Crime and (Corporal) Punishment: Revisiting *Ingraham v. Wright* and Banning School Corporal Punishment Under the Fourth Amendment

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ABSTRACT

While it may seem unimaginable that teachers may lawfully paddle students in 2022, school corporal punishment is common in many U.S. public schools today. Despite the negative consequences it has on children, corporal punishment has persisted for decades. Educators' continual use of corporal punishment is due in large part to the 1977 landmark U.S. Supreme Court decision, *Ingraham v. Wright*. In that case, the Court found no Eighth or Fourteenth Amendment violations for school corporal punishment and upheld the right of individual states to draft their own pertinent legislation.

In the 45 years since, federal courts have reached vastly different conclusions in school corporal punishment cases, given that the *Ingraham* Court provided no concrete analytical framework from which to examine these issues. However, in the last 20 years, a trend has emerged, with petitioners subjected to school corporal punishment alleging violations of their Fourth Amendment protection from unreasonable seizures. This trend has created a split among the federal circuit courts of appeals: the Seventh and Ninth Circuits found that school corporal punishment may violate the Fourth Amendment under some circumstances. On the other hand, in *T.O. v. Fort Bend Independent School District*, the Fifth Circuit held that a teacher did not violate a first-grade student's Fourth Amendment rights when placing him in a chokehold.

From spanking, to paddling, to now choking children, the *Ingraham* decision and subsequent silence from the nation's highest court have allowed school corporal punishment to escalate drastically. Given the practice's prevalence and increasing severity, the federal government

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should immediately ban school corporal punishment. Alternatively, the Supreme Court should overrule *Ingraham* and resolve the circuit split by creating a bright-line rule categorizing school corporal punishment as a seizure.

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I. INTRODUCTION

Imagine yourself as a first-grade student, enduring a panic attack during class, and being choked as punishment.[1] Alternatively, picture yourself as a high school student, forgetting to switch your cell phone to silent mode and then enamored with shame and humiliation as you bend over for a paddling because your ringtone disrupted the lesson.[2] If a manager choked or beat their employee for making mistakes during the workday, they would likely face aggravated assault charges.[3] Nevertheless, public school officials regularly evade liability simply because their victims are under age 18.[4]

The degrading[5] practice of corporal punishment may seem archaic.[6] Yet today it remains a prevalent disciplinary mechanism in many American public pre-K–12 schools.[7] As of 2022, school corporal punishment remains legal in public schools in 19 states[8] and in private schools in 48 states.[9] Corporal punishment persists legally because, nearly 45 years ago, the U.S. Supreme Court decided *Ingraham v.*

1. *See* T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 412 (5th Cir. 2021) (denying relief to a student who was choked by a teacher after leaving a classroom to calm down).

2. *See* Jess Clark, *Where Corporal Punishment is Still Used in Schools, Its Roots Run Deep*, NPR (Apr. 12, 2017, 6:00 AM), https://n.pr/3AHNZX4 (describing a school policy that forces students to choose between paddling and in-school suspension as punishment for infractions such as cell phone use during class).

3. *See* Paul Bergman, *Assault, Battery, and Aggravated Assault*, NOLO, https://bit.ly/3xTtiGC.

4. *See* discussion *infra* Section II.A.2 (explaining that school officials are given deference for acting *in loco parentis*).

5. *See A Violent Education: Corporal Punishment of Children in U.S. Public Schools*, AM. C.L. UNION & HUM. RTS. WATCH (Aug. 2008), https://bit.ly/3unlJrz ("Corporal punishment violates international human rights standards binding on the U.S., including norms prohibiting cruel, inhuman[,] and degrading treatment and protecting the right to dignity."); *see also* discussion *infra* Section II.B.

6. *See* Marie Falcone et al., *Ending Corporal Punishment of Preschool-Age Children*, BROOKINGS: BROWN CTR. CHALKBOARD (Oct. 13, 2020), https://brook.gs/3ocW3db.

7. *See* Christian Spencer, *Spanking Schoolchildren is Legal in Many Parts of the U.S.—And Some Kids Get Hit More Often*, THE HILL (May 19, 2021), https://bit.ly/3u2a9Qd.

8. *See id.*; *see also* Sarah A. Font & Elizabeth T. Gershoff, *Contextual Factors Associated with the Use of Corporal Punishment in U.S. Public Schools*, 79 CHILD YOUTH SERVS. REV. 408, 408 (2017).

9. Elizabeth T. Gershoff & Sarah A. Font, *Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy*, SOC. POL'Y REP., 2016, at 1, 4.

Wright,[10] a landmark case reserving to states the power to create school corporal punishment legislation.[11]

Since *Ingraham*, the federal government has devoted "scant attention" to school corporal punishment.[12] While the U.S. Departments of Education and Justice have compiled reports addressing public school discipline issues nationwide,[13] their reports made only passing references to corporal punishment and failed to condemn the practice.[14] Likewise, proposed federal legislation to outlaw school corporal punishment has failed.[15] The U.S. Supreme Court has not revisited the constitutionality of school corporal punishment since *Ingraham*.[16]

By empowering states to enact their own school corporal punishment laws, and by otherwise ignoring the issue, the federal government has left lower courts with minimal guidance for analyzing these claims.[17] This Comment discusses the recent circuit split concerning the proper framework for analyzing school corporal punishment lawsuits.[18] First, this Comment provides a broad overview of corporal punishment, its history in the United States, and modern rationales for allowing it in the classroom.[19] This Comment then dissects *Ingraham*[20] and the resulting discrepancies in lower federal court decisions,[21] culminating in a circuit split regarding the Fourth Amendment's application to school corporal punishment analyses.[22]

Further, this Comment weighs the benefits and drawbacks of the Fourth Amendment framework, ultimately concluding that it provides the optimum constitutional scheme for school corporal punishment claims.[23] Finally, this Comment argues that the federal government

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

11. *See id.* at 683.

12. *See* Gershoff & Font, *supra* note 9, at 3.

13. *See id.* (citing *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,* U.S. DEP'T OF JUST. & U.S. DEP'T OF EDUC. (Jan. 8, 2014), https://bit.ly/3HLXmY1).

14. *See id.* (repudiating the discriminatory use of corporal punishment rather than the practice itself).

15. *See id.* at 18 (outlining bills introduced consistently as early as 1990); *see, e.g.*, Ending Corporal Punishment in Schools Act of 2021, H.R. 1234, 117th Cong. § 4 (2021).

16. *See* Ryan Park, *The Supreme Court Didn't Ban Corporal Punishment. Local Democracy Did.*, WASH. POST (Apr. 11, 2019, 6:33 PM), https://wapo.st/2YOeJWW.

17. *See* Lewis M. Wasserman, *Corporal Punishment in K-12 Public School Settings: Reconsideration of its Constitutional Dimensions Thirty Years After* Ingraham v. Wright, 26 TOURO L. REV. 1029, 1098 (2011) (arguing that the *Ingraham* decision and subsequent silence from the high court "has left lower courts in a constitutional limbo").

18. *See* discussion *infra* Section II.E.

19. *See* discussion *infra* Section II.A.

20. *See* discussion *infra* Section II.C.

21. *See* discussion *infra* Section II.D.

22. *See* discussion *infra* Section II.E.

23. *See* discussion *infra* Section III.C.

should immediately ban school corporal punishment.[24] Given the low likelihood of federal legislation passing both chambers of Congress,[25] this Comment recommends in the alternative that the Supreme Court resolve the circuit split by reviewing *T.O. v. Fort Bend Independent School District* and creating a bright-line rule prohibiting school corporal punishment as an unreasonable seizure under the Fourth Amendment.[26] In doing so, the Court should explicitly overrule *Ingraham*.[27]

II. BACKGROUND

Corporal punishment has a long and complicated history in the United States.[28] The application and legality of corporal punishment may vary depending on the actor inflicting the punishment, making this an exceptionally difficult concept to define.[29] Regardless, corporal punishment imposes severe ramifications on children's mental and physical well-being.[30]

The federal government has taken a largely hands-off approach to handling school corporal punishment[31] following the 1977 Supreme Court decision *Ingraham v. Wright*.[32] There, the Court found no Eighth or Fourteenth Amendment violations by teachers who paddled two students.[33] Nevertheless, some petitioners in recent years have claimed Fourth Amendment violations, culminating in the current circuit split regarding the Fourth Amendment's application to school corporal punishment.[34]

24. *See* discussion *infra* Section III.D.

25. *See* discussion *infra* Section III.A.

26. *See* discussion *infra* Section III.D.

27. *See* discussion *infra* Section III.B.

28. *See* Angela Bartman, *Spare the Rod and Spoil the Child? Corporal Punishment in Schools Around the World*, 13 IND. INT'L & COMPAR. L. REV. 283, 287 (2002).

29. *See* Sabrina Fréchette & Elisa Romano, *How Do Parents Label Their Physical Disciplinary Practices? A Focus on the Definition of Corporal Punishment*, 71 CHILD ABUSE & NEGLECT 92, 92–93 (2017).

30. *See* Bartman, *supra* note 28, at 310.

31. *See* Gershoff & Font, *supra* note 9, at 3.

32. *See* Ingraham v. Wright, 430 U.S. 651, 683 (1977).

33. *See id.*

34. *See* Wallace by Wallace v. Batavia Sch. Dist., 68 F.3d 1010, 1014 (7th Cir. 1995) (finding that school corporal punishment could violate the Fourth Amendment in some circumstances); Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th Cir. 2007) (agreeing with the Seventh Circuit); T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 418 (5th Cir. 2021) (finding school corporal punishment did not violate the Fourth Amendment).

