HITTING BACK: METHODS OF ABOLISHING CORPORAL PUNISHMENT IN THE FLORIDA SCHOOL SYSTEM

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Abstract

The use of corporal punishment against children has fallen more and more out of vogue in the past half-century as research has shown that the practice only harms children. But, despite that research and the growing public distaste for the practice, the use of corporal punishment in schools remains legal in eighteen states, including Florida. A fifty-year-old Supreme Court case, *Ingraham v. Wright*, upholds the legality of corporal punishment in schools. The Court has not revisited the topic despite changes in public attitudes and research and that it was confronted with the ability to revisit it as recently as 2021.

In the 2017–2018 school year, about 70,000 students received corporal punishment in the United States. Although this is a small minority of the millions of students in the U.S. public school systems, this Note argues that even one instance of in-school corporal punishment is too many. After arguing that in-school corporal punishment should be abolished, this Note explores the federal precedent related to the practice. Finding the federal precedent lacking, this Note turns to the Florida constitution for answers. Finally, this Note calls on state legislators and citizens to enact new legislation or a constitutional amendment to abolish the practice.

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INTRODUCTION

In April 2021, a mother received a phone call from Central Elementary, a public school in Florida's Hendry County School District.[1] The school clerk informed her that her six-year-old daughter had scratched her school-issued laptop with a paper clip; there would be a $50 fine for the damages.[2] The clerk also mentioned something about paddling and requested that she come to the school.[3] But the mother, a Spanish-speaking immigrant, said she did not fully understand.[4] Assuming she needed to pay the fine, she went to the school.[5]

Upon arrival, the mother was directed to the principal's office where her daughter was already present.[6] As the principal began screaming at the six-year-old girl, the alarmed mother discreetly started recording the incident.[7] The video shows the principal and a school clerk forcefully placing the girl on a chair and preparing to spank her with a wooden paddle.[8] The principal paddled the girl three times, despite the girl's distress and attempts to resist.[9] Following this, a doctor's examination revealed bruising consistent with the paddle, and the girl later showed signs of severe anxiety and depression, requiring psychological counseling and transfer to another school.[10]

Although the Florida Department of Education found that the principal violated several laws and regulations, it only sanctioned the principal to a three-month suspension followed by two years of probation.[11] The State Attorney's Office for the

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1. *See* Val Simpson & Melissa Montoya, *Hendry County School Principal Under Investigation for Paddling 6-year-old Student In Front of Child's Mother*, WINK NEWS (May 5, 2021), https://www.winknews.com/2021/04/29/hendry-county-school-principal-under-investigation-for-paddling-6-year-old-student-in-front-of-childs-mother/ [https://perma.cc/Y4TM-KCZJ].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* After the first strike, the child turned around, but the principal pinned her down by her small wrists and yelled, "Put your hands down!" before striking her twice more. Johnny Diaz, *Florida Principal Under Investigation for Paddling 6-Year-Old Student, Authorities Say*, N.Y. TIMES (May 3, 2021), https://www.nytimes.com/2021/05/03/us/student-paddled-florida-central-elementary-school.html [https://perma.cc/977L-DSFA].

10. Diaz, *supra* note 9.

11. *Id.*

Twentieth Judicial Circuit investigated the incident, but ultimately did not press charges.[12] The state attorney stated that a parent has the right to use corporal punishment against her child and can delegate that right to others, including school officials.[13] But notably, Hendry County—where the school is located—prohibits corporal punishment.[14] Florida state law[15] and federal law,[16] however, do not. Schools are one of the last places that corporal punishment remains legal—the practice has been federally banned in prisons, the military, juvenile detention centers, childcare centers, treatment centers, and adult education centers.[17]

When the U.S. Supreme Court held that in-school corporal punishment did not violate the Eighth or Fourteenth Amendments, the Court implicitly pushed the legality of in-school corporal punishment to the states.[18] Consequently, some have lauded the near-abolishment of in-school corporal punishment as a state and local government success story because most states and school districts subsequently banned

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12. The state attorney's investigation found that the mother had greater knowledge of the paddling than she suggested in the media coverage—the principal claimed that the mother had requested the principal spank her daughter because she was having a hard time disciplining her daughter at home. Finding either that the mother gave the principal permission to hit the child or that the principal reasonably believed that the mother had given her permission, the state attorney concluded that the principal did not violate any Florida laws. *See* Letter from Abraham R. Thornburg, Deputy Chief Assistant State Att'y, to Thomas Lewis, Clewiston Police Dep't Sgt. (May 7, 2021), https://www.sao.cjis20.org/wp-content/uploads/2021/05/SAOMemo.pdf [https://perma.cc/LN6X-72RW] [hereinafter *Letter from Thornburg*].

13. *See Letter from Thornburg*, *supra* note 12, at 3.

14. *See* Hendry Cnty. Sch. Bd. Pol'y Manual, P.O. 5600 (2022), https://go.boarddocs.com/fl/hendry/Board.nsf/Public?open&id=policies [https://perma.cc/7UMV-JJTK] ("The Superintendent shall designate sanctions for the infractions of rules, *excluding corporal punishment* . . . ." (emphasis added)) [hereinafter Hendry Pol'y Manual].

15. FLA. STAT. ANN. § 1003.32(1)(k)(1–3) (West) (allowing school boards to elect to create policies that enable the use of corporal punishment in schools).

16. *See* Ingraham v. Wright, 430 U.S. 651, 682 (1977) (holding that the Eighth Amendment's Cruel and Unusual Punishments Clause does not extend to corporal punishment in schools, and the practice is not a violation of the Fourteenth Amendment's Due Process Clause).

17. *See* Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968) (holding that use of corporal punishment in prisons violates the Eighth Amendment's Cruel and Unusual Punishments Clause); Elizabeth T. Gershoff & Sarah A. Font, *Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy*, 2016 SOC. POL'Y REP. 1, 13 [hereinafter Gershoff & Font, *Corporal Punishment in U.S.*].

18. *See* Ingraham v. Wright, 40 U.S. 651, 682 (1977).

the practice.[19] The use of corporal punishment in schools has decreased substantially in the last half-century.[20] But, while some students have not been threatened with corporal punishment at school for decades, others continue to fear the force of the paddle each time they enter their classrooms.[21] Studies consistently show that corporal punishment has wide-ranging negative impacts on students with no corresponding improvements in their behavior.[22] Thus, there is no compelling argument for the continued use of the practice. Allowing states to continue using corporal punishment in schools leads to inconsistent treatment of children across and within states. And some school districts are starting to bring the practice back.[23]

Florida is a prime example of the inconsistent treatment of students even in the same state.[24] Florida law allows school districts to enact policies that permit corporal punishment, as

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19. *See* Ryan Park, *The Supreme Court Didn't Ban Corporal Punishment. Local Democracy Did.*, WASH. POST (Apr. 11, 2019, 6:33 PM), 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 [https://perma.cc/PNN2-SX5L] [hereinafter Park, *Local Democracy*].

20. Press Release, Off. for Civ. Rights, U.S. Dep't of Educ., Corporal Punishment in Public Schools 1 (Mar. 2023) (on file with author) [hereinafter *OCR Press Release*] (showing a thirty-five percent drop in reported cases of corporal punishment in public schools between the 2013–2014 and 2017–2018 school years).

21. *See* Gershoff & Font, *Corporal Punishment in U.S.*, *supra* note 17, at 32 tbl.1 (listing the states that ban and permit corporal punishment).

22. Joel Warsh, *Spanking is Harmful to Children. Why do Schools Still Allow It?*, WASH. POST (Sept. 7, 2022), https://www.washingtonpost.com/opinions/2022/09/07/spanking-paddling-missouri-schools-corporal-punishment-parents/ [https://perma.cc/95US-GYBM] (stating that studies have shown a link between corporal punishment and child aggression, future spousal assault, and adult mental health problems, and that there are no links between spankings and improved child behavior); Elizabeth Gershoff et al., *School Corporal Punishment and Its Associations with Achievement and Adjustment*, 63 J. APPLIED DEV. PSYCH. 1, 1 (2019) [hereinafter Gershoff et al., *Associations*] (finding that students who had experienced any corporal punishment were more likely to have lower high school grade point averages (GPAs)).

23. A Missouri school board reinstated corporal punishment in June 2022—the same school board had previously banned the practice in 2001. *See* Claudette Riley, *Missouri School District Reinstates Spanking as Punishment: 'We've had People Actually Thank Us'*, SPRINGFIELD NEWS-LEADER (Aug. 25, 2022, 8:31 AM), https://www.news-leader.com/story/news/education/2022/08/23/missouri-school-district-reinstates-spanking-corporal-punishment-cassville/7872893001/ [https://perma.cc/5W3Y-YH9H].

