators, and the disproportionate impact on racial minorities, local offices of the Department of Education must police these actions. Accountability begins from the level of reporting and the system currently in place.

Finally, states must address the underlying issues that warrant corporal punishment in public schools. As discussed above, states that have abolished the practice implemented reasonable alternatives to better address disciplinary issues in the classroom. For example, schools should recruit and retain administrators and teachers who will work to adopt alternatives to corporal punishment and reject its continued practice.¹¹⁸ However, local school districts should also recognize the challenges not only lie within the guidelines, but also

116. Zelig Pollon, *New Mexico Bans Spanking of Children in Schools*, REUTERS (Apr. 7, 2011), <https://www.reuters.com/article/us-spanking-newmexico/new-mexico-bans-spanking-of-children-in-schools-idUSTRE73648X20110407>.

117. Ryan Park, Opinion, *The Supreme Court Didn't Ban Corporal Punishment. Local Democracy Did.*, WASH. POST (Apr. 11, 2019), https://www.washingtonpost.com/opinions/the-supreme-court-didnt-ban-corporal-punishment-local-democracy-did/2019/04/11/b059e8fa-5554-11e9-814f-e2f46684196e_story.html. The final county in North Carolina to prohibit corporal punishment was Graham County. However, “when the end came, it was uncontroversial—the board voted unanimously to end the practice with little public debate.” *Id.*

118. See Carr, *supra* note 47 (“The recruitment of younger teachers through alternative programs like Teach for America has contributed to the decline [of corporal punishment], because they are far less likely to embrace corporal punishment.”).

from the individual upbringings of students.¹¹⁹ As a result, states must prioritize increased awareness within their own communities.

States that continue to permit corporal punishment should answer the call to further move the needle and promote access to quality education for all by providing practical steps to eliminate the abuse. Absent any intervention at the federal, state, and local levels, institutional discrimination will fester within our public schools. The most impactful path forward lies with coordinated efforts between government and the public to recognize the issues and weed out the bad actors who reinforce a traditional, inhumane form of discipline that no longer has a place in our classrooms.

CONCLUSION

The history of corporal punishment clearly illustrates that such disciplinary methods are a detriment to the educational experience and should be wholly abolished. Educators should teach students to resolve conflicts at school with alternative methods rather than resort to violence. Congress should amend Title VI of the Civil Rights Act to protect racial minorities in our public school system by allowing them to have a private right of action for unintentional discrimination. Absent any federal regulation, there has been a call to action for state governments to address the issue, claiming that these “decisions about whether to harm young children [are left] to local leaders, educators, or even parents.”¹²⁰ The issue of disproportionate impact on racial minorities who experience corporal punishment calls for necessary disciplinary reform in the education realm that is long overdue.

Title VI should be used as a sword, not a shield, to protect vulnerable populations as it was originally intended. The American public entrusts government leaders to uphold and enforce the laws that past generations put in place to provide legal redress. Without such enforcement, inherent discrimination in the disciplinary process will continue to fester in American public schools—an issue that our federal government aimed to address decades ago with the desegregation of public schools. Absent recognition that corporal punishment should be wholly abolished, the federal government should work to create a legal remedy for individuals who experience disproportionate impact in the enforcement of corporal punishment policies in federally funded public schools. If the federal government refuses to do so, states should act to either abolish or limit such discretion granted to school districts. The future of America is relying on our legislators, judges, and advocates to address these injustices.

119. *Id.* (“[C]orporal punishment is part of their identity, tied in with personal journeys of overcoming obstacles and growing into accomplished adults.”).

120. Falcone et al., *supra* note 41 (addressing corporal punishment of preschool-age children).