A. What is Corporal Punishment?

Corporal punishment is a complicated disciplinary tactic and hard to define,[35] partly because each individual inflicting corporal punishment may use different methods.[36] Further, the line between corporal punishment and abuse blurs easily.[37] Corporal punishment may transform into abuse when parents, teachers, or other authority figures[38] lash out at children unreasonably,[39] or when the punishment inflicted is disproportionate to the child's behavior.[40] In general, corporal punishment refers to any physical contact that does not rise to the level of criminal liability for assault.[41]

Methods of inflicting corporal punishment exist on a spectrum ranging from slapping, "pinching, shaking, [or] hitting[,]"[42] to electric shocks, exercise drills, force-feeding, or isolation.[43] Notably, corporal punishment does not include using physical restraints to ensure children's safety or the safety of those around them.[44]

For this Comment, corporal punishment includes any physical blow to a child in any context.[45] This Comment equates corporal punishment and physical abuse because both deserve the same level of scrutiny by

35. *See* Fréchette & Romano, *supra* note 29, at 92 (identifying a "lack of consensus" among scholars in defining corporal punishment).

36. *See id.* at 92–93.

37. *See id.* at 97; *see also* Amy Morin, *Facts About Corporal Punishment*, VERY WELL FAM. (Aug. 6, 2020), https://bit.ly/3wijqos.

38. *See Corporal Punishment in Schools*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY (2014), https://bit.ly/338LeBj (explaining that an authority figure may be any "supervising adult").

39. *See* Benjamin Shmueli, *Corporal Punishment in the Educational System Versus Corporal Punishment by Parents: A Comparative View*, 73 LAW & CONTEMP. PROBS. 281, 284 (2010) (explaining corporal punishment may constitute abuse when an authority figure hits a child out of anger, "since this expresses a loss of control"); *see also* Benjamin Shmueli, *Who's Afraid of Banning Corporal Punishment? A Comparative View on Current and Desirable Models*, 26 PENN ST. INT'L L. REV. 57, 72–73 (2007) (suggesting punishment is unreasonable when a child is left with "marks on their body").

40. *See, e.g.*, Doe v. Haw. Dep't of Educ., 334 F.3d 906, 907–09 (9th Cir. 2003) (finding a teacher exceeded their disciplinary authority by "tap[ing] a second grade student's head to a tree" after the student fought with another child and refused to sit in time-out).

41. *See* Murray A. Straus & Julie H. Stewart, *Corporal Punishment by American Parents: National Data on Prevalence, Chronicity, Severity, and Duration, in Relation to Child and Family Characteristics*, 2 CLINICAL CHILD & FAM. PSYCH. REV. 55, 57 (1999).

42. *Id.* at 55.

43. *See* Bartman, *supra* note 28, at 286.

44. *See* Reece L. Peterson & Ann O'Connor, *Corporal Punishment: A Traditional Discipline Consequence*, UNIV. OF NEB-LINCOLN (Jan. 2014), https://bit.ly/3sm21Kj.

45. *See* Susan H. Bitensky, *Spare the Rod, Embrace Our Humanity: Toward a New Legal Regime Prohibiting Corporal Punishment of Children*, 31 UNIV. OF MICH. J. OF L. REFORM 353, 354 (1998) [hereinafter Bitensky, *Spare the Rod*].

courts.[46] The trauma of enduring even one instance of corporal punishment could lead to a lifetime of consequences similar to that of a single instance of abuse.[47]

In the United States, the legality of corporal punishment hinges on the actor.[48] Generally, courts afford parents broad childrearing rights, including the discretion to discipline.[49] This broad discretion bleeds into the educational context as school officials take on a parental role during school hours.[50]

1. Spanking by Parents

The most common form of corporal punishment is spanking by parents, a practice deeply embedded in the American consciousness as an accepted disciplinary tactic.[51] The U.S. Supreme Court has a long history of granting parents broad privacy and autonomy in childrearing under the Fourteenth Amendment's Due Process Clause.[52] However, corporal punishment is not constitutionally protected and, in some cases, has been explicitly rejected by federal courts.[53] In these cases, the punishment was so severe that it likely crossed the line from discipline to abuse.[54]

46. *See id.*; *see also* Paul C. Holinger, *Why Does the U.S. Still Permit the Physical Punishment of Children?*, PSYCH. TODAY (Nov. 11, 2020), https://bit.ly/3gbTR17 (noting the Centers for Disease Control & Prevention have released policies and legislative recommendations equating corporal punishment to child abuse).

47. *See* Bitensky, *Spare the Rod*, *supra* note 45, at 428–32.

48. *See* Elizabeth T. Gershoff & Susan H. Bitensky, *The Case Against Corporal Punishment of Children: Converging Evidence From Social Science Research and International Human Rights Law and Implications for U.S. Public Policy*, 13 PSYCH. PUB. POL'Y & L. 231, 245 (2007) (distinguishing the legality of parents using corporal punishment with school officials); *see also* Deana Pollard, *Banning Child Corporal Punishment*, 77 TUL. L. REV. 575, 640 (2003).

49. *See* Pollard, *supra* note 48, at 577; *see also* discussion *infra* Section II.A.1.

50. *See* Carolyn P. Weiss, *Curbing Violence or Teaching It: Criminal Immunity for Teachers Who Inflict Corporal Punishment*, 74 WASH. UNIV. L. Q. 1251, 1254 (1996); *see also* discussion *infra* Section II.A.2.

51. *See* Weiss, *supra* note 50, at 1253–54; *see also* Emily Cuddy & Richard V. Reeves, *Hitting Kids: American Parenting and Physical Punishment*, BROOKINGS (Nov. 6, 2014), https://brook.gs/3ienC2R (citing a 2014 report which found that over 80% of parents spank their children at least sometimes and believe it is "appropriate").

52. *See, e.g.*, Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (denying children the opportunity to learn a foreign language in school interfered with parents' right to bring up children); Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925) (forcing children to enroll in public schools violated parents' childrearing rights); Troxel v. Granville, 530 U.S. 57, 72–73 (2000) (denying parents' visitation violated their right to control children's upbringing).

53. *See, e.g.*, Farr v. Kendrick, No. CV-19-08127-PCT-DWL, 2019 WL 2568843, at *7, 14–16 (D. Ariz. June 21, 2019) (upholding loss of custody when parents used various weapons to spank child with the admitted intention of inflicting as much pain as possible), *aff'd by* Farr v. Kendrick, 824 Fed. Appx. 480 (9th Cir. 2020).

54. *See id.* at *7.

2. Corporal Punishment in the Classroom

Corporal punishment has existed in schools for as long as it has existed in the United States, dating back to the colonial period.[55] During the 2013–2014 school year, over 100,000 students nationwide were subjected to corporal punishment and, as of 2021, school corporal punishment remains legal in 19 states.[56] The use of corporal punishment in schools has resulted in tens of thousands of children requiring medical attention.[57] School corporal punishment is most common in Mississippi, where teachers use it "nearly 28,000 times a year."[58]

Courts traditionally justify school corporal punishment as an exercise of school administrators' independence[59] and their *in loco parentis*[60] authority.[61] Thus, courts generally permit teachers and other school officials to discipline students using "reasonable" corporal punishment.[62] The reasonableness standard extends immunity to school officials when "act[ing] in accord with school board policy and [when] the punishment is appropriate,"[63] usually when students' behavior disrupts the learning environment.[64] But even though courts extend significant discretion to school boards and local counties to shape corporal punishment policies, school officials often blatantly ignore policies that ban corporal punishment and face little to no repercussion.[65]

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55. *See* Weiss, *supra* note 50, at 1253.

56. *See* Spencer, *supra* note 7; Clark, *supra* note 2.

57. *See A Violent Education*, *supra* note 5, at 3–4.

58. Spencer, *supra* note 7.

59. *See* Safford Unified Sch. Dist. #1 v. Redding, 557 U.S. 364, 383 (2009) (Thomas, J., concurring in part and dissenting in part) (stating that courts are reluctant to "interfere in the routine business of school administration" (quoting Morse v. Frederick, 551 U.S. 393, 414 (2007)).

60. *See In Loco Parentis*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining *in loco parentis* as "acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent").

61. *See, e.g.*, Webb v. McCullough, 828 F.2d 1151, 1157 (6th Cir. 1987) (finding that a teacher who was chaperoning a school trip had *in loco parentis* authority to search a student's hotel room). *But see* Mahanoy Area Sch. Dist. v. B.L., 141 S. Ct. 2038, 2046 (2021) (finding that the school did not have *in loco parentis* authority when disciplining a student for a social media post made off-campus and outside school hours).

62. *See Safford*, 557 U.S. at 375–77 (finding that a search of a student's outer clothes and backpack was reasonable but conducting a strip search and checking her underwear for drugs was unreasonable).

63. Weiss, *supra* note 50, at 1251.

64. *See, e.g.*, Gonzales v. Passino, 222 F. Supp.2d 1277, 1279–83 (D.N.M. 2002) (finding that a teacher did not exceed their authority when hitting a student with a plastic whiffle ball bat after the student used a homophobic slur and refused to report to the principal's office). *But see* Doe v. Haw. Dep't of Educ., 334 F.3d 906, 907–08 (9th Cir. 2003) (finding teacher exceeded authority when "tap[ing] a second-grade student's head to a tree" when the student refused to sit in time-out).

65. *See* Mark Keierleber, *'It's Barbaric': Some U.S. Children Getting Hit at School Despite Bans*, GUARDIAN (May 19, 2021, 6:00 AM), https://bit.ly/30qPStA (describing

Although the reasonableness standard may provide school districts too much discretion, teachers do not necessarily maintain unfettered discretion in states where school corporal punishment is legal.[66] For instance, some states provide exemptions preventing teachers from physically disciplining students with disabilities.[67] Other states require teachers to file incident reports justifying the need for each instance of corporal punishment.[68] Therefore, some limitations on the use of school corporal punishment may exist even where the practice is legal.[69]

In sum, corporal punishment by parents is a generally accepted disciplinary practice in the United States.[70] Because school administrators act in place of parents during the school day, courts generally extend immunity to school officials who inflict corporal punishment on students.[71] Although relevant state legislation may place limitations on school corporal punishment where it is still legal, the broad discretion afforded to school officials over the years has cemented corporal punishment's status as a common practice in the United States.[72]

B. Corporal Punishment's Adverse Effects on Children

Only recently have scholars studied the harmful effects of corporal punishment on children.[73] Because of the lack of research, the true extent of emotional and developmental damage resulting from corporal punishment is difficult to quantify.[74] However, available studies indicate that enduring corporal punishment during childhood leaves emotional and physical scars that may either last in the short-term or persist throughout life.[75]

In the short-term, corporal punishment may cause severe physical injury.[76] Young children are particularly susceptible to injuries resulting from corporal punishment because adults are bigger and stronger.[77] Therefore, what adults may consider "light" physical punishment, like

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case where the police brought no charges against a school principal who spanked a six-year-old).