24. FLA. STAT. ANN. § 1003.32(1)(k)(1–3) (West).

long as they meet minimum requirements.[25] Nineteen school districts have opted to do so.[26] Because of the inconsistencies in the law regarding corporal punishment, Florida courts have not imposed criminal sanctions related to in-school corporal punishment. Thus, the lack of statewide enforcement cuts against local initiatives to ban the practice; this was seen in the Hendry County incident where, despite Hendry County School District's explicit ban on corporal punishment,[27] the state attorney declined to press any charges against the principal.[28]

Fortunately, criminal punishment is not the only available avenue for justice. Administrative bodies may also place sanctions on bad actors. As mentioned above, the Florida Department of Education found the Hendry County principal had violated several state statutes and administrative rules, leading the Department to suspend her teaching license for three months.[29] The mother and daughter also sued the school district and school board, bringing tort claims including battery and negligent hiring.[30] The civil case ultimately settled, and the girl and her family received about $125,000.[31] But such administrative hearings and tort claims do not go far enough to protect our Nation's children. Teachers and principals must be subject to more than school-based sanctions for causing harm to students. And tort claims based on a reasonableness standard imply that some level of corporal punishment in schools is reasonable. This Note argues that all in-school corporal punishment is inherently unreasonable and that the

25. *Id.* (requiring that all school board policies that allow corporal punishment include at least one adult witness and a written explanation of the reason for the corporal punishment to a parent upon request).

26. Jesse Scheckner, *Lawmakers Renew Push for Parental Consent, Limits on Corporal Punishment in Schools*, FLA. POL. (Jan. 31, 2024), https://floridapolitics.com/archives/656382-lawmakers-renew-push-for-parental-consent-limits-on-corporal-punishment-in-schools/# [https://perma.cc/558C-GLLN]. These nineteen school districts serve less than five percent of Florida's students, but the impacts of the statute go beyond those districts. *Id.*

27. *See* Hendry Pol'y Manual, *supra* note 14 ("The Superintendent shall designate sanctions for the infractions of rules, *excluding corporal punishment* . . . ." (emphasis added)).

28. *See Letter from Thornburg*, *supra* note 12, at 1.

29. *See* Corcoran v. Carter, Case No. 22-0311-RA, at 5, 14 (Fla. Educ. Pracs. Comm'n Sept. 19, 2022) (final order).

30. *See* Complaint at 5–15, J.M.R. v. Hendry Cnty. Sch. Dist., No. 2022-CA-196 (Fla. Cir. Ct. Apr. 7, 2022) (listing allegations).

31. *See* Order Approving Minor Settlement Agreement at 4, *J.M.R.*, No. 2022-CA-196 (Fla. Cir. Ct. Sept. 6, 2023).

practice must be abolished to treat all students with the dignity and respect that they deserve.

This Note attempts to find a legal framework for abolishing corporal punishment in schools. Part I begins by describing what corporal punishment is and where it is still being practiced. It then explains why the elimination of all corporal punishment is necessary to achieve an equitable education system. Part II describes the federal legal framework for abolishing or at least limiting in-school corporal punishment, looking specifically at the ways in which courts have approached the topic through the Fourth, Eighth, and Fourteenth Amendments. Because the federal frameworks are insufficient, Part III discusses potential ways to eliminate corporal punishment specifically within Florida through Florida's constitutional right to privacy and the state's promise of a high quality, uniform education. Finally, this Note calls on state legislators to enact a statute or citizens to ratify a constitutional amendment that prohibits the use of corporal punishment—the most surefire way of protecting students.

I. WHERE IS IN-SCHOOL CORPORAL PUNISHMENT HAPPENING AND WHY DOES IT MATTER?

Florida is one of eighteen states that currently allow corporal punishment in schools.[32] In the 2017–2018 school year, 69,492 students in the United States received some form of corporal punishment in a public school.[33] Although the practice has been declining generally, even one instance of legal or illegal corporal punishment is too many because of the impacts on both the individual students and communities at large.

A. *What is In-School Corporal Punishment?*

The legality, effectiveness, and impact of corporal punishment inflicted by family members or otherwise at-home has also been researched by many,[34] but, because the legal

32. *Cruel Schools*, LAWS. FOR GOOD GOV'T 4 (Apr. 2023), https://www.lawyersforgoodgovernment.org/corporal-punishment-report [https://perma.cc/8WXC-5BBZ].

33. *OCR Press Release*, *supra* note 20 (showing a thirty-five percent drop in reported cases of corporal punishment in public schools between the 2013–2014 and 2017–2018 school years).

34. *See, e.g.*, Blake S. Rutherford, *Corporal Punishment after the Greenbrier, Arkansas Incident: Do Children Have the Rights They Deserve at School and at Home?*, 9 WAKEFOREST J.L. & POL'Y 355, 386–417 (2019) (considering the legal frameworks justifying corporal punishment at home and potential legislative reform).

framework and the moral questions about it are inherently different,[35] this Note focuses solely on the use of corporal punishment in schools. For this Note, "in-school corporal punishment" refers to corporal punishment inflicted on students by school officials—such as teachers, teachers' aides, and administrators—whether it is legally sanctioned (i.e., permitted by state statute or school board policy) or illegal (i.e., occurring despite state or local ordinances prohibiting in-school corporal punishment).

The State of Florida defines corporal punishment as

> the moderate use of physical force or physical contact by a teacher or principal as may be necessary to maintain discipline or to enforce school rule. However, the term "corporal punishment" does not include the use of such reasonable force by a teacher or principal as may be necessary for self-protection or to protect other students from disruptive students.[36]

Because of this Note's focus on corporal punishment within the Florida school system, this Note adopts Florida's definition, focusing on the infliction of physical pain through force or contact. Similarly, this Note excludes the use of force as a means of self-defense and defense of others from its definition of corporal punishment because of the inherently different policy considerations related to self-defense. Here, in-school corporal punishment is limited to physical harm or pain purposefully inflicted on a student by a school official or employee intended to deter student behavior that the school, school district, or state has deemed negative.

B. *Where is Corporal Punishment Still Happening Within the United States?*

Corporal punishment is still expressly legal in eighteen states, including Alabama, Arkansas, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming.[37] Alabama, Arkansas, and Mississippi have the highest instances of in-

35. *See id.* at 355–56 (comparing the legal frameworks of corporal punishment in schools versus at home).

36. FLA. STAT. ANN. § 1003.01(7) (West).

37. *Cruel Schools*, LAWS. FOR GOOD GOV'T 4 (Apr. 2023).

school corporal punishment: about half of the schools in each of these three states use corporal punishment.[38]

This list shows a heavy concentration in the Southern states—this does not seem to be a coincidence.[39] In-school corporal punishment has its roots in slavery and lynching.[40] It is unsurprising, then, that the practice remains most prominent in areas where slavery once predominated. Corporal punishment's connection to slavery poses important questions when combined with the well-established data showing that corporal punishment is used most often against Black boys and used far more often against Black girls than white girls.[41] Although this may violate the Equal Protection Clause, such analysis is beyond the scope of this Note.

C. *Why is Abolishing Corporal Punishment Necessary?*

Despite a lack of federal prohibition of in-school corporal punishment, the practice has decreased steadily over the past half-century.[42] Some argue that the decrease in in-school corporal punishment without federal intervention is an example of state and local government success.[43] Additionally, some school officials advocate for the continued use of in-school corporal punishment, believing that the practice acts as a strong deterrent for negative behavior and that it is less disruptive and less harmful than alternatives, such as suspension and expulsion.[44] But studies show that all instances of corporal punishment have devastating impacts on both individual students and communities at large.[45] Thus, we should not tolerate the practice at all.

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38. *Id.* at 5.

39. Geoff Ward et al., *Historic Lynching and Corporal Punishment in Contemporary Southern Schools*, 68 SOC. PROBS. 41, 41 (2019).

40. *Id.*

41. *See* Gershoff & Font, *Corporal Punishment in U.S.*, *supra* note 17, at 10.

42. *OCR Press Release*, *supra* note 20 (showing a thirty-five percent drop in reported cases of corporal punishment in public schools between the 2013–2014 and 2017–2018 school years).

43. *See* Park, *supra* note 19.

44. *See* Riley, *supra* note 23.

45. *See* Warsh, *supra* note 22 (stating that studies have shown a link between corporal punishment and child aggression, future spousal assault, and adult mental health problems, and that there are no links between spankings and improved child behavior); Gershoff et al., *Associations*, *supra* note at 22, at 1 (finding that students who had experienced any corporal punishment were more likely to have lower high school GPAs).

Students who experience corporal punishment bear not only the immediate pain and potentially serious injuries associated with corporal punishment but also long-lasting social and educational harm.[46] Researchers have found no positive relationship between corporal punishment of students and improved behavior.[47] Students who receive corporal punishment are more likely to suffer from mental health problems and engage in aggressive behaviors.[48] Young adults who self-reported experiencing corporal punishment in schools graduated with lower high school GPAs than their peers who had not experienced corporal punishment.[49] And those who experienced corporal punishment were more likely to experience depressive symptoms.[50]

The pains of corporal punishment are felt beyond the individual recipient. School discipline and justice models instill values and socioemotional learning in students that they carry with them into adulthood.[51] When schools use corporal punishment, they teach their students that violence is an appropriate means of correction and control, a lesson that leads to adults who have normalized such violence. Studies show that the harm of corporal punishment self-perpetuates.[52] Those who had experienced corporal punishment were more likely to advocate for the use of corporal punishment against children.[53] Even worse, a study found that former recipients of corporal punishment were more likely to engage in spousal abuse.[54]

But perhaps most importantly, our Nation was founded on principles of protecting minorities from injustice.[55] Although it

46. Gershoff et al., *Associations*, *supra* note 22, at 7.

47. *See* Warsh, *supra* note 22.

48. *Id.*

49. Gershoff et al., *Associations*, *supra* note 22, at 7.

50. *Id.*

51. *See* Lydia Nussbaum, *Realizing Restorative Justice: Legal Rules and Standards for School Discipline Reform*, 69 HASTINGS L.J. 583, 613–14 (2018) (arguing that punitive school discipline measures are associated with long-term negative outcomes for students and should be replaced with restorative justice models).

52. Diana Divecha, *Hitting Children Leads to Trauma, Not Better Behavior*, DEVELOPMENTAL SCI. (Feb. 10, 2022), https://www.developmentalscience.com/blog/2022/2/10/hitting-children-leads-to-trauma-not-better-behavior [https://perma.cc/P62L-8C33].

53. *See* Gershoff et al., *Associations*, *supra* note 22, at 7.

54. *See* Warsh, *supra* note 22.

55. *See* THE FEDERALIST 10 (James Madison) (discussing the ways in which a republic form of government protects minorities from the oppressive will of a majority).

is easy to dismiss the 70,000 instances of in-school corporal punishment[56] within the context of the millions of American schoolchildren, doing so absconds our duty to protect the rights of our fellow citizens. By not protecting those students from the devastating physical, social, and emotional harm of being hit at school, we maintain a status quo that is less equitable than it ought to be.

Instead of staying silent, we must step up to protect our most vulnerable citizens—our Nation's children—through whichever avenues we have available to us. This Note now explores those avenues.

II. FEDERAL LAW

The Supreme Court held that in-school corporal punishment does not violate the Constitution in *Ingraham v. Wright*.[57] No federal statutes address the issue. Thus, the federal legal framework revolves around the circuit courts' interpretations of *Ingraham*.[58] *Ingraham*, circuit courts' interpretations of it, and potential new strategies to combat corporal punishment.

A. Ingraham*: Children Leave Their Eighth Amendment Rights at the Schoolhouse Gates*[59]

Federal law permits in-school corporal punishment.[60] Under the Supreme Court's *Ingraham v. Wright* decision, in-school corporal punishment does not violate the Eighth Amendment's Cruel and Unusual Punishments Clause.[61]

Interestingly, the *Ingraham* case began at a Florida school.[62] James Ingraham and Roosevelt Andrews, public school students in Dade County, Florida, brought claims alleging that

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56. Nathaniel Beers, *Ending Corporal Punishment in Schools: AAP Policy Explained*, HEALTHYCHILDREN.ORG (Aug. 21, 2023), https://www.healthychildren.org/English/ages-stages/gradeschool/school/Pages/ending-corporal-punishment-in-schools-aap-policy-explained.aspx [https://perma.cc/3Z3J-GVTM].

57. 430 U.S. 651, 680 (1977).

58. *See* Lekha Menon, Note, *Spare the Rod, Save a Child: Why the Supreme Court Should Revisit* Ingraham v. Wright *and Protect the Substantive Due Process Rights of Students Subjected to Corporal Punishment,* 39 CARDOZO L. REV. 313, 335–41 (2017) (describing the in-school corporal punishment precedents across the different circuit courts).

59. *Contra* Tinker v. Des Moines Indep. Cnty. Sch. Dist., 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

60. Ingraham, 430 U.S. at 664, 682.

61. *Id.* at 653.

62. *Id.*

their Eighth and Fourteenth Amendment rights had been violated during paddling incidents that occurred at their school.[63] As punishment for being "slow to respond to his teacher's instructions," Ingraham was paddled more than twenty times, severely enough that he suffered a hematoma that required medical attention.[64] Ingraham was not able to attend school for several days while he recovered.[65] Andrews was paddled multiple times in the month of October, once so severely that he lost the ability to use his arm for a week.[66]

The Supreme Court held that the Eighth Amendment did not apply in this case because the Amendment only applies in the criminal punishment context, and the plaintiffs were not criminally convicted.[67] The Court applied a historical framework and looked to the Founders' understanding of the Eighth Amendment in reaching its decision.[68] In limiting the Amendment's application, the Court noted that corporal punishment had been used in schools since before the American Revolution and that there was a widespread common law principle that "[t]eachers may impose reasonable but not excessive force to discipline a child."[69] Additionally, the Court stated that, unlike incarcerated individuals, schoolchildren are free to come and go from school and that community oversight provides additional protections in the context of school discipline.[70] According to the Court, the community oversight, the ability to leave school, and the common law remedies afforded to students make the Eighth Amendment unnecessary in the school setting.[71]

Since *Ingraham*, it has been widely accepted that the Eighth Amendment is limited to criminal convictions.[72] But the law may be less settled than it facially seems. *Ingraham*, a 5–4

63. *Id.* at 653, 658.
64. *Id.* at 657.
65. *Id.*
66. *Id.*
67. *Id.* at 666–67.
68. *Id.* at 670–71.
69. *Id.* at 661.
70. *Id.* at 670.
71. *Id.* at 671.
72. *See, e.g.*, Youngberg v. Romeo, 457 U.S. 307, 325 (1982) (holding that a trial court had erroneously instructed a jury that the Eighth Amendment applies to a mentally incapacitated person involuntarily committed); City of Revere v. Mass. Gen. Hosp., 463 U.S. 239, 244 (1983) (holding that Eighth Amendment analysis did not apply to a medical treatment claim that occurred when a person was shot during an arrest because the Eighth Amendment only applies to punishments after the state secures a conviction).

decision, set the precedent that the Eighth Amendment does not apply to schools, and the precedent has not yet been deeply interrogated. Justice Byron White's *Ingraham* dissent, joined by three other Justices, heavily disputes the majority's holding, stating "[t]he Eighth Amendment places a *flat* prohibition against the infliction of 'cruel and unusual punishments.'"[73] Justice White further notes that the lack of the word "criminal" in the Amendment is "strong evidence that the Amendment was designed to prohibit all inhumane or barbaric punishments, no matter what the nature of the offense for which the punishment is imposed."[74] Justice White goes on to refute the majority's assertions that a school's openness to the community, available common law remedies, and a student's ability to come and go from school negate the need for the Eighth Amendment; he states the Court has never used "any of these factors in determining the scope of the . . . Amendment."[75] Justice White's harsh dissent throws the Court's holding into question, and the question has not yet been revisited.

Recently, some scholars have called for a reanalysis of the application of the Eighth Amendment to school settings, noting that schools have become more and more prison-like in the past decades due to the increases in surveillance and on-school police presence.[76] If the Court revisited the question and found that the Eighth Amendment applied to school settings, there would be a strong case to abolish the use of corporal punishment in schools. Eighth Amendment analysis involves looking to evolving societal standards and the national consensus to determine whether a punishment is cruel and unusual.[77] In-school corporal punishment is almost certainly a practice that is out of style and that most Americans find ineffective, if not inhumane.[78] But it seems unlikely that the Court will look at the question again. As mentioned above, the Eighth Amendment's limitation to criminal convictions has been accepted as the law of the land, and the Court is unlikely to overturn the nearly fifty-year precedent.[79] Additionally, the

73. *Ingraham,* 430 U.S. at 684 (White, J., dissenting) (emphasis added).

74. *Id.* at 685.

75. *Id.* at 689.

76. Maryam Ahranjani, *School "Safety" Measures Jump Constitutional Guardrails*, 44 SEATTLE U. L. REV. 273, 293 (2021).

77. Miller v. Alabama, 567 U.S. 460, 469 (2012).

78. Warsh, *supra* note 22.

79. Of course, the current Court has not shied away from making massive departures from *stare decisis*, so we should never say never. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 231 (2022).

current Court adheres much more closely to the historical analysis and originalist ideology seen in the *Ingraham* majority opinion than the more purposivism-based approach taken by Justice White in the dissent. Thus, at least for now, we must accept that the Eighth Amendment does not protect children at schools.

B. *The Fourteenth Amendment and its Limitations*

The Court in *Ingraham* also held that the Fourteenth Amendment's Due Process Clause did not require a hearing before a school could administer corporal punishment.[80] Although in-school corporal punishment implicates "a constitutionally protected liberty interest," the Court found that the burden of the additional safety measures outweighed the potential benefits.[81]

The plaintiffs had also brought a substantive due process claim against the school and its administration.[82] But the Supreme Court did not grant certiorari for that claim, and thus did not uphold or reverse the Fifth Circuit's[83] substantive due process analysis.[84] The Fifth Circuit had held that paddling in schools did not implicate a student's substantive due process rights per se and noted that state civil and criminal claims could be used to decide whether individual instances of in-school corporal punishment were excessive.[85]

However, because the Supreme Court did not weigh in on the Fifth Circuit's substantive analysis, the Fifth Circuit's approach was not binding on other courts. Furthermore, because the Supreme Court held that "corporal punishment in public schools [does] implicate[] a constitutionally protected liberty interest," circuit courts have held that the Supreme Court implicitly acknowledged that substantive due process

80. *Ingraham,* 430 U.S. at 682.

81. *Id.* at 672.

82. Ingraham v. Wright, 525 F.2d 909, 915 (5th Cir.1976) (en banc); *Ingraham,* 430 U.S. at 651.

83. *Ingraham* predates the splitting of the Fifth and Eleventh Circuits, and Florida was part of the Fifth Circuit at the time the case was filed and decided. Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub. L. No. 96-452, 94 Stat. 1994 (codified as amended at 28 U.S.C. § 41).