66. *See* Gershoff & Font, *supra* note 9, at 17.

67. *See id.*; *see, e.g.*, OKLA. STAT. tit. 70, § 13-116 (2017); TENN. CODE ANN. § 49-6-4103 (2018).

68. *See, e.g.*, TENN. CODE ANN. § 49-6-4108 (2018).

69. *See id.*

70. *See* Cuddy & Reeves, *supra* note 51.

71. *See* Weiss, *supra* note 50, at 1252–53.

72. *See id.* at 1251.

73. *See* Bartman, *supra* note 28, at 288.

74. *See id.*

75. *See id.*

76. *See* Anne B. Smith, *The State of Research on the Effects of Physical Punishment*, 27 SOC. POL'Y J. OF N.Z. 114, 114–15 (2006) [hereinafter Anne B. Smith].

77. *See* Joan Durrant & Ron Ensom, *Physical Punishment of Children: Lessons from 20 Years of Research*, 184 CANADIAN MED. ASS'N J. 1373, 1375 (2012).

spanking or slapping, may cause serious injury to children.[78] Further, continual corporal punishment by the same authority figure tends to escalate with each instance, with punishments becoming harsher as children either learn to fight back or become complacent and build a higher tolerance.[79] Thus, the potential for corporal punishment to become more dangerous increases with each instance.[80] Even an isolated occurrence of corporal punishment may cause a child to live in fear.[81]

The long-term impacts are even worse.[82] First, studies show that corporal punishment evokes aggression from children.[83] Scholars attribute this hostility to the impressionable nature of children, who learn socially appropriate behaviors by example.[84] Accordingly, children subjected to corporal punishment inevitably view violence as a proper means to resolve conflicts.[85] Ingrained childhood behaviors form habits that are difficult to break, that transfer into adulthood, and that affect the ability to resolve conflict.[86] Thus, corporal punishment is linked not only to continued aggressive tendencies in adulthood but also to domestic violence, spousal assault,[87] and even criminal activity.[88]

Second, children subjected to corporal punishment may develop antisocial behaviors, including fear of authority figures.[89] Other behavioral issues may include "lower intellectual achievement"[90] and a greater likelihood of dropping out of high school.[91] Ironically, even though one justification for school corporal punishment is that it

78. *See Corporal Punishment and Health*, WORLD HEALTH ORG. (Nov. 23, 2021), https://bit.ly/3MaxTKH.

79. *See id.*

80. *See id.*; *see also* Brendan L. Smith, *The Case Against Spanking*, AM. PSYCH. ASS'N: MONITOR ON PSYCH. (Apr. 2012), https://bit.ly/3HjQksQ [hereinafter Brendan L. Smith] ("Physical punishment doesn't work to get kids to comply, so parents think they have to keep escalating it. That is why it is so dangerous." (quoting physical punishment expert Elizabeth Gershoff)).

81. *See* Bartman, *supra* note 28, at 310.

82. *See* Durrant & Ensom, *supra* note 77, at 1373–74.

83. *See id.* at 1373.

84. *See* Eve Glicksman, *Physical Discipline is Harmful and Ineffective*, AM. PSYCH. ASS'N (May 2019), https://bit.ly/38Tt3Tz.

85. *See* Bartman, *supra* note 28, at 290.

86. *See id.*

87. *See* Durrant & Ensom, *supra* note 77, at 1373–74; *see also* Jonathan P. Schwartz et al., *Unhealthy Parenting and Potential Mediators as Contributing Factors to Future Intimate Violence: A Review of the Literature*, 7 TRAUMA, VIOLENCE, & ABUSE 206, 206–07 (2006).

88. *See* Adam Maurer & James S. Wallerstein, *The Influence of School Corporal Punishment on Crime*, U.S. DEP'T OF JUST.: NAT'L INST. OF JUST., https://bit.ly/3qCHu4C (finding in one survey that 95% of inmates who were incarcerated for violent crimes were abused as children).

89. *See* Bartman, *supra* note 28, at 310.

90. *See* Anne B. Smith, *supra* note 76, at 114.

91. *See* Clark, *supra* note 2.

supposedly promotes better work and higher grades,[92] evidence shows that it creates the opposite effect.[93]

Corporal punishment perpetuates a vicious cycle in which children grow up and subject peers and their own children to violence and hostility.[94] Overall, studies reveal that corporal punishment does not increase compliance in children.[95] Rather, it imposes negative physical and mental health ramifications that may persist in the short- or long-term.[96]

C. Getting the Courts Involved: The Supreme Court Decides Ingraham v. Wright

The seminal case governing school corporal punishment claims is *Ingraham v. Wright*,[97] marking the only time the Supreme Court considered the constitutionality of school corporal punishment.[98] In *Ingraham*, a Florida middle school teacher paddled two students, petitioners James Ingraham and Roosevelt Andrews.[99] A state statute permitted school corporal punishment,[100] a common practice in Florida in the 1970s.[101] Additionally, the local school board had enacted a regulation permitting corporal punishment and providing "explicit directions" for teachers to paddle "recalcitrant student[s]."[102] However, the regulation limited the paddling to no more than five blows so teachers would leave behind "no apparent physical injury to the student."[103] The regulation also restricted teachers to only paddle students on the buttocks.[104]

In their complaint, Ingraham and Andrews claimed their paddling exceeded these limitations.[105] Ingraham claimed his teacher paddled him at least 20 times, resulting in a hematoma and in other severe injuries

92. *See* Bartman, *supra* note 28, at 288.
93. *See* Anne B. Smith, *supra* note 76, at 118–19.
94. *See* Bartman, *supra* note 28, at 290.
95. *See* Durrant & Ensom, *supra* note 77, at 1373; *see also* Brendan L. Smith, *supra* note 80.
96. *See* Bartman, *supra* note 28, at 288.
97. *See* Ingraham v. Wright, 430 U.S. 651, 683 (1977).
98. *See* Park, *supra* note 16 ("The Supreme Court has considered the constitutionality of corporal punishment only once.").
99. *See Ingraham*, 430 U.S. at 657.
100. *See id.* at 655 n.6 (quoting relevant Florida statute, which did not limit the number of "licks" a student may receive when paddled, leaving the discretion to local school boards).
101. *See id.* at 655–56.
102. *Id.* at 656.
103. *Id.* at 656–57.
104. *See id.* at 656.
105. *See id.* at 657.

warranting medical attention.[106] Meanwhile, Andrews claimed the teacher paddled his arms in violation of the regulation, hitting him hard enough to "depriv[e] him of the full use of his arms for a week."[107] Based on these allegations, Ingraham and Andrews claimed violations of their Eighth and Fourteenth Amendment rights.[108]

On appeal, the Supreme Court emphasized the traditional use of corporal punishment in disciplining children.[109] Even though the government "general[ly] abandon[ed]" corporal punishment in disciplining prisoners, it remained a dominant method to discipline children despite "sharply divided" public opinion.[110] Because the Court could "discern no trend towards its elimination,"[111] it held that school corporal punishment violated neither the Eighth nor Fourteenth Amendments.[112]

Examining the Eighth Amendment claim first,[113] the Court reasoned that the prohibition on cruel and unusual punishment did not apply to school corporal punishment because the Framers did not intend that prohibition to extend beyond the criminal context.[114] Justice Powell, writing for the majority, asserted that the "legislative definition of crimes and punishments" deeply concerned the Framers.[115] The Court theorized that the Framers' concern arose because the English Bill of Rights of 1689, the predecessor to the Eighth Amendment, included the word "criminal" in the clause concerning "illegal punishments."[116] Even though the Framers omitted the word "criminal" in the final draft of the Eighth Amendment, the Court explained, "the subject to which [the Eighth Amendment] was intended to apply—the criminal process—was the same."[117] Since the Constitution's ratification, no cases before the Supreme Court addressed the Eighth Amendment outside the criminal context.[118]

106. *See id.*
107. *Id.*
108. *See id.* at 653.
109. *See Ingraham*, 430 U.S. at 660.
110. *Id.* at 660.
111. *Id.* at 661.
112. *See id.* at 683.
113. *See id.* at 658–59 (explaining the district court found the paddling did not violate the Eighth Amendment because it was neither severe nor arbitrary; an *en banc* Fifth Circuit agreed, citing the Eighth Amendment's general application to criminal procedure).
114. *See id.* at 664–66.
115. *Id.* at 665-66 (citing In re Kemmler, 136 U.S. 436, 446–67 (1890) and Furman v. Georgia, 408 U.S. 238, 263 (1972) (Brennan, J., concurring)).
116. *Id.* at 665.
117. *Id.* at 666.
118. *See id.*

Ingraham and Andrews countered that the Framers could not have anticipated the severity of punishments children would face in public schools.[119] Accordingly, they argued that the Court should extend Eighth Amendment protection beyond its original scope because failing to do so would afford criminals greater constitutional protections than innocent schoolchildren.[120] However, the Court rejected this argument, finding it an "inadequate basis" for extending the Eighth Amendment's application.[121]

Next, the Court considered whether school corporal punishment violated the Fourteenth Amendment's Due Process Clause,[122] limiting its analysis to Procedural Due Process.[123] The Court first discussed the history of due process in protecting the "right to be free from . . . unjustified intrusions on personal security,"[124] as well as "freedom from bodily restraint and punishment."[125] The Court held that due process liberty interests are inherent in school corporal punishment because the practice involves bodily restraint.[126]

Procedural Due Process requires "notice and an opportunity to be heard" before depriving individuals of liberty.[127] Despite this established principle, the Court concluded that schools need not provide procedural protections before inflicting corporal punishment.[128] The Court reasoned that excessive corporal punishment was rare, so the costs of implementing due process protections outweighed any marginal benefits students may accrue.[129]

The Court then applied this principle to the Florida statute and school board regulation, finding no due process violations.[130] First, the Court found that under the statute, if a teacher's corporal punishment was unreasonable or excessive, the child had the opportunity to obtain civil damages or hold the teacher criminally liable.[131] Further, because the school board regulation required approval by the principal, administration in front of another adult, and notification to the child's

119. *See Ingraham*, 430 U.S. at 668–69.

120. *See id.*

121. *Id.* at 669.

122. *See id.* at 658 (explaining the Fifth Circuit initially found a Fourteenth Amendment violation, but after a rehearing *en banc*, it reinstated the district court's holding that schools would be overburdened by adhering to rigid procedures).

123. *See id.* at 672.

124. *Id.* at 673.

125. *Id.* at 674.

126. *See id.* at 672.

127. *Id.* at 653.

128. *See id.* at 683 (noting Florida provides procedural protections through common-law remedies).

129. *See Ingraham*, 430 U.S. at 682.

130. *See id.* at 683.

131. *See id.* at 676–77.

parents, the Court determined it did not violate due process.[132] Overall, the Court considered these limitations reasonable and found that the incidents involving Ingraham and Andrews departed from the school's standard practices.[133] Because the students had alternative common-law remedies under the statute and regulation, the Court found no constitutional violation.[134]

Beyond its constitutional analysis, the Court offered policy justifications for its holding.[135] It reasoned that teachers will likely only paddle students when they misbehave in the teacher's presence, leaving little reason to believe that paddling would occur "without cause."[136] Like the district court, the Supreme Court expressed concern for the burden imposed on schools through procedural requirements.[137] The Court reasoned that requiring "even informal hearings" may divert significant time and attention from a school's primary purpose: education.[138] Therefore, in balancing the government's interest in disciplining students against children's bodily integrity, the *Ingraham* Court weighed the integrity of the education system more heavily,[139] allowing school corporal punishment when "reasonable."[140] However, the Court did not specify when corporal punishment is reasonable, leaving this standard open for determination by states.[141]

D. Ingraham *Leaves Lower Federal Courts Confused*

Since *Ingraham*, the Supreme Court has not considered the constitutionality of school corporal punishment.[142] Because *Ingraham* articulated no clear standard for evaluating school corporal punishment, cementing *Ingraham* as precedent has resulted in inconsistent jurisprudence among lower federal courts.[143]

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132. *See id.* at 656 n.7.

133. *See id.* at 677 ("Although students have testified in this case to specific instances of abuse, there is every reason to believe that such mistreatment is an aberration.").

134. *See id.* at 683.

135. *See id.* at 677–78.

136. *Id.*

137. *See id.* at 680.

138. *Id.*

139. *See Ingraham*, 430 U.S. at 680.

140. *Id.* at 674.

141. *See id.* at 662–64.

142. *See* Park, *supra* note 16.

143. *See, e.g.*, Hatfield v. O'Neill, 534 F. App'x 838, 840–42 (11th Cir. 2013) (per curiam) (finding a due process violation when a teacher hit a disabled student over the head). *Contra* Moore v. Willis Indep. Sch. Dist., 233 F.3d 871, 874–75 (5th Cir. 2000) (dismissing a student's suit because alternative due process remedies were available to the student under state law).

1. Eighth Amendment Application

One reason children lack constitutional protection from corporal punishment is that the Eighth Amendment usually applies in the criminal context.[144] Even in the criminal context, though, the burden to hold an actor accountable for inflicting corporal punishment is often substantial.[145]

Since *Ingraham*, courts consider school corporal punishment cases "foreclosed" under the Eighth Amendment.[146] As asserted in *Ingraham*, the Framers originally intended to protect prisoners—not schoolchildren—through the Eighth Amendment.[147] For this reason, students receive no legal relief under the Eighth Amendment for enduring corporal punishment.[148]

2. Fourteenth Amendment Application

Because *Ingraham* foreclosed relief for school corporal punishment under the Eighth Amendment, most petitioners now rely on Fourteenth Amendment Substantive Due Process.[149] The Fourteenth Amendment provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."[150] Analyzing school corporal punishment under the Fourteenth Amendment has resulted in vastly different rulings in the federal courts of appeals.[151] Due process includes two categories of claims: Substantive Due Process and Procedural Due Process.[152]

144. *See Ingraham*, 430 U.S. at 664–68.

145. *See, e.g.*, Bailey v. Turner, 736 F.2d 963, 970–72 (4th Cir. 1984) (holding that a prison guard spraying mace on a prisoner did not constitute Cruel and Unusual Punishment because the prisoner was "unruly" and the guard did not know "his action in gassing the plaintiff was unconstitutional"). *Contra* Austin v. Hopper, 15 F. Supp.2d 1210, 1239-53 (M.D. Ala. 1998) (finding that using a hitching post on prisoners was unconstitutional when not every use involved a "security risk, disturbance, or other type of situation requiring an immediately necessarily coercive measure").

146. Clayton v. Tate Cnty. Sch. Dist., 560 F. App'x 293, 297 (5th Cir. 2014) (affirming lower court's dismissal of student's Eighth Amendment claim against teacher for paddling him).

147. *See Ingraham*, 430 U.S. at 666.

148. *See id.*; *see Clayton*, 560 F. App'x at 297.

149. *See, e.g.*, Hatfield v. O'Neill, 534 F. App'x 838, 840 (11th Cir. 2013) (per curiam); Webb v. McCullough, 828 F.2d 1151, 1159 (6th Cir. 1987).

150. U.S. CONST. amend. XIV, § 1.

151. *See, e.g.*, *Hatfield*, 534 F. App'x at 840 (affirming denial of summary judgment for teacher hitting student on head). *Contra Webb*, 828 F.2d at 1159 (remanding to determine whether teacher slapping student violated substantive due process).

152. *See* Snider Int'l Corp. v. Town of Forest Heights, 739 F.3d 140, 145 (4th Cir. 2014) ("Due process contains both substantive and procedural components. Procedural due process prevents mistaken or unjust deprivation, while substantive due process prohibits certain actions regardless of procedural fairness.").

First, Substantive Due Process "limits what the government may do regardless of the fairness of the procedures that it employs to guarantee protection against government power arbitrarily and oppressively exercised."[153] Courts developed two primary tests for analyzing Substantive Due Process claims: the "Shock the Conscience" and "Reasonableness" tests.[154]

Under the Shock the Conscience test, courts may impose liability on school officials when corporal punishment is "so brutal, demeaning[,] and harmful as literally to shock the conscience of the court."[155] The Supreme Court has clarified the standard as any behavior that is "'intended to injure in some way unjustifiable by any government interest,' or in some circumstances if it has resulted from deliberate indifference."[156] Nevertheless, the circuit courts' interpretation of the standard's contours has varied. Therefore, corporal punishment must be quite severe for a Substantive Due Process violation to be found under the Shock the Conscience test.[157]

Alternatively, under the Reasonableness test, "corporal punishment in public schools is a deprivation of substantive due process when it is arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning."[158] Unlike the Shock the Conscience test, the Reasonableness inquiry turns on why the actor inflicted corporal punishment instead of the severity of the punishment.[159] Under this standard, courts consider whether school

153. Harold v. Richards, 334 F. Supp.3d 635, 644 (E.D. Pa. 2018).

154. *Compare Hatfield*, 534 F. App'x at 845 (implementing the "shocks the conscience" test), *with* Fee v. Herndon, 900 F.2d 804, 808 (5th Cir. 1990) (applying the "reasonableness" test).

155. *See Hatfield*, 534 F. App'x at 847 (alteration in original) (quoting Neal v. Fulton Cnty. Bd. of Educ., 229 F.3d 1069, 1075 (11th Cir. 2000)).

156. *See* Rosales-Mireles v. United States, 138 S. Ct. 1897, 1906 (2018) (quoting Cnty. of Sacramento v. Lewis, 523 U.S. 833, 849 (1998)).

157. *Compare Hatfield*, 534 F. App'x at 845 (finding that "forceful feeding[,] . . . the removal of skin from [the student's] lips," and forcing the student's thumb down her throat were not conscience-shocking), *and* Peterson v. Baker, 504 F.3d 1331, 1337–38 (11th Cir. 2007) (finding grabbing student's neck did not shock the conscience because his injuries were limited to bruising and red marks and no medical care was required), *and* London v. Dirs. of DeWitt Pub. Schs., 194 F.3d 873, 874–75 (8th Cir. 1999) (finding that a teacher dragging a student out of the classroom and banging the student's head on a metal pole did not shock the conscience because no major injury resulted), *with Neal*, 229 F.3d at 1076–77 (finding that the school sports coach striking a student in eye and causing the student to go blind was conscience-shocking).

158. P.B. v. Koch, 96 F.3d 1298, 1302 n.3 (9th Cir. 1996) (quoting Fee v. Herndon, 900 F.2d 804, 808 (5th Cir. 1990)).

159. *See P.B.*, 96 F.3d at 1303 (finding that a teacher lacked qualified immunity when "slapping, punching, and choking [] students" because "there was no need for force" when student's only infraction was not removing his hat as instructed); *see also* Metzger v. Osbeck, 841 F.2d 518, 519–21 (3d Cir. 1988) (remanding to determine whether grabbing a student's neck was unreasonable based on the teacher's intent). *But*

officials have complied with school policies and upheld "educational objectives" when administering the punishment.[160] Like the Shock the Conscience test, the Reasonableness standard imposes a high burden on petitioners and awards great deference to school officials.[161]

Second, Procedural Due Process generally requires adequate notice and a hearing before the state may deprive individuals of "life, liberty, or property."[162] Like Eighth Amendment claims, the *Ingraham* decision precludes Procedural Due Process for school corporal punishment.[163] The inconsistencies in school corporal punishment jurisprudence in the aftermath of *Ingraham* have culminated in the current circuit split.[164]

E. Where is Congress? Legislative Remedy Unlikely

One option to ban school corporal punishment nationwide is by federal legislation.[165] Although the *Ingraham* Court granted states power to draft school corporal punishment legislation, many did not enact such laws.[166] Even states that *did* pass legislation did not do so until several decades after *Ingraham*.[167] With the most recent state legislation on school corporal punishment passed over 10 years ago, and so many instances of school corporal punishment today,[168] federal action is long overdue.[169]

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see Wise v. Pea Ridge Sch. Dist., 855 F.2d 560, 564 (8th Cir. 1988) (finding that paddling a student was reasonable when the student failed to listen to the teacher).