84. Ingraham v. Wright, 96 S. Ct. 2200, 2201 (1976) (granting certiorari on the due process and Eighth Amendment questions).

85. *Ingraham*, 525 F.2d at 915–17 (determining that the Florida policy was not facially arbitrary and capricious).

may be violated in some instances of corporal punishment.[86] Thus, circuit courts have applied substantive due process frameworks—and a Fourth Amendment analysis—to their in-school corporal punishment cases.[87]

1. The Circuit Courts' Substantive Due Process Precedents

Because the Supreme Court did not weigh in on whether corporal punishment in schools implicates a student's substantive due process rights,[88] several circuit courts have established substantive due process frameworks for in-school corporal punishment cases.[89] Most circuits apply a version of what has been called the "*Hall* standard," referencing the Fourth Circuit's decision in *Hall v. Tawney*.[90] *Hall* was the first appellate case after *Ingraham* that addressed whether a student's substantive due process rights were implicated in in-school corporal punishment.[91] The court in *Hall* held that although *Ingraham* implies that corporal punishment in schools does not always violate a student's substantive due process rights, there are circumstances in which it could.[92]

The court in *Hall* categorized the student's right as "the right to be free of state intrusions into the realms of personal privacy and bodily security"; it analogized the right to the pretrial detainee's right to be free from excessive and reckless use of force by police officers.[93] Drawing on the parallel to pretrial detainees, the court held that in-school corporal punishment violates a student's rights if (1) the force used is disproportionate to the level of force needed; (2) the force rises to a level of brutality that causes injury so severe; and (3) the force "was so inspired by malice or sadism . . . that it . . . literally shock[s] . . . the conscience" of a court.[94] The court differentiated this analysis from a common law tort analysis, emphasizing

86. *See Ingraham,* 430 U.S. at 672; Hall v. Tawney, 621 F.2d 607, 611–13 (4th Cir. 1980); Garcia *ex rel.* Garcia v. Miera, 817 F.2d 650, 654 (10th Cir. 1987), *cert. denied*, 485 U.S. 959 (1988).

87. *See* Menon, *supra* note 58, at 335–41 (describing the in-school corporal punishment precedents across the different circuit courts).

88. *See Garcia*, 817 F.2d at 654.

89. *See* Menon, *supra* note 58, at 335–41 (describing the in-school corporal punishment precedents across the different circuit courts).

90. Hall v. Tawney, 621 F.2d 607, 611–13 (4th Cir. 1980); Menon, *supra* note 58, at 332–35 (describing the *Hall* Standard, which "most jurisdictions" follow).

91. *See Hall*, 621 F.2d at 611; Menon, *supra* note 58, at 332.

92. *See Hall*, 621 F.2d at 611–12.

93. *See id.* at 613.

94. *Id.*

that, instead of a test of reasonableness, a substantive due process claim (a "constitutional tort" claim) requires a test of "malice or sadism."[95]

Most jurisdictions follow a similar or modified version of the *Hall* standard.[96] The Sixth[97] and Tenth Circuits[98] have adopted the *Hall* standard in full.[99] The Second,[100] Third,[101] Eighth,[102] and Eleventh Circuits[103] use a modified version of the *Hall* standard.[104] A minority of circuits have used a Fourth Amendment analysis.[105] The Fourth Amendment analysis is discussed in greater detail below.[106]

The Eleventh Circuit's precedent is most important to this Note as the precedent that federal courts in Florida must follow. Before *Neal*, the Eleventh Circuit was bound by the Fifth

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95. *Id.*

96. *See* Menon, *supra* note 58, at 336–37.

97. Saylor v. Bd. of Educ., 118 F.3d 507, 514, 516 (6th Cir. 1997), *cert. denied*, 522 U.S. 1029 (1997) (holding that a school administrator had not violated a student or his parents' substantive due process rights after applying the *Hall* test).

98. Garcia *ex rel.* Garcia v. Miera, 817 F.2d 650, 652, 655–56, 658 (10th Cir. 1987), *cert. denied*, 485 U.S. 959 (1988) (applying the *Hall* standard and holding that school staff had violated a nine-year-old student's substantive due process rights when they administered corporal punishment in school and that qualified immunity did not apply).

99. *See* Menon, *supra* note 58, at 336.

100. *See* Johnson v. Newburgh Enlarged Sch. Dist., 239 F.3d 246, 249, 251–52 (2d Cir. 2001) (applying the Third Circuit's *Metzger* factors for substantive due process and holding that a student's substantive due process rights were violated when a gym teacher violently choked and slammed the student's head against a bleacher after the student had thrown a dodge ball in the direction of the gym coach).

101. *See* Metzger *ex rel.* Metzger v. Osbeck, 841 F.2d 518, 520 (3d Cir. 1988) (holding that the test to determine whether a student's substantive due process rights were violated by in-school corporal punishment includes the following factors: "'the need for the application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether the force was applied in a good faith effort . . . or maliciously and sadistically'" (quoting Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973))).

102. *See* Wise v. Pea Ridge Sch. Dist., 855 F.2d 560, 564 (8th Cir. 1988) (holding that the following factors should be weighed in an in-school corporal punishment case: "1) the need for the application of corporal punishment; 2) the relationship between the need and the amount of punishment administered; 3) the extent of injury inflicted; and 4) whether the punishment was administered in a good faith effort to maintain discipline or maliciously and sadistically for the very purpose of causing harm").

103. *See* Neal *ex rel.* Neal v. Fulton Cnty. Bd. Educ., 229 F.3d 1069, 1075 (11th Cir. 2000) (adopting a modified *Hall* test).

104. *See* Menon, *supra* note 58, at 336–37.

105. *See id.* at 337–38.

106. *See infra* Section II.C.

Circuit's *Ingraham* precedent[107] that in-school corporal punishment is not a per se substantive due process violation but that it could rise to that level if it "bears no reasonable relation to the legitimate end of maintaining an atmosphere conducive to learning."[108] In *Neal*, a high school gym coach struck a fourteen-year-old student in the eye with a metal weight lock as a punishment for engaging in a fight—as a result, the student lost vision in his left eye.[109] The student brought a substantive due process claim against the gym coach and the school administration, among others.[110] The Eleventh Circuit reversed the lower court's dismissal for failure to state an adequate claim for relief and noted that the "former Fifth Circuit in *Ingraham* did not say that under no set of circumstances could corporal punishment rise to the level of a constitutional violation."[111] Thus, the court in *Neal* held that there are circumstances under which corporal punishment could violate a student's substantive due process rights and that the following factors are determinative: "(1) [whether] a school official intentionally used an amount of force that was obviously excessive under the circumstances, and (2) [whether] the force used presented a reasonably foreseeable risk of serious bodily injury."[112]

2. *Dobbs* Complicates the Substantive Due Process Analysis

Given the lack of clarity and the circuit courts' differing frameworks, scholars have called on the Supreme Court to address substantive due process in the context of in-school corporal punishment.[113] Some have called for a test similar to the *Hall* standard, with modifications such as using an absolute necessity test or a reasonableness test rather than a maliciousness test.[114] However, this approach is likely not

107. *See* Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub. L. No. 96-452, 94 Stat. 1994 (codified as amended at 28 U.S.C. § 41).

108. Ingraham v. Wright, 525 F.2d 909, 915–16 (5th Cir. 1976) (en banc).

109. *See* Neal *ex rel.* Neal v. Fulton Cty. Bd. of Educ., 229 F.3d 1069, 1071 (11th Cir. 2000).

110. *See id.*

111. *See id.* at 1073, 1076.

112. *See id.* at 1075.

113. *See* Menon, *supra* note 58, at 341; Rutherford, *supra* note 34, at 381–82.

114. *See* Menon, *supra* note 58, at 341; Rutherford, *supra* note 34, at 382 (advocating for a three-step substantive due process test that would weigh three factors: "(1) was the child's liberty interest infringed upon? (2) what was the purpose of the physical force used? (3) was the physical force used commensurate with the

viable given that the Roberts Court has been limiting rather than expanding substantive due process claims in recent terms.[115] In *Dobbs v. Jackson Women's Health Organization*, the Court overruled *Roe v. Wade*, striking down nearly fifty years of established precedent.[116] In its reasoning, the Court limited the reading of liberty interests within substantive due process analysis, holding that the only constitutionally protected liberty interests were those either explicitly laid out in the Constitution or those "'deeply rooted in [our] history and tradition' and 'implicit in the concept of ordered liberty.'"[117] The Court held that the right to an abortion was in neither category and, therefore, was not constitutionally protected.[118] The Court's analysis relied heavily on the lack of abortion rights in the history of the United States as well as the historical criminalization of abortion.[119]

But notably, the Court in *Roe* did not focus solely on the narrow right to abortion—rather it held that the right to abortion existed within the broader right to privacy.[120] Thus, the Court in *Dobbs* may have been implicitly discounting the right to privacy when it rejected the right to abortion. Overruling *Roe*, therefore, may have implications on many different rights—e.g., the right to contraception, marriage, child-rearing, and family relationships.[121] The Court's limitation of the right to privacy is significant to this Note because the liberty interests cited in corporal punishment claims are the narrow right to bodily security and the broad right to privacy.[122] If the right to privacy is no longer considered a fundamental right or is limited only to contexts that have

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desired disciplinary outcome when weighed against other disciplinary alternatives available?").

115. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2242 (2022) (limiting the application of the Substantive Due Process Clause to the first eight Amendments and to fundamental rights that are "'deeply rooted in [our] history and tradition' and [are] 'implicit in the concept of ordered liberty'" (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997))).

116. *Id.*; *see generally* Roe v. Wade, 410 U.S. 113 (1973) (holding that seeking abortion procedures implicates a constitutionally protected liberty interest); Danielle Keats Citron, *Intimate Privacy in a Post-*Roe *World*, 75 FLA. L. REV. 1033 (2023) (discussing the impact of *Dobbs*).

117. *Dobbs*, 142 S. Ct. at 2242 (quoting *Glucksberg*, 521 U.S. at 721).

118. *Id.*

119. *Id.* at 2255–56.

120. *Roe*, 410 U.S. at 152–53.

121. *Id. But see Dobbs*, 142 S. Ct. at 2261 (stating that the right to abortion is distinct from other substantive due process rights).

122. *See* Hall v. Tawney, 621 F.2d 607, 611–13 (4th Cir. 1980).

"historically" or "traditionally" been protected, then the right to be free from corporal punishment in schools is almost certainly not a constitutionally protected right. As noted by the Court in *Ingraham*, corporal punishment was widely used in schools going back to the American Revolution.[123] Although the practice is definitely out of vogue,[124] the Nation's current sentiment is not what matters under the Court's analysis—the focus is instead solely on how the right has historically been viewed by the common law and how it was viewed at the time of the Nation's founding.[125] Thus, because the school children's right to bodily security[126] is not explicitly included in the Constitution and because in-school corporal punishment was widely practiced at the time of the founding, it is highly unlikely the *Dobbs* understanding of substantive due process includes a student's right to be protected from corporal punishment in schools.

3. A New, But Still Lacking, Approach to Substantive Due Process

Although *Dobbs* may have limited the right to bodily security, in-school corporal punishment may implicate a right that the Supreme Court holds to be a traditionally protected fundamental right: a parent's right to raise her children.[127] A parent's right to raise her children "is perhaps the oldest of the fundamental liberty interests recognized by th[e] Court."[128] The Court has held that a parent's right to raise her children includes the right to make choices about her children's

123. *See* Ingraham v. Wright, 430 U.S. 651, 661 (1977).

124. *OCR Press Release*, *supra* note 20 (showing that a minority of states still employ corporal punishment and that 69,492 students had been subjected to corporal punishment in the 2017–2018 school year, a thirty-five percent drop from the 2013–2014 school year).

125. *Dobbs*, 142 S. Ct. at 2242 (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).

126. *See infra* Section II.C for a Fourth Amendment analysis of in-school corporal punishment.

127. *See* Troxel v. Granville, 530 U.S. 57, 65 (2000).

128. *Id.*

education.[129] A post-*Dobbs* federal district court decision[130] and some commenters[131] have suggested that parental rights have been untouched or even strengthened by *Dobbs*, making a parental-rights-based substantive due process claim a potentially more appealing approach to in-school corporal punishment cases. The use of corporal punishment in schools infringes upon a parent's right to choose the means of discipline for her child, which is a significant element of the child's education and general child-rearing. The right to parent one's child gives a parent the right to use corporal punishment against her child[132]—why shouldn't the same principle apply to preventing others from hitting her child?

The parental rights framework, however, still faces significant setbacks as a means of abolishing in-school corporal punishment.

First, school districts could work around bans rooted in parental rights by allowing in-school corporal punishment with parental consent. For the reasons discussed above, allowing only some kids to get paddled is still not a sufficient remedy.[133] But, the logistical hassle of obtaining the required consent could significantly stimy the practice, working toward the goal of abolition even if not fully reaching it.

Second, although the Supreme Court has held that parental rights are traditionally protected liberty interests,[134] the Court has not consistently applied a strict scrutiny framework in its

129. *See* Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (holding that a state law banning instruction in languages besides English violated parents' Fourteenth Amendment right to direct the upbringing of their children); Pierce v. Soc'y of the Sisters, 268 U.S. 510, 534–35 (1925) (holding that a law compelling parents to send their children to public school violated parents' Fourteenth Amendment right to direct the upbringing of their children); Wisconsin v. Yoder, 406 U.S. 205, 232–33 (1972) (holding that a law requiring Amish parents to enroll their children in high school through age sixteen violated the parents' First and Fourteenth Amendment rights).

130. *See* Deanda v. Becerra, 645 F. Supp. 3d. 600, 621–22 (N.D. Tex. Dec. 8, 2022), *appeal filed* 2022 WL 17843938 (5th Cir. Feb. 20, 2023).

131. Michael Toth, *Parental Authority Gets a Boost from* Dobbs, WALL ST. J. (July 27, 2022, 6:49 PM), https://www.wsj.com/articles/parental-authority-gets-a-boost-from-dobbs-justice-alito-glucksberg-unenumerated-rights-history-tradition-education-meyer-pierce-11658941498 [https://perma.cc/P25A-YKHQ].

132. *See* Meghan M. Boone, *Chilling Parental Rights*, 90 FORDHAM L. REV. 2469, 2481 (2022); Doe v. Heck, 327 F.3d 492, 523 (7th Cir. 2003).

133. *See supra* Section I.C.

134. *See generally* Washington v. Glucksberg, 521 U.S. 702 (1997) (concluding that parental rights are protected by the Fourteenth Amendment).

parental rights cases.[135] Indeed, it seems that the Court may be intentionally shirking the question—Justice Sandra Day O'Connor's *Troxel* plurality opinion does not explicitly apply a strict scrutiny framework.[136] In his concurrence, Justice Clarence Thomas asserts that strict scrutiny should apply to parental rights cases given the Court's precedent, but he also calls the entirety of the Court's substantive due process framework into question in the same opinion.[137] The lack of clarity has resulted in lower courts applying all levels of scrutiny—rational basis review, intermediate scrutiny, and strict scrutiny—to parental rights cases.[138] Importantly, courts seem to apply rational basis review (or something that looks like it) to parental rights cases that involve public school education.[139] Because rational basis analysis only requires that a government action be rationally related to a legitimate government interest,[140] public schools and districts implementing corporal punishment could argue that the government has a strong interest in maintaining order and discipline in schools, which would likely meet the low rational basis standard. The Supreme Court could, of course, reverse course and definitively declare strict scrutiny the test for parental rights, but that seems unlikely given the past parental rights jurisprudence[141] and the current Court's propensity to limit rather than expand substantive due process.[142] Thus, even when employing an established and traditionally held fundamental right, federal substantive due process does not seem to be a promising framework for abolishing in-school corporal punishment.

135. Margaret Ryznar, *A Curious Parental Right*, 71 SMU L. REV. 127, 133–37 (2018) (describing the lack of clarity in the Supreme Court's Fourteenth Amendment parental rights analysis).

136. Troxel v. Granville, 530 U.S. 57, 60, 65 (2000).

137. *Id.* at 80 (Thomas, J., dissenting).

138. Ryznar, *supra* note 135, at 137–42.

139. *Id.* at 155.

140. United States v. Carolene Products Co., 304 U.S. 144, 152 (1938).

141. Ryznar, *supra* note 135, at 133–37.

142. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2242 (2022) (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).

C. *The Fourth Amendment and its Limitations*

As an alternative to substantive due process, the Seventh[143] and Ninth Circuits[144] have employed a Fourth Amendment analysis for in-school corporal punishment cases, using a fact-intensive reasonableness standard.[145] The Seventh Circuit applied a Fourth Amendment analysis to in-school corporal punishment in *Wallace* ex rel. *Wallace v. Batavia School District 101*;[146] however, district courts have not extended this precedent to other cases.[147] In *Wallace*, a student alleged her teacher violated her Fourth Amendment rights when the teacher intervened in a student fight and dragged the student by her elbow.[148] The Seventh Circuit held that a teacher who seizes a student violates the Fourth Amendment "only when the restriction of liberty is unreasonable under the circumstances then existing and apparent."[149] Applying that framework, the Seventh Circuit held that the teacher grabbing the student's elbow was reasonable under the given circumstances.[150]

Under its Fourth Amendment analysis, the Ninth Circuit held that a vice principal was not entitled to qualified immunity when he taped a second grader's head to a tree, because the vice principal clearly violated the student's Fourth Amendment right to be free from unreasonable seizures.[151] The Ninth Circuit later added a causation element to its reasonableness analysis in *Preschooler II v. Clark County School Board of Trustees*[152] when it held that beating and slamming a student could rise to a Fourth Amendment violation but unexplained bruises and scratches alone could not.[153]

As opposed to the Ninth Circuit, the Fifth Circuit held in *T.O. v. Fort Bend Independent School District* decision[154] that

143. Wallace ex rel. Wallace v. Batavia School District 101, 68 F.3d 1010, 1012–15 (7th Cir. 1995) (applying a Fourth Amendment analysis).

144. Doe *ex rel.* Doe v. Haw. Dep't of Educ., 334 F.3d 906, 908–10 (9th Cir. 2003).

145. *See generally* Megan R. Thomas, Note, *Crime and (Corporal) Punishment: Revisiting* Ingraham v. Wright *and Banning School Corporal Punishment Under the Fourth Amendment*, 127 PENN ST. L. REV. 267 (2022) (arguing for the universal adoption of Fourth Amendment analysis for in-school corporal punishment cases).