160. Doe v. Haw. Dep't of Educ., 334 F.3d 906, 907–09 (9th Cir. 2003).

161. *See, e.g.*, *Wise*, 855 F.2d at 564; *Fee*, 900 F.2d at 808.

162. U.S. CONST. amend. XIV, § 1.

163. *See* Coleman v. Franklin Par. Sch. Dist., 702 F.2d 74, 76 (5th Cir. 1983).

164. *See* Wallace by Wallace v. Batavia Sch. Dist., 68 F.3d 1010, 1014 (7th Cir. 1995) (holding that school corporal punishment may violate the Fourth Amendment); Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th Cir. 2007) (finding Fourth Amendment claims possible where the student can point to a specific cause of injury); T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 418 (denying finding a Fourth Amendment violation for placing a student in chokehold).

165. *See* Rachel M. Cohen & Marcia Brown, *Congress Has the Power to Override Supreme Court Rulings. Here's How.*, The INTERCEPT (Nov. 24, 2020, 5:00 AM), https://bit.ly/3ALDUZ9.

166. *See Discipline: State Laws on Corporal Punishment*, FINDLAW (June 20, 2016), https://bit.ly/3GUFD0o.

167. *See id.* (noting, for instance, that Delaware banned corporal punishment in 2003 and Pennsylvania banned corporal punishment in 2005).

168. *See* Christina Caron, *In 19 States, It's Still Legal to Spank Children in Public Schools*, N.Y. TIMES (Dec. 13, 2018), https://nyti.ms/3tXGt74 (noting that New Mexico was the latest state to ban school corporal punishment in 2011).

169. *See* Susan H. Bitensky, *An Analytical Ode to Personhood: The Unconstitutionality of Corporal Punishment of Children Under the Thirteenth Amendment*, 53 SANTA CLARA L. REV. 1, 10 (2013) ("Waiting for lawmakers to harmonize the dissonance on a state-by-state basis is not an optimal solution. Such a piecemeal, haphazard approach would probably require a very long time before all children enjoyed legal protection from corporal punishment across the country.").

Federal lawmakers have debated school corporal punishment legislation several times.[170] However, multiple bills introduced in the U.S. House of Representatives and the U.S. Senate have failed.[171] The most recent of these bills would have required each state's Secretary of Education to submit to the Secretary of State a plan to eliminate school corporal punishment.[172] The plan would require implementing alternative disciplinary measures and training school personnel to ensure awareness and compliance with the new policies.[173] In addition, the federal government would withhold education funds from states failing to comply.[174] However, the bill never made it past the House committee and has a low chance of enactment.[175]

The bill introduced in the Senate was similar, and it also had a minimal chance of passage.[176] Because of the difficulty in advancing school corporal punishment legislation, this solution is unlikely to prevail.[177] Accordingly, the federal judiciary should intervene.

F. Breaking Down the Circuit Split: Corporal Punishment as a Seizure?

With the Supreme Court unwilling to revisit the issue, and a lack of federal legislation, *Ingraham* has remained the law.[178] Seeking alternative remedies in suing school officials for corporal punishment, petitioners in recent years have alleged Fourth Amendment violations to circumvent *Ingraham's* barriers to relief.[179] The Fourth Amendment provides that "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated."[180] In claiming that corporal punishment violates the Fourth Amendment,

170. *See* Gershoff & Font, *supra* note 9, at 18 (explaining that legislators have introduced proposed legislation in Congress as early as 1990, with multiple efforts to modify and reintroduce; lawmakers later revived their efforts in 2010).

171. *See, e.g.*, Ending Corporal Punishment in Schools Act of 2021, H.R. 1234, 117th Cong. (2021).

172. *See id.* at § 5(a).

173. *See id.*

174. *See id.* at § 5(b).

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

176. *See* Protecting Our Students in Schools Act of 2021, S. 2029, 117th Cong. (2021).

177. *See* Falcone, et al., *supra* note 6.

178. See Gershoff & Font, *supra* note 9, at 18 (explaining that the Court has not revisited the issue of school corporal punishment since *Ingraham*, though it was petitioned to do so in *Serafin v. School of Excellence in Education* in 2007. Additionally, "[t]here are no federal laws or regulations concerning school corporal punishment," although several lawmakers have proposed bills over the years).

179. *See Wallace*, 68 F.3d at 1014; *Preschooler II*, 479 F.3d at 1182; *T.O.*, 2 F.4th at 418.

180. U.S. CONST. amend. IV.

petitioners generally argue that physical intervention by school officials constitutes a seizure.[181] This theory of recovery has created a circuit split regarding the application of the Fourth Amendment to school corporal punishment.[182]

1. General Constitutional Rights of Schoolchildren

While the *Ingraham* Court did not find a constitutional violation for school corporal punishment,[183] the Supreme Court has recognized that the Constitution protects schoolchildren under some circumstances.[184] However, the Court tends to employ a more "rigorous" review[185] for students than other individuals due to the "lesser expectation of privacy" students have at school.[186]

Most of the Court's jurisprudence surrounding schoolchildren implicates either the First Amendment[187] or the Fourth Amendment.[188] Most of these Fourth Amendment cases have primarily dealt with searches of students or their property by school administrators.[189] However, this framework still affords significant deference to school officials by weighing the intrusion imposed on the student by the search against the objective need of the school in conducting the search.[190] For instance, the Court has recognized that these considerations weigh in

181. *See Wallace*, 68 F.3d at 1014; *Preschooler II*, 479 F.3d at 1182; *T.O.*, 2 F.4th at 418.

182. *See Wallace*, 68 F.3d at 1014; *Preschooler II*, 479 F.3d at 1182; *T.O.*, 2 F.4th at 418.

183. *See* Ingraham v. Wright, 430 U.S. 651, 683 (1977).

184. *See, e.g.*, Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 514 (1969) (upholding First Amendment protections for students); Safford Unified Sch. Dist. #1 v. Redding, 557 U.S. 364, 368 (2009) (upholding Fourth Amendment protections for students).

185. *See* Curry v. Hensiner, 513 F.3d 570, 578 (6th Cir. 2008).

186. *See* N.J. v. T.L.O., 469 U.S. 325, 348 (1985) (Powell, J., concurring).

187. *See, e.g.*, *Tinker*, 393 U.S. at 507.

188. *See, e.g.*, *Safford*, 557 U.S. at 364.

189. *See, e.g.*, *id.* at 368 (finding that the school violated the student's Fourth Amendment right when she was forced to strip to her underwear to check for drugs because school officials had no reason to believe the student hid drugs in her underwear). *But see* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 664–65 (1995) (finding that a school's drug testing policy was not unreasonable because the school had an interest in maintaining a drug-free environment and requiring students to urinate in a cup was not intrusive).

190. *See T.L.O.*, 469 U.S. at 342, 347 (finding that the school did not violate a student's Fourth Amendment rights when searching the student's belongings for cigarettes and marijuana because the "measures adopted [we]re reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction").

favor of searches when officials suspect students of drug possession.[191] Although the Court extends deference to officials, it has still drawn limits on when searches of students cross the line and become unreasonable.[192]

Lower courts have used the same analysis in evaluating violations of students' bodily autonomy.[193] The present circuit split regarding the Fourth Amendment's application to school corporal punishment turns on when teachers may seize students under the Fourth Amendment, an issue the Supreme Court has not considered.[194] The circuit split arose from three cases, with the Seventh[195] and Ninth Circuits[196] upholding Fourth Amendment rights for children subjected to school corporal punishment. Meanwhile, the Fifth Circuit found no Fourth Amendment violation.[197]

2. The Seventh Circuit Considers Banning Corporal Punishment as a Seizure

The Seventh Circuit was one of the first to deal with the Fourth Amendment's application to school corporal punishment.[198] In *Wallace by Wallace v. Batavia School District*, two high school girls, Wallace and Fairbanks, argued before class.[199] The teacher asked the girls to stop, but he dragged Wallace from the classroom by her elbow when the fighting continued.[200] Wallace asked the teacher to let her go, which he did.[201] Wallace sued, alleging the teacher violated her Fourth and Fourteenth Amendment rights.[202]

On appeal, the Seventh Circuit noted that teachers may take "reasonable action" in maintaining classroom order.[203] However, relying on the Ninth Circuit case *United States v. Attson*,[204] the court held that

191. *See id.* at 344–47; *see also* Bd. of Educ. v. Earls, 536 U.S. 822, 825 (2002) (allowing a school to drug test students for after-school activities because it served an "important interest" in deterring and preventing drug use).

192. *See, e.g.*, Edwards v. Rees, 883 F.2d 882, 884 (10th Cir. 1989) (finding no Fourth Amendment violation when school officials detained student); Hassan v. Lubbock Indep. Sch. Dist., 55 F.3d 1075, 1080-82 (5th Cir. 1995) (finding no Fourth Amendment violation when school officials kept a student in a holding room after the student disrupted a school field trip).

193. *See Hassan*, 55 F.3d at 1080–82.

194. *See* Park, *supra* note 16.

195. *See* Wallace by Wallace v. Batavia Sch. Dist., 68 F.3d 1010, 1014 (7th Cir. 1995).

196. *See* Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1181–82 (9th Cir. 2007).

197. *See* T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 415 (5th Cir. 2021).

198. *See Wallace*, 68 F.3d at 1011.