146. *Wallace*, 68 F.3d at 1015.

147. *See* Menon, *supra* note 58, at 338.

148. *Wallace*, 68 F.3d at 1011.

149. *Id.* at 1014.

150. *Id.* at 1015.

151. Doe *ex rel.* Doe v. Haw. Dep't of Educ., 334 F.3d 906, 907–10 (9th Cir. 2003).

152. 479 F.3d 1175 (9th Cir. 2007).

153. *See id.* at 1181.

154. 2 F.4th 407, 415 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 2811 (2022).

in-school corporal punishment does not clearly implicate the Fourth Amendment and that a teacher was therefore entitled to qualified immunity.[155] In *T.O. v. Fort Bend*, a first grader with attention deficit hyperactivity disorder was having an outburst during class, so his behavioral aide removed him to the hallway to calm him down.[156] While the aide was working with the student in the hallway, a fourth-grade teacher walked by and asked what was going on.[157] The aide explained the situation and then declined the fourth-grade teacher's offer of assistance.[158] However, the fourth-grade teacher attempted to intervene anyway, and the student then pushed the teacher away.[159] The teacher then put the student in a chokehold for "several minutes" and only released the student when the aide intervened.[160] The student's parents sued on behalf of the student, alleging that placing the student in a chokehold violated his Fourth Amendment rights.[161] The district court granted the teacher's motion to dismiss, holding that the teacher was entitled to qualified immunity.[162] The Fifth Circuit upheld the dismissal, stating that its caselaw had not definitively "determined whether the momentary use of force by a teacher against a student constitutes a Fourth Amendment seizure."[163] The Fifth Circuit declined to answer the unsettled question and instead affirmed the dismissal on qualified immunity grounds.[164] The parents appealed to the Supreme Court, but the Court denied certiorari.[165]

Some scholars advocate for the universal adoption of the Fourth Amendment reasonableness standard.[166] This standard may be the most promising federal constitutional framework for abolishing in-school corporal punishment because the Supreme Court has held that the Fourth Amendment applies in public

155. *See id. at* 415.
156. *See id.* at 412.
157. *Id.*
158. *Id.*
159. *Id.*
160. *Id.*
161. *Id.* at 411–12.
162. *Id.* at 412.
163. *Id.* at 415.
164. *Id.*
165. *See* T.O. v. Fort Bend Indep. Sch. Dist., 142 S. Ct. 2811 (2022) (denying certiorari).
166. Thomas, *supra* note 145, at 267–68.

schools.[167] But the Fourth Amendment still stops short of protecting all children in schools for several reasons.

First, the reasonableness test explicitly allows in-school corporal punishment under certain circumstances.[168] Allowing judges and juries to make the determination on a case-by-case basis opens too many opportunities for bias to creep into decisions. By inviting bias, a fact-intensive reasonableness test could fail to protect the most vulnerable populations, including students of color and students with disabilities, who are already the students most likely to receive corporal punishment.[169] Of course, there may be circumstances where it is permissible for a teacher to intervene to end an altercation or fight, such as the situation that the teacher in *Wallace* faced, but these circumstances could be handled using self-defense frameworks if corporal punishment were abolished.

Additionally, by denying cert. in *T.O. v. Fort Bend*,[170] the Supreme Court, at best, seems disinclined to reexamine the question of corporal punishment in schools and, at worst, is implicitly endorsing the Fifth Circuit's holding that the Fourth Amendment does not apply to in-school corporal punishment. Both because the Supreme Court has shown a lack of interest in revisiting *Ingraham* and because the frameworks offered by the federal Constitution do not go far enough in protecting students, state constitutional rights need to be used to protect students. This Note looks to possible remedies using the Florida state constitution.

III. THE FLORIDA CONSTITUTION AND POTENTIAL RELIEF FOR FLORIDA'S STUDENTS

As Justice William J. Brennan Jr. reminded us, federal constitutional rights are a floor, and states are permitted—and perhaps, in Justice Brennan's case, encouraged—to provide more protection in their constitutions.[171] Even when the language in a state constitution is identical to language in the federal Constitution, state courts are free to interpret the meaning of their own constitutions more broadly than the U.S.

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167. *See, e.g.*, New Jersey v. T.L.O., 469 U.S. 325, 333 (1985); Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652 (1995).

168. *See* Wallace *ex rel.* Wallace v. Batavia Sch. Dist. 101, 68 F.3d 1010, 1015 (7th Cir. 1995).

169. *See* Gershoff & Font, *Corporal Punishment in U.S*, *supra* note 21, at 8, 10.

170. *See T.O.*, 142 S. Ct. at 2811 (denying certiorari).

171. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977).

Supreme Court interprets the federal Constitution.[172] Justice Brennan's framework for state constitutional rights has been criticized as misunderstanding the fundamental difference between state and federal constitutions.[173] State constitutions are relatively fickle documents—they are generally easily amendable and therefore responsive to the popular will.[174] The impermanence of state constitutional rights arguably makes them shakier grounds to stand on because state legislatures or intrastate political majorities (or well-funded political minorities) can, through amendment, quickly invalidate a state court's interpretation.[175] Florida's constitution exemplifies this heightened level of majoritarian responsiveness because it can be amended through legislative action and citizen-sponsored initiatives.[176]

With these opposing understandings of state constitutions in mind, this Note explores the use of rights guaranteed by the Florida constitution as a means of abolishing in-school corporal punishment in the state, the limitations of the state constitution, and the potential for a constitutional amendment. This Note focuses on two of Florida's constitutional provisions: the state's paramount duty to provide a uniform, high-quality education[177] and the right to privacy.[178] This Note does not explore the Florida constitution's Fourth or Eighth Amendment analogs because they both explicitly state that the state-created rights (to be free from unreasonable search and seizure and to be free from cruel and unusual punishment, respectively) are equivalent to the federal constitutional rights.[179]

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172. *Id.* at 495.

173. Jonathan L. Marshfield, *America's Misunderstood Constitutional Rights*, 170 U. PENN. L. REV. 853, 859 (2022) ("[A]lthough the Federal Bill of Rights may operate as a bulwark against abusive majorities, state bills of rights grew from the belief that extra precautions are necessary to prevent government officials from using their political power to thwart or oppress democratic majorities.").

174. *Id.* at 927.

175. *Id.* at 853–54.

176. FLA. CONST. art. XI, §§ 1, 3.

177. *Id.* art. IX, § 1(a).

178. *Id.* art. I, § 23.

179. *Id.* § 12 (stating that the right to be free from search and seizure "shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court"); *id.* § 17 (stating that the right to be free of cruel and unusual punishment "shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution").

A. *Corporal Punishment and Florida's Promise of Uniform Education*

The Florida constitution promises to provide a "uniform, efficient, safe, secure, and high-quality system of free public" education to all students within the state.[180] One could argue that permitting school districts to allow corporal punishment violates the state's paramount duty to provide a "uniform" public education to its children. According to the Florida Supreme Court, article IX, section 1 of the Florida constitution (or "the education provision")

> declares that the "education of children is a fundamental value of the people of the State of Florida," . . . sets forth an education mandate that provides that it is "a paramount duty of the state to make adequate provision for the education of all children residing within its borders," and . . . sets forth *how* the state is to carry out this education mandate, specifically, that "*[a]dequate* provision shall be made by law for a *uniform*, efficient, safe, secure, and *high quality system of free public schools*."[181]

Although, on its face, the amendment seems to provide an enforceable mandate for a high-quality education system in the state,[182] the Florida Supreme Court has limited the power of the constitution's education provision, citing both the language of the provision and its own reluctance to step on the toes of the

180. *Id.* art. IX, § 1(a) ("The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.").

181. Bush v. Holmes, 919 So. 2d 392, 405 (Fla. 2006) (quoting State *ex rel.* Clark v. Henderson, 188 So. 351, 352 (1939)) (emphasis added).

182. Courts in other states have interpreted state constitutional amendments with similar language as providing a justiciable means of enforcing education-quality standards. *See* Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ., 262 So. 3d 127, 149 (Fla. 2019) (Pariente, J., dissenting) ("Indeed, [other state] courts adjudicated similar claims even though many of the education constitutional provisions in their state constitutions are less detailed than ours."); *see also* Joshua E. Weishart, *Separate But Free*, 73 FLA. L. REV. 1139, 1181–82 (2021) (stating that the highest courts of fifteen states have declared education a fundamental right).

state legislature.[183] State education advocates brought broad challenges to the adequacy of the state's education system under the education provision in *Citizens for Strong Schools, Inc. v. Florida State Board of Education*.[184] Interpreting the education provision, the Florida Supreme Court held that, although the Florida constitution provides that education is a "paramount duty of the state," the provision stops short of making education a fundamental right.[185] Looking at the legislative history of the provision, the court noted that earlier drafts contained the phrase "fundamental right" but that drafters intentionally decided against such language out of fear of creating too high of a liability for the state.[186] Thus, the court held that the language does not create a fundamental right but instead imposes a "'maximum duty'" on the state to provide for a "'uniform, efficient, safe, secure, and high quality'" education.[187] According to the court, the terms "efficient," and "high quality" are not definite enough to create standards to measure the adequacy of the school system.[188]

But, although the Florida Supreme Court has held that the terms "adequate" and "high quality" are not specific enough to enable judicial intervention in the education system, the court has suggested that "uniform" may create a concrete standard that it can measure against.[189] In *Holmes*, the court answered the "narrow question" of whether a state voucher program that allowed parents to apply for public funding for private school tuition assistance violated the state constitution's education provision.[190] The court held that the program violated the uniformity requirement.[191] It reasoned that the private schools did not comply with several of the state public schools requirements—for example, private school teachers are not subject to the same standards as public school teachers, and private schools are not required to meet Florida's curriculum standards.[192] The state could not fund private schools through vouchers because the differences in curriculum and teacher qualifications made private schools not "uniform" with public

183. *Citizens for Strong Sch., Inc.*, 262 So. 3d at 129–30.
184. *Id.* at 130.
185. *Id.* at 138.
186. *Id.* at 138–39.
187. *Id.* at 140 (quoting Bush v. Holmes, 919 So. 2d 392, 404 (Fla. 2006)).
188. *Id.* at 142.
189. Bush v. Holmes, 919 So. 2d 392, 410 (Fla. 2006).
190. *Id.* at 397–98.
191. *Id.* at 410.
192. *Id.*

schools.[193] Notably, the different standards for private school teachers and public school teachers are statutorily mandated.[194] In applying its analysis, the court both demonstrated that the uniformity requirement creates an enforceable standard and that statutorily created differences between schools can be deemed not uniform.[195]

Florida Statute section 1003.32(k) permits school boards to allow the use of corporal punishment. Under this statute, nineteen school districts have opted into the use of corporal punishment, while the remaining districts have abolished the practice.[196] Under the *Holmes* analysis, Florida Statute section 1003.32(k) violates the education provision's uniformity requirement. Like the narrow question presented in *Holmes*, the question of the uniformity of education given the disparity in corporal punishment use does not require an inquiry into the entire education system's adequacy. Because the question looks at a single statute's impact on the uniformity of education in the state, it is more likely to be justiciable under the court's *Holmes* standard. Although corporal punishment does not relate directly to teaching standards or curriculum, corporal punishment has devastating impacts on students; students who experience corporal punishment in schools are more likely to have lower grades and more likely to have mental health problems.[197] Thus, the piecemeal use of corporal punishment in some Florida public schools and not others creates an unequal patchwork of schools in which some students are afforded a higher level of dignity and greater opportunity for success than other students, solely based on which school district they happen to live in. Therefore, like the statute in *Holmes*, Florida Statute section 1003.32(k) works against uniformity in Florida's public school system in defiance of the state constitution.

Of course, the Florida Supreme Court's reluctance to invalidate the legislature's determination of the best ways to create a "high quality" public school system can be seen in

193. *Id.*

194. *Id.*

195. *Id.*

196. Zoey Thomas, *UF Student Group Fights Corporal Punishment in K-12 Public Schools*, ALLIGATOR (Oct. 23, 2023), https://www.alligator.org/article/2023/10/uf-student-group-fights-corporal-punishment-in-k-12-public-schools [https://perma.cc/BPM4-S242].

197. *See supra* Section I.C.

Citizens.[198] In *Citizens*, the court gave a high level of deference to state lawmakers to determine what a "high quality" education looks like.[199] Similarly, the court could determine that it is within the legislature's discretion to allow some diversity in discipline policies across school districts. This argument could be strengthened by the statute's inclusion of minimal procedures and policies that school boards must have in place to use corporal punishment.[200] Additionally, corporal punishment proponents could argue that, although the uniformity requirement imposes some standard for districts, school boards have the power to control their own policies and there must be some permissible level of variation between districts.[201] This argument could be persuasive to the Florida Supreme Court, which seems to be walking back from the higher bar of uniformity required in *Holmes* to the more deferential standard of the *Citizens* opinion.[202] But, given the high disparity of outcomes between students who do and do not experience corporal punishment in schools, it should be clear that exposing some students in the state to the practice and not others creates a lack of uniformity in the state public education system that the Florida Supreme Court should hold violates the constitution.

B. *Corporal Punishment and Florida's Right to Privacy*

Florida is one of only eleven states with an enumerated constitutional right to privacy.[203] Article I, section 23 of the Florida Constitution provides that,

> Every natural person has the right to be let alone and free from governmental intrusion into the

198. Citizens for Strong Sch., Inc. v. Fla. State Bd. Of Educ., 262 So. 3d 127, 142 (Fla. 2019) (quoting FLA. CONST. art. IX, § 1(a)).

199. *Id.*

200. FLA. STAT. ANN. § 1003.32(1)(k)(1–3) (West).

201. *Citizens*, 262 So. 3d at 132 ("The trial court thus explained that variability necessarily exists between school districts, even among those with equivalent funding, given 'variations in how the local districts allocate their resources.'").

202. Notably, Justice Barbara Pariente wrote the majority opinion in *Holmes* and the dissenting opinion in *Citizen*. *Compare* Bush v. Holmes, 919 So. 2d 392, 397 (Fla. 2006) (Pariente, C.J., writing for the majority), *with Citizens*, 262 So. 3d at 145 (Pariente, J., writing for the dissent).

203. Nick Ehli, *Privacy Rights in State Constitutions May Protect Their Abortion Access*, WOMEN'S HEALTHCARE (2021) https://www.npwomenshealthcare.com/privacy-rights-in-state-constitutions-may-protect-their-abortion-access/?utm_source=rss&utm_medium=rss&utm_campaign=privacy-rights-in-state-constitutions-may-protect-their-abortion-access [https://perma.cc/7X7D-V4YQ].

> person's private life except as otherwise provided herein.[204]

Because federal substantive due process has been limited to explicitly granted rights or rights that are "'deeply rooted in [our] history and tradition' and 'implicit in the concept of ordered liberty,'"[205] it is unlikely that the Supreme Court would recognize a liberty interest related to in-school corporal punishment. But because Florida explicitly recognizes a right to privacy, it may be easier to build a substantive due process framework in the state court system.[206]

As a fundamental right in the state constitution, Florida state courts apply a strict scrutiny standard to the right to privacy; if a plaintiff shows that a state action impedes on his right to privacy, the action is presumptively unconstitutional.[207] To make a colorable claim that a government official violated one's right to privacy, the plaintiff must show that (1) the government interfered with a legitimate expectation of privacy[208] and (2) the action the government official took was within the scope of the government official's official duties.[209] After the plaintiff satisfies these elements, the government may rebut the presumption of unconstitutionality by showing that the challenged act or policy serves a compelling state interest and does so by the least intrusive means.[210]

In instances of corporal punishment, school officials are almost certainly considered to be acting within the scope of their official duties—especially in districts that explicitly allow the practice. However, in districts where corporal punishment is banned, the government could argue that the teacher or

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204. FLA. CONST. art. I, § 23.

205. Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2242 (2022) (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).

206. The Florida Supreme Court recently overturned precedent that had extended the right to privacy to include abortion care. Planned Parenthood of Sw. & Cent. Fla. v. Fla., 2024 WL 1363525 (Fla. 2024) (holding that the right to privacy does not encompass a right to abortion care). However, *Planned Parenthood v. Florida* decided only that the right to privacy did not include the right to abortion care, and therefore does not impact this Note's analysis of the right to privacy, especially given Florida courts' recognition of parental rights as fundamental rights before the constitutionalization of the right to privacy, as discussed *infra* text accompanying notes 211–13.

207. Beagle v. Beagle, 678 So. 2d 1271, 1275–77 (Fla. 1996).

208. McFall v. Welsh, 301 So. 3d 320, 321 (Fla. Dist. Ct. App. 2019).

209. Resha v. Tucker, 670 So. 2d 56, 57 (Fla. 1996).

210. *Beagle*, 687 So. 2d at 1276 (quoting Winfeld v. Division of Pari-Mutuel Wagering, 477 So. 2d 544, 548 (Fla. 1985).

school official was acting outside the scope of their official roles. For those districts where corporal punishment is prohibited, exploring alternative deterrents may be necessary. These could include establishing personal liability for teachers who engage in corporal punishment, applying school board sanctions, or potentially imposing criminal liability to effectively abolish the practice.

What may be more challenging is establishing that school officials are invading an expected privacy right by using corporal punishment. The Florida Supreme Court recognized a parent's rights to raise her children as a fundamental liberty interest even before the right to privacy was constitutionalized as Article I, section 23.[211] Since the constitutional amendment was passed, the court has included parental rights within the right to privacy.[212] In *Beagle v. Beagle*, the court held that state law could not compel parents to allow their child's grandparents to have visitation rights, thereby affirming that the fundamental liberty interest in parenting is constitutionally protected by the state-granted right to privacy.[213] Applying this framework, one could argue that the use of corporal punishment in Florida schools infringes upon a parent's right to choose the means of discipline for his child. As stated above, if the right to parent one's child gives parents the right to use corporal punishment against their child,[214] the same principle should enable parents to prevent others from using corporal punishment against their child.

Critics will argue that under the *in loco parentis* doctrine, schools and their staff stand in the place of parents and therefore possess delegated parental rights. These rights enable them to make decisions regarding punishment, including the use of corporal punishment.[215] *In loco parentis* is a common law doctrine that predates the United States, let alone the modern American school system.[216] However, because

211. State *ex rel.* Sparks v. Reeves, 97 So. 2d 18, 20 (Fla. 1957).

212. *Beagle*, 678 So. 2d at 1275–77.