199. *See id.*

200. *See id.*

201. *See id.*

202. *See id.*

203. *Id.* at 1014.

204. *See id.* at 1013 (citing United States v. Attson, 900 F.2d 1427 (9th Cir. 1990)).

teachers are subject to the Fourth Amendment ban on unreasonable seizures.[205] In *Attson*, the court explained, "non-law enforcement government actors come within the purview of the Fourth Amendment only when their searches or seizures of individuals have no other purpose but to aid the government's investigatory or administrative functions."[206] In *Wallace*, the court characterized the teacher's action as administrative in nature.[207]

Thus, the Seventh Circuit articulated a narrow rule limiting relief to school corporal punishment that is "unreasonable under the circumstances."[208] The court reasoned that school officials must maintain "flexibility" to discipline students, but their discretion must be limited.[209] Here, the court found the teacher's actions reasonable.[210] Under the circumstances, where a fight threatened to thwart the start of the day's lesson, removing Wallace was justified.[211] Moreover, grabbing her by the elbow was permissible.[212] Although the court ultimately ruled against the student, it constructed a framework for analyzing school corporal punishment cases under the Fourth Amendment and created a check on school officials.[213]

3. The Ninth Circuit Agrees with the Seventh

Twelve years after *Wallace*, the Ninth Circuit faced a similar issue, confronting the question of whether a four-year-old's alleged beating at preschool violated the Fourth Amendment.[214] In *Preschooler II v. Clark County School Board of Trustees*, the plaintiff's child arrived home from preschool with "unexplained bruises."[215] The child's shoes were missing, and he apparently walked barefoot from the school bus to the classroom in the morning.[216] The plaintiff learned that her child, who suffered from a disability, was "beaten, slapped, and body slammed" by his teacher.[217]

205. *See id.* at 1014 ("[Courts] should afford teachers and administrators an acceptable range of action for dealing with disruptive students while still protecting students against the potentially excessive use of state power.").

206. *Id.* at 1013 (citing *Attson*, 900 F.2d at 1427).

207. *See Wallace*, 68 F.3d at 1013.

208. *Id.* at 1014.

209. *Id.* at 1013.

210. *See id.* at 1015.

211. *See id.*

212. *See id.*

213. *See id.*

214. *See* Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1179 (9th Cir. 2007).

215. *Id.* at 1177.

216. *See id.* at 1181.

217. *Id.* at 1177.

The district court denied the school's motion to dismiss, finding that the school lacked qualified immunity.[218]

On appeal, the Ninth Circuit employed a fact-intensive reasonableness test similar to the Seventh Circuit.[219] The court found the beating and slamming could constitute a Fourth Amendment violation.[220] In contrast, the child's "unexplained bruises and scratches, without more, do not rise to the level of a recognized constitutional violation."[221] Therefore, the Court recognized a Fourth Amendment protection from school corporal punishment.[222] This ruling added a prong to the Fourth Amendment analysis articulated by *Wallace*: the cause of the student's injuries must be clear.[223]

4. The Fifth Circuit Splits: *T.O. v. Fort Independent School District*

In 2021, the Fifth Circuit split from the Seventh and Ninth Circuits, holding that children lack Fourth Amendment protection from school corporal punishment.[224] In *T.O. v. Fort Bend Independent School District*, a first-grade student, who suffered from ADHD, struggled with an outburst during class.[225] His behavioral aide removed him from the classroom and accompanied him to the hallway to help him calm down.[226] A fourth-grade teacher walked by and asked what was happening.[227] The aide explained, and when the teacher offered assistance, the aide insisted she had control of the situation.[228] The teacher persisted in interfering, and the student pushed her away.[229] In response, the teacher placed the student in a chokehold "for several minutes" while yelling at him.[230] Despite the aide's repeated demands, the teacher released the student only after he began "foaming at the mouth."[231]

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218. *See id.*

219. *See id.* at 1180 (citing Doe v. Haw. Dep't of Educ., 334 F.3d 906, 908–09 (9th Cir. 2003)).

220. *See id.* at 1182.

221. *Id.* at 1181.

222. *See id.* at 1178.

223. *See id.* at 1181.

224. *See* T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 415 (5th Cir. 2021), *cert. denied*, No. 21-1014, 2022 WL 2111366 (S. Ct. June 13, 2022).

225. *See id.* at 412.

226. *See id.*

227. *See id.*

228. *See id.*

229. *See id.*

230. *Id.*

231. Petition for Writ of Certiorari at 4, *T.O.*, 2 F.4th 407 (No. 21-1014).

The student's parents sued on his behalf, alleging a Fourth Amendment violation.[232] The district court dismissed the case, finding the teacher was entitled to qualified immunity.[233] The plaintiffs appealed to the Fifth Circuit, which affirmed.[234] The court reasoned that school corporal punishment did not constitute a Fourth Amendment violation because the Fifth Circuit "ha[d never before] conclusively determined whether the momentary use of force by a teacher against a student constitutes a Fourth Amendment seizure."[235] The court declined to analyze the Fourth Amendment issue and resolve what it identified as an "inconsistency in [its] caselaw."[236]

III. ANALYSIS

Corporal punishment instills fear in children, worsens behavior, and lacks material benefits.[237] T.O.'s petition for review[238] provided the Supreme Court with a new opportunity to review the constitutionality of school corporal punishment for the first time in nearly 45 years.[239] Unfortunately, the Supreme Court has decided not to heed this call to action.[240] The Supreme Court should have granted certiorari and held that school officials utilizing corporal punishment may violate the Fourth Amendment.[241] By ruling on *T.O.*, the Court could have explicitly overturned its dangerous *Ingraham* decision.[242]

Of course, Congress instead could consider advancing legislation that would ban school corporal punishment.[243] However, this solution is unlikely because none of the bills proposed in the past few decades have advanced beyond committee.[244] Further, a legislative remedy is not the

232. *See T.O.*, 2 F.4th at 412 (noting that plaintiff also alleged Fifth and Fourteenth Amendment violations).

233. *See id.*

234. *See id.*

235. *Id.* at 415.

236. *Id.*

237. *See* discussion *supra* Section II.B.

238. *See* Petition for Writ of Certiorari at 4, *T.O.*, 2 F.4th 407 (No. 21-1014).

239. Parties have petitioned the Supreme Court to review school corporal punishment before, but the Court has denied certiorari. *See, e.g.*, Serafin v. Sch. of Excellence in Educ., 252 F. App'x 684, 685–86 (5th Cir. 2007), *cert. denied*, 554 U.S. 922 (2008).

240. *See* T.O. v. Fort Bend Indep. Sch. Dist., No. 21-1014, 2022 WL 2111366, at *1 (S. Ct. June 13, 2022) (denying certiorari).

241. *See* discussion *infra* Section III.C; *see* Wallace by Wallace v. Batavia Sch. Dist., 68 F.3d 1010, 1014 (7th Cir. 1995); Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1179 (9th Cir. 2007); Doe v. Haw. Dep't of Educ., 334 F.3d 906, 910 (9th Cir. 2003).

242. *See* discussion *infra* Section III.B.

243. *See* discussion *infra* Section III.A.

244. *See, e.g.*, Ending School Corporal Punishment in Schools Act of 2021, H.R. 1234, 117th Cong. (2021).

best solution because lower courts need a concrete framework from which to analyze school corporal punishment cases in the future.[245] Thus, the Supreme Court should have granted T.O.'s petition and created a bright-line rule banning school corporal punishment under the Fourth Amendment.[246] In doing so, the Court should have overturned its outdated *Ingraham* decision.[247]

The Fourth Amendment reasonableness standard is the most logical analytical framework for school corporal punishment cases.[248] This standard provides a more specific mechanism from which lower courts may work.[249] Additionally, school corporal punishment qualifies as a seizure within the Fourth Amendment[250] and serves investigatory and administrative functions.[251] Furthermore, adopting this framework would maintain *Ingraham*'s policy rationale in preserving schools' autonomy.[252] The Reasonableness test offers a proper check on school officials while still affording a degree of discretion to maintain classroom order and to discipline students when needed.[253] Finally, a Supreme Court ruling clarifying that lower courts should use the Fourth Amendment reasonableness standard would have resolved the inconsistencies among lower federal courts and created a sound framework for analyzing future cases.[254]

A. The U.S. Supreme Court Should Review T.O. *and Overturn* Ingraham v. Wright

The U.S. Supreme Court should have reviewed *T.O.* and overturned *Ingraham v. Wright*.[255] Despite several petitions over the years,[256] the Supreme Court has not revisited school corporal punishment's constitutionality since *Ingraham* in 1977.[257] Denying these petitions has allowed more corporal punishment to occur, with its severity escalating

245. *See* discussion *infra* Section III.C.
246. *See* discussion *infra* Section III.D.
247. *See* discussion *infra* Section III.C; *see also* discussion *infra* Section III.D.
248. *See* discussion *infra* Section III.C.2.
249. *See* Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th Cir. 2007) (noting the Supreme Court has called on lower courts to analyze excessive force under "more specific constitutional provision[s], rather than through generalized notions of due process" (citing Graham v. O'Connor, 490 U.S. 386, 394 (1989))).
250. *See* discussion *infra* Section III.C.1.
251. *See* discussion *infra* Section III.C.1.
252. *See* discussion *infra* Section III.C.2.
253. *See* discussion *infra* Section III.C.2.
254. *See* discussion *supra* Section II.D.; *see also* discussion *supra* Section II.E.
255. *See* discussion *infra* Section III.D.
256. *See, e.g.*, Serafin v. Sch. Of Excellence in Educ., 252 F. App'x 684, 685–86 (5th Cir. 2007), *cert. denied*, 554 U.S. 922 (2008); Saylor v. Bd. of Educ., 118 F.3d 507, 508 (6th Cir.), *cert. denied*, 522 U.S. 1029 (1997).
257. *See* Park, *supra* note 16.

over time.[258] The denials have also caused discrepancies in lower federal court jurisprudence.[259]

The Supreme Court should overturn *Ingraham* because it is flawed and outdated.[260] First, the Court did not consider corporal punishment's adverse effects on children.[261] School is supposed to be safe for children to learn and grow, but imposing physical punishment hinders that goal.[262] In *Ingraham*, rather than considering the ethical merits of corporal punishment in addition to its constitutionality, the Court focused heavily on public opinion surrounding the practice.[263]

In its reliance on public opinion of school corporal punishment, the Court noted that there was insufficient evidence of a trend toward eliminating the practice, despite public opinion being "sharply divided."[264] Of course, public opinion is sometimes a factor that the Court considers in its rulings.[265] However, the lack of a clear public preference on school corporal punishment makes the *Ingraham* Court's perception arbitrary.[266] Moreover, *Ingraham*'s rationale relies on public opinion that is now outdated.[267]

Second, the Court emphasized the Eighth Amendment's history and purpose.[268] The Court adopted an overly narrow reading of the Eighth Amendment.[269] Although not stated in the text of the Eighth Amendment, the Court assumed a strict application confined to the criminal context simply because none of its Eighth Amendment jurisprudence ventured beyond that boundary.[270] This rationale imposed an unnecessary limitation on the Court's authority—if the Court applied such reasoning to every case, it would never consider any new constitutional questions or issue novel rulings comporting with the needs of an evolving society.

Further, in analyzing the original drafts of the Eighth Amendment, the Court did not consider the possibility that deliberately omitting the word "criminal" from the final draft indicated the Founders' intent to

258. *See, e.g.*, T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 412 (5th Cir. 2021) (extending qualified immunity to a teacher who choked a student).

259. *See* discussion *supra* Section II.D.; *see also* discussion *supra* Section II.E.

260. *See* discussion *supra* Section II.C.

261. *See* discussion *supra* Section II.B.

262. *See* discussion *supra* Section II.B.

263. *See* Ingraham v. Wright, 430 U.S. 651, 660–61 (1977).

264. *Id.*

265. *See, e.g.*, Atkins v. Virginia, 536 U.S. 304, 307 (2002) (looking to public consensus, among other factors, to conclude that the execution of intellectually deficient criminals violated the Eighth Amendment).

266. *See* Gershoff & Font, *supra* note 9, at 18.

267. *See id.* (explaining that today, 31 states have banned school corporal punishment, illustrating the shift in public opinion).

268. *See Ingraham*, 430 U.S. at 664–67.

269. *See id.* at 667–68.

270. *See id.*

adopt a broad construction of cruel and unusual punishment.[271] As noted by Justice White in his *Ingraham* dissent, "[t]he Eighth Amendment places a flat prohibition against the infliction of 'cruel and unusual punishments[,]'" regardless of the context.[272]

Third, *Ingraham* resulted in inconsistent jurisprudence among lower courts under the Fourteenth Amendment framework.[273] Not only did the Court fail to foresee the negative consequences of its Procedural Due Process ruling[274] but it also overlooked the Substantive Due Process issue entirely.[275] The Court's rationale that Ingraham and Andrews did not need constitutional relief because state law remedies were available failed to consider that seeking relief under these avenues is far more complicated for schoolchildren than adults.[276] Regardless, such alternative remedies would not prevent the harmful short- and long-term consequences associated with corporal punishment in the first place.[277]

Furthermore, the Court's failure to address Substantive Due Process left lower courts with no analytical framework, causing inconsistencies among the circuit courts.[278] For example, although the Court noted that teachers may "impose reasonable but not excessive force to discipline a child," the Court did not distinguish between what is reasonable and excessive.[279] This uncertainty extended overly broad discretion to teachers, administrators, and state legislators.[280]

Ingraham's legacy allows corporal punishment without proper consequences for school officials, even as the severity of such physical intervention escalates over time.[281] The Fifth Circuit's precedents and recent *T.O.* decision illuminate the overly broad discretion extended to

271. *Id.* at 685 (White, J., dissenting).

272. *See id.* at 684 (White, J., dissenting) ("[I]f it is constitutionally impermissible to cut off someone's ear for the commission of murder, it must be unconstitutional to cut off a child's ear for being late to class.").

273. *See* discussion *supra* Section II.E.

274. *See Ingraham*, 430 U.S. at 690–91 (White, J., dissenting) (arguing that nothing guarantees that alternative remedies would be adequate for students).

275. *See id.* at 689 n.5 (White, J., dissenting).

276. *See* Raymond C. O'Brien, *An Analysis of Realistic Due Process Rights of Children Versus Parents*, 26 CONN. L. REV. 1209, 1218 (1994) (explaining that courts usually prioritize the view of parents ahead of children in procedural due process considerations).

277. *See* discussion *supra* Section II.B.

278. *See* discussion *supra* Section II.E.

279. *See Ingraham*, 430 U.S. at 661, 670 (noting that teachers and administrators may use corporal punishment when "reasonably necessary" to maintain the educational environment but failing to define to what extent a student must be disruptive before punishment is reasonable).

280. *See id.* at 670.

281. *See, e.g.*, T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 412 (5th Cir. 2021); *see also* discussion *supra* II.E.4.

teachers under *Ingraham*.[282] In *T.O.*, Judge Wiener, writing both the majority opinion and a special concurrence, did not condone the teacher's behavior of placing the student in a chokehold but stressed that the court was "bound by . . . precedent[,]"[283] of which his special concurrence explicitly urged reconsideration.[284] By keeping *Ingraham* intact, the Supreme Court has extended excessive deference to school officials using corporal punishment, highlighted by the Fifth Circuit's precedents.[285]

Using the *Ingraham* ruling, the Fifth Circuit does not weigh the severity of students' behavior against the level of force school officials use in response.[286] In *T.O.*, the court suggested that the student was not the "subject of a 'random, malicious, and unprovoked attack,'" which is unlikely given that the teacher injected herself into a situation otherwise under control.[287] This reasoning also lacks context, as the court glossed over the teacher's excessive reaction to a relatively minor and age-appropriate outburst from a struggling child.[288] While choking the student, the teacher yelled that the student "'had hit the wrong one' and needed 'to keep his hands to himself.'"[289] Contrary to the Fifth Circuit's holding, it appears T.O. was indeed subjected to a random, malicious, and unprovoked attack by a teacher.[290]

While the outcome of *T.O.* was disappointing, Judge Wiener's recognition of the need for change is promising.[291] Unfortunately, however, Judge Wiener's colleagues on the Fifth Circuit did not heed his call to action.[292] Instead, they denied a petition to rehear *T.O. en banc*,

282. *See T.O.*, 2 F.4th at 412.

283. *See T.O.*, 2 F.4th at 412.

284. *See id.* at 419 (Wiener, J., concurring).

285. *See id.* at 414 (denying protection to a student "instructed to perform excessive physical exercise as a punishment" (citing Moore v. Willis Indep. Sch. Dist., 233 F.3d 871, 873, 875 (5th Cir. 2000))); Campbell v. McAlister, 162 F.3d 94, at *1, *5 (5th Cir. 1998) (declining protection to student "slammed" and "dragged" by a police officer after disrupting class); Flores v. Sch. Bd. of DeSoto Par., 116 F. App'x 504, 506 (5th Cir. 2004) (denying protection to student thrown against wall and choked after questioning the teacher's directive).

286. *See, e.g.*, *Moore*, 233 F.3d at 876; *Campbell*, 162 F.3d at *5; *Flores*, 116 F. App'x at 506.

287. *T.O.*, 2 F.4th at 415.

288. *See id.* at 412.

289. *See id.*

290. *See id.*

291. *See id.* at 419 (Wiener, J., concurring) ("Unlike this court, all other circuit courts have declined to apply *Ingraham*'s procedural due process reasoning to substantive due process claims, instead concluding that under particular circumstances, excessive corporal punishment can violate substantive due process rights (or Fourth Amendment rights), regardless of the availability of alternative remedies.").

292. *See* Petition for Writ of Certiorari at 3–5, *T.O.*, 2 F.4th 407 (No. 21-1014) (noting the Fifth Circuit denied petition for rehearing *en banc*).

which would have allowed the Court to overturn dangerous precedents.[293]

To rectify the harms caused by *Ingraham* and perpetuated in subsequent cases such as *T.O.*, the Supreme Court should have granted T.O.'s petition.[294] In reviewing his case, the Court should have found that a teacher placing a student in a chokehold violates a student's Fourth Amendment protection from unreasonable seizures.[295] The Court should have also explicitly overturned its harmful *Ingraham* decision, effectively banning school corporal punishment nationwide as unconstitutional.[296]

B. Adopting the Fourth Amendment Framework

The Fourth Amendment analytical framework is the most logical to apply in school corporal punishment cases.[297] First, corporal punishment fits within the meaning of a seizure under the Fourth Amendment because it violates bodily autonomy and restricts movement.[298] Second, when used to maintain order in the classroom, as courts and school officials generally assert, school corporal punishment constitutes an investigatory or administrative function consistent with Fourth Amendment jurisprudence.[299] Finally, applying the Fourth Amendment's Reasonableness test to the school corporal punishment context strikes the proper balance between school officials' authority to discipline students and students' bodily autonomy.[300]

1. Corporal Punishment as a Seizure

Under the Supreme Court's Fourth Amendment jurisprudence, a seizure is "a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful."[301] For instance, the corporal punishment in *T.O.* easily fits this definition because the teacher placed the student in a chokehold.[302] The chokehold restricted not only the student's movement but also his ability to

293. *See id.* at 10–11.
294. *See id.* at 22.
295. *See* discussion *infra* Section III.C.
296. *See* discussion *infra* Section III.C.; *see also* discussion *infra* Section III.D.
297. *See* discussion *infra* Section III.C.2.
298. *See* discussion *infra* Section III.C.1.
299. *See* discussion *infra* Section III.C.2.
300. *See* discussion *infra* Section III.C.2.
301. Torres v. Madrid, 141 S. Ct. 989, 993–95, 1003 (2021) (defining seizure as "[t]he application of physical force to the body of a person with intent to restrain;" finding an unlawful seizure occurred when a police officer shot a person even though the person was not actually arrested or taken into custody because the officer was still attempting to restrain his movements).
302. *See* T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 412 (5th Cir. 2021).

breathe.[303] The Court's definition could also apply to other instances of corporal punishment, such as a teacher paddling or spanking a student.[304] The student most likely would not feel free to leave or fight back in those instances.[305]

While most Fourth Amendment jurisprudence applied to the school context involves searches,[306] some federal courts have suggested applying this same analysis to school seizures.[307] Thus, courts would evaluate incidents of school corporal punishment based on whether it was reasonable under the circumstances.[308] This framework would allow school officials the independence to maintain classroom order with reasonable physical intervention if necessary while still protecting the bodily integrity of students.[309] Given the severe consequences corporal punishment often imposes on children,[310] the Supreme Court should impose an extremely high standard on officials claiming corporal punishment was reasonable.[311]

2. Courts Should Apply the Fourth Amendment Reasonableness Test

The Supreme Court's *Ingraham* decision resulted in inconsistent jurisprudence among lower federal courts by not articulating a clear distinction between reasonable physical intervention and excessive force.[312] The test to establish this distinction should be the Reasonableness test.[313] In determining what is reasonable under the Fourth Amendment, the Supreme Court has created a balancing test weighing the objectives of the search against its intrusiveness to the

303. *See id.*

304. *See, e.g.*, P.B. v. Koch, 96 F.3d 1298, 1299 (9th Cir. 1996).