213. *Id.*

214. *See* Boone, *supra* note 132, at 2481; Doe v. Heck, 327 F.3d 492, 523 (7th Cir. 2003).

215. *See* Doe v. Heck, 327 F.3d 492, 512 (7th Cir. 2003) (holding that when parents chose a private school that used corporal punishment, they delegated their parental rights and the school was acting *in loco parentis*, making the corporal punishment permissible).

216. Perry A. Zirkel & Henry F. Reichner, *Is the Loco Parentis Doctrine Dead*, 15 J.L. & EDUC. 271, 271 (1986) ("'*In loco parentis*' literally means 'in the place of a

the modern public education is essentially compulsory, the *in loco parentis* framework is much less compelling now than it was centuries ago when parents had more influence over who would educate their child. Given these changes in the public school system, the Court in *Ingraham v. Wright* even hinted that the *in loco parentis* framework may not be the best legal framework for in-school corporal punishment, stating

> [a]lthough the early cases viewed the authority of the teacher as deriving from the parents, the concept of parental delegation has been replaced by the view—more consonant with compulsory education laws—that the State itself may impose such corporal punishment as is reasonably necessary "for the proper education of the child and for the maintenance of group discipline."[217]

Of course, parents can opt out of the public education system—either through private schools, homeschooling, or charter schools—but all these options are costly and logistically challenging. It is also true that Florida's variation in district policies could be viewed as a system enabling parent choice—but, like opting out of public education, requiring parents to move to another district to choose a school with a different discipline structure imposes too high a cost. Thus, because parents do not have much choice in where their kids go to school or who educates them, parents are not necessarily delegating their full parental rights to a teacher or other school official. *In loco parentis* is thus a poor conduit to explore corporal punishment in schools.

Additionally, as noted above, state constitutions are relatively fickle instruments.[218] It is therefore possible that an unpopular decision could lead to a constitutional change, preventing a reading of the privacy amendment that would abolish corporal punishment. It is also possible that state judges might read the amendment as allowing corporal punishment in an attempt to adhere to the wishes of the majority of the state electorate—a practice that really should be beyond the scope of the judiciary but that some scholars have

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parent.' The application of this term to educators was recognized in 1770 in Blackstone's compilation of English law . . . .").

217. Ingraham v. Wright, 430 U.S. 651, 662 (1977) (quoting F. Harper & F. James, LAW OF TORTS § 3.20 292 (1956)).

218. Marshfield, *supra* note 173, at 859.

suggested state court judges already engage in.[219] However, because corporal punishment is unpopular amongst the majority of citizens, it is less likely that these obstacles inherent to state constitutions pose a threat.

Because Florida privacy rights include a parent's right to control the upbringing of her child, the use of in-school corporal punishment—especially in a system such as Florida's that does not require parental consent[220]—is likely presumptively unconstitutional.

C. *A Call to Florida's Legislators—and to Florida's Citizens*

Although the Florida constitution provides potential avenues for abolishing corporal punishment in the state's schools, the only surefire way to protect Florida students is through a statutory or constitutional ban. As shown by the Hendry County incident, local school bans are not effective because school board policies are not binding on state prosecutors.[221] Available civil penalties are also subject to an incredibly high "shock the conscience" test and, therefore, are not easily won.[222] Corporal punishment has consistently been shown to be an ineffective tool in managing student behavior, and it is associated with only negative outcomes for students.[223] Florida's lawmakers—and the lawmakers in the seventeen other states that allow corporal punishment—should act swiftly in abolishing this cruel and outdated practice. As of February 2024, Florida's legislature is considering a bill that would restrict the practice of corporal punishment by requiring parental consent and by banning its use against students with disabilities.[224] Although this bill is a step in the right direction

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219. *Id.* at 927 ("Although very few courts express a sensitivity to popular reprisal by amendment, some judges surely wish to avoid being overruled (even by amendment).").

220. FLA. STAT. ANN. § 1003.32(1)(k)(1–3) (West). The same analysis seen above about using parental consent as a work-around in the parental rights framework applies to this privacy law framework as well.

221. State v. Lanier, 979 So. 2d 365, 368–69 (Fla. Dist. Ct. App. 2008) ("We reject the state's contention that Lanier's violation of a school board policy against corporal punishment is significant in deciding whether there has been a [state criminal] violation.").

222. *See* Neal *ex rel.* Neal v. Fulton Cty. Bd. of Educ., 229 F.3d 1069, 1075 (11th Cir. 2000).

223. *See supra* Section I.C.

224. Fla. H.R. 439 (2024); Jesse Scheckner, *Lawmakers Renew Push for Parental Consent, Limits of Corporal Punishment in Schools*, FLA. POL. (Jan. 31, 2024), https://floridapolitics.com/archives/656382-lawmakers-renew-push-for-parental-consent-limits-on-corporal-punishment-in-schools/ [https://perma.cc/ZE4T-NHP6].

(and I hope that it passes), the bill does not go far enough. Abolishing the use of corporal punishment in schools is the only way for our state to achieve true educational equity.

Florida's constitutional amendment initiative procedure also supplies concerned citizens with a unique opportunity to abolish the practice in the state.[225] The initiative procedure allows citizens to amend the constitution by obtaining a sixty percent vote in a general election.[226] Abolishing in-school corporal punishment is an ideal candidate for a constitutional amendment initiative. State constitutional amendment processes enable the popular majority to push back against elitism and government inaction.[227] Here, government inaction seems to be the more pressing issue. The general public sentiment[228] and the lack of widespread in-school corporal punishment[229] both suggest that most Florida citizens are opposed to the practice. Because most citizens oppose the practice, an amendment initiative banning in-school corporal punishment would likely pass.

An ideal amendment initiative would narrowly focus on abolishing in-school corporal punishment rather than broadly addressing more student rights, both to avoid the potential for violating the single-issue initiative requirement[230] and to increase the likelihood of success. Although most Floridians likely disapprove of in-school corporal punishment, other school discipline procedures are more heavily debated; coming to a broader consensus would open the initiative up to too much room for error. And beyond the possibility of the proposed abolition initiative failing, there are strong arguments for allowing school districts discretion for school discipline procedures when those procedures are not known to have the

225. *See* FLA. CONST. art. XI, § 3.

226. *Id.*

227. Marshfield, *supra* note 173, at 859.

228. *See* Elizabeth T. Gershoff, *More Harm than Good: A Summary of Scientific Research on the Intended and Unintended Effects of Corporal Punishment on Children*, 73 L. & CONTEMP. PROBS. 31, 49 (2010) (finding that seventy-seven percent of Americans opposed spanking in schools).

229. Of Florida's 1.4 million schoolchildren, only about 1,300 received corporal punishment in the 2017–2018 school year. *See* Off. for Civ. Rts., *2017–18 State and National Estimates by Discipline Type: Corporal Punishment*, CIV. RTS. DATA COLLECTION, https://civilrightsdata.ed.gov/assets/downloads/2017-2018/Discipline/Discipline/Corporal-Punishment/Corporal-Punishment_by-Disability-and-no.xlsx [https://perma.cc/E8PS-4LKG].

230. FLA. CONST. art. XI, § 3 ("[S]uch . . . amendment . . . shall embrace but one subject and matter.").

devastating ramifications associated with corporal punishment. This Note proposes the following language for an amendment: "Any school receiving any public funding shall not engage in any form of corporal discipline, where 'corporal discipline' includes any discipline that uses physical force or engages in any physical contact with a student's body." With the optimistic outlook of a state constitutional amendment initiative, the most fruitful means of protecting the state's children may be found through the democratic process.

CONCLUSION

In-school corporal punishment has been systematically shown to not benefit student learning or behavioral outcomes but instead causes significant and lasting harm both to students and communities at large.[231] However, corporal punishment is still legal in eighteen states, including Florida.[232] Federal legal frameworks are not adequately protecting our Nation's children. For these reasons, this Note turns to the Florida state constitution as a means of protecting schoolchildren—it specifically looks to Florida's constitutional right to privacy and its promise of a uniform, high quality education. This Note also calls on Florida legislators and Floridians to enact either a new statute or a constitutional amendment that abolishes the use of corporal punishment in the state's school system. Of course, Florida is only one of the eighteen states that still permit corporal punishment.[233] With that in mind, the Florida-specific frameworks presented here are intended to be models and to encourage advocates across the country to look at their own states' constitutions for mechanisms to abolish corporal punishment in schools. As Justice Brennan said, "[Liberty] must necessarily be furthered significantly when state courts thrust themselves into a position of prominence in the struggle to protect the people of our [N]ation from governmental intrusions on their freedoms."[234]

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231. *See* Warsh, *supra* note 22; Gershoff et al., *Associations*, *supra* note 22 (finding that students who had experienced any corporal punishment were more likely to have lower high school GPAs).

232. FLA. STAT. ANN. § 1003.32(1)(k)(1–3) (West); Gershoff et al., *Associations*, *supra* note 22, at 1.

233. Gershoff & Font, *Corporal Punishment in U.S.*, *supra* note 21, at 1.

234. Brennan, Jr., *supra* note 171, at 503.