305. *See id.* at 1303–04.

306. *See* discussion *supra* Section II.E.1; *see* Safford Unified Sch. Dist. #1 v. Redding, 557 U.S. 364, 368 (2009); N.J. v. T.L.O., 469 U.S. 325, 342 (1985).

307. *See* Wallace by Wallace v. Batavia Sch. Dist., 68 F.3d 1010, 1012 (7th Cir. 1995) ("Although *T.L.O.* dealt only with searches, several circuit courts have relied upon it to find that seizures of students by teachers also come within the ambit of the Fourth Amendment." (citing Edwards v. Rees, 883 F.2d 882, 884 (10th Cir. 1989))).

308. *See id.* at 1015.

309. *See* Kathryn R. Urbonya, *Determining Reasonableness Under the Fourth Amendment: Physical Force to Control and Punish Students*, 10 CORNELL J.L. & PUB. POL'Y 397, 450–51 (2001).

310. *See* discussion *supra* Section II.B.

311. *See* discussion *infra* Section III.D.

312. *See* discussion *supra* Section II.D.; *see also* discussion *supra* Section II.E.

313. *See* Courtney Mitchell, *Corporal Punishment in the Public Schools: An Analysis of Federal Constitutional Claims*, 73 J. LAW & CONTEMP. PROBS. 321, 336 (2010).

student.[314] Courts analyzing school corporal punishment claims as seizures should undergo the same inquiry.[315]

The first prong of the analysis requires courts to evaluate the corporal punishment's objectives.[316] School administrators become subject to the Fourth Amendment analysis when their actions are "investigatory or administrative" in nature.[317] Therefore, when looking at the objectives advanced by corporal punishment, courts should ensure that school officials engage in an investigatory or administrative function.[318] This requirement will allow schools to maintain a classroom environment conducive to learning.[319]

For instance, the alleged corporal punishment in *Wallace* was an administrative action because the teacher removed a disruptive student from the classroom by grabbing her elbow.[320] This example is necessarily distinct from *T.O.*, where the disruptive student had already left the classroom when the teacher used corporal punishment.[321] Although it could be argued that the teacher was justified because the student provoked her by kicking her, retaliating with a chokehold did not further any legitimate administrative function.[322]

The second prong of the reasonableness analysis concerns the intrusiveness of the punishment.[323] This prong focuses on the student's reasonable expectation of privacy.[324] While the Court has established that students have a diminished expectation of privacy at school, their privacy should extend to their bodily integrity.[325] In *T.O.*, the teacher's chokehold violated the student's bodily autonomy because the chokehold inhibited the student from breathing normally.[326] This example is entirely distinct from *Wallace* because the teacher in that case grabbed the student by the elbow to guide her out of the classroom and then removed his hand when

314. *See* N.J. v. T.L.O., 469 U.S. 325, 342 (1985).
315. *See* Mitchell, *supra* note 313, at 321–22.
316. *See T.L.O.*, 469 U.S. at 342.
317. Wallace by Wallace v. Batavia Sch. Dist., 68 F.3d 1010, 1013 (7th Cir. 1995).
318. *See id.*
319. *See* Urbonya, *supra* note 309, at 450.
320. *See Wallace*, 68 F.3d at 1013.
321. *See* T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 412 (5th Cir. 2021).
322. *See id.* (explaining that the teacher placed the student in a chokehold after the student shouted that he wanted to return to class and attempted to push and kick the teacher out of the way; the teacher "responded by seizing T.O.'s neck, throwing him to the floor, and holding him in a choke hold for several minutes" because the student "'had hit the wrong one' and needed 'to keep his hands to himself'").
323. *See* N.J. v. T.L.O., 469 U.S. 325, 342 (1985).
324. *See id.*
325. *See* Urbonya, *supra* note 309, at 447–48.
326. *See T.O.*, 2 F.4th at 412.

asked.[327] *T.O.* is also distinct from *Preschooler II* because the student in that case sustained bruises but could not point to their cause.[328]

As government actors, school officials—like law enforcement—should face a reasonableness test when examining physical force.[329] Therefore, "objectively reasonable" physical intervention should be legal only if it is the only possible way to regain control of the classroom.[330] Certainly, chokeholds would fall outside the boundaries of what is objectively reasonable under this inquiry.[331] Instead, mild force, like the elbow grab in *Wallace*, is objectively reasonable because the physical intervention was appropriate for the situation.[332]

On review, the Supreme Court should have found that the chokehold in *T.O.* constituted a Fourth Amendment seizure under the Reasonableness test.[333] Where a school official's objectives in using corporal punishment do not mitigate a dangerous or highly disruptive classroom situation, courts should find the physical intervention objectively unreasonable.[334] Further, where punishment is extremely intrusive, like a chokehold, it should be an unreasonable seizure.[335] This ruling would distinguish cases of teachers exceeding their disciplinary authority from those using physical contact reasonably justified to restore classroom order, a distinction *Ingraham* failed to draw.[336] For these reasons, the Supreme Court should have reviewed *T.O.* and held that schoolchildren are protected from school corporal punishment under the Fourth Amendment; while doing so would have effectively overturned *Ingraham*, the Court should explicitly repudiate that decision.[337]

C. Recommendation

The federal government should ban school corporal punishment nationwide.[338] This ban could come from congressional action.[339] However, given the low viability of corporal punishment statutes passing

327. *See* Wallace by Wallace v. Batavia Sch. Dist., 68 F.3d 1010, 1011 (7th Cir. 1995).

328. *See* Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1181 (9th Cir. 2007).

329. *See* Urbonya, *supra* note 309, at 440.

330. *See id.* at 440–41.

331. *See T.O.*, 2 F.4th at 415 (recognizing that the teacher's use of a chokehold may have been "ill-advised and her reaction inappropriate" despite still occurring in the "disciplinary context").

332. *See Wallace*, 68 F.3d at 1011.

333. *See* Petition for Writ of Certiorari at 10-11, *T.O.*, 2 F.4th 407 (No. 21-1014).

334. *See T.O.*, 2 F.4th at 412.

335. *See id.*

336. *See* discussion *supra* Section II.C.

337. *See* discussion *infra* Section III.D.

338. *See* discussion *supra* Section III.B.

339. *See* discussion *supra* Section III.A.

both chambers of Congress, the best solution would be for the Supreme Court to resolve the current circuit split.[340] The Court should have reconsidered *Ingraham v. Wright* by reviewing *T.O.* under the Fourth Amendment reasonableness standard.[341] This ruling would have struck a more appropriate balance between upholding classroom discipline and students' bodily integrity.[342] Further, it would create uniformity across the nation and set a clear standard for lower courts.[343] When reviewing *T.O.,* the Court should have explicitly overturned *Ingraham*.[344]

IV. CONCLUSION

Corporal punishment against children accomplishes little more than creating a cycle of violence.[345] The Supreme Court has allowed this cycle to persist and flourish for several generations by refusing to review its decision in *Ingraham v. Wright*.[346] With 19 states still permitting school corporal punishment despite its numerous negative effects on children, the federal government should act immediately.[347]

The current circuit split regarding the Fourth Amendment's application to school corporal punishment cases highlights the inconsistency and confusion *Ingraham* has created.[348] This confusion has culminated in the Fifth Circuit allowing a teacher to choke a first-grade student with no repercussions.[349] When the Court decided *Ingraham*, school corporal punishment's scope was generally confined to spanking or paddling.[350] But 45 years later, it has escalated to the point of strangulation.[351] To prevent corporal punishment's scope from intensifying further, the Supreme Court should have granted T.O.'s petition for certiorari, overturned the Fifth Circuit's holding by implementing the Fourth Amendment's Reasonableness test, and overturned *Ingraham v. Wright*.[352]

340. *See* discussion *supra* Section III.A; *see also* discussion *supra* Section III.C.
341. *See* discussion *supra* Section III.C.2.
342. See discussion supra Section III.C.2; *see also* Urbonya, *supra* note 309, at 447–48.
343. *See* discussion *supra* Section II.D (discussing inconsistent jurisprudence under *Ingraham*); *see also* discussion *supra* Section III.C.
344. *See* discussion *supra* Section III.B.
345. *See* discussion *supra* Section II.B.
346. See discussion *supra* Section II.D.; *see also* discussion *supra* Section III.B.
347. *See* discussion *supra* section II.B.
348. *See* discussion *supra* Section II.E.
349. *See* T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 412, 415 (5th Cir. 2021).
350. *See* Ingraham v. Wright, 430 U.S. 651, 655–57 (1977).
351. *See T.O.*, 2 F.4th at 412.
352. *See* discussion *supra* Section III.D.