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Parental Exclusion from the Education Governance Kaleidoscope: Providing a Political Voice for Marginalized Students in Our Time of Disruption

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**PARENTAL EXCLUSION FROM THE
EDUCATION GOVERNANCE KALEIDOSCOPE:
PROVIDING A POLITICAL VOICE FOR
MARGINALIZED STUDENTS IN
OUR TIME OF DISRUPTION**

Tiffani N. Darden*

ABSTRACT

This Article develops how the judiciary should play an instrumental part in amplifying the parent’s voice as a citizenship broker for their child. The Supreme Court scrutinizes school-board actions with little consideration of parents’ substantive due process right to control their child’s education through the political process. Through representative school boards, effective participation models, and an enforcement framework, parents could hold the power to affect education policies. Parents deserve full citizenship recognition in the tiered processes controlling public education policy. In addition to recognizing “quality” education as a government interest, the Supreme Court should also take into account the political processes underlying the adoption of education reforms. We should earnestly grapple with the intersection between our equal protection doctrine’s deference to local control and the fundamental yet limited right for parents to control their child’s education.

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INTRODUCTION

The political kaleidoscope known as education governance spans every branch and every level of government. As a nation, we find ourselves fixated with the wavering currents of federal intrusion and states' rights, but all the while, social and economic unrest stirs at the local level. From Chicago in the Midwest, to California on the West Coast, to Tennessee in the South, poor white and ethnic communities battle common issues, and parents cannot edge forward against vast education bureaucracies and costly political-interest establishments. Parents deserve full citizenship recognition in the tiered processes controlling public-education policy. Parental involvement seems particularly important for reforms meant to improve the academic performance of student populations striving to overcome adversities that coalesce to create unique educational needs.

In the public education context, economic disruption continues to prompt drastic actions by local officials and community members. In Chicago and Philadelphia, during the 2012–2013 academic year, non-elected school boards shuttered dozens of public facilities in spite of protests to save these neighborhood institutions. Such draconian measures incited activists to send smoke signals so far as the United Nations and U.S. Department of Education. Naturally, parents lamented over the closing of local schools, but most disconcerting, they felt disassociated from the decision-making process. Parents have expressed similar fears with regards to the largest district consolidation in our nation's history, also pacing forward during the 2012–2013 academic year. These stark examples of strained government and community relations also appear in areas servicing large immigrant populations.

Parents occupy an overlapping, dual space in education reform, as guardian and as citizen. In both functions, parents advocate on behalf of their children. As a citizen, more so than as a guardian, parents assume agency responsibilities that saddle them with the duties of a participating citizen and/or citizen by proxy. Accordingly, by

default, parents embody the potential to assume an all-encompassing role in redirecting public education reform efforts. Federal constitutional and statutory law fully recognizes the guardian role and provides limited enforcement; however, it falls short of accommodating the parents' role as a citizenship broker for their children's future interest.

Interestingly, for education policies concerning race, unlike other school policies challenged by parents, the Supreme Court applies strict scrutiny with little consideration of parents' substantive due process right to control their child's education through the political process. Through representative school boards, effective participation models, and an enforcement framework, parents could hold the power to greatly affect education policies. The current system and applicable law either exclude or dilute to a detrimental degree the political influence that can only be procured from the collective action of a diverse parent stakeholder group.

The Court's Fourteenth Amendment analysis ignores a factor "fundamental" to developing public education policies: parental participation. In *Defining Quality Education as a Government Interest*,¹ I proposed that the Supreme Court should recognize quality education, as defined by state constitutional education clauses, to be a government interest sufficient to justify the use of protected classifications.² But under an expansive interpretation of the equal protection doctrine in the education context, this recognition would not accommodate the full extent of leeway necessary to bring about dynamic change in our public-education system. Federal courts should expand their deference given to local authorities under the Fourteenth Amendment's "local control" doctrine to include a review of the opportunities parents and community members have to participate in the deliberation process. For the parents of school-age children, such consideration would be justified based on their fundamental right to parent, which receives protection through substantive due process.

This Article focuses on how legislation and the judiciary may play an instrumental part in amplifying the parents' voice as a citizen by proxy for their child, especially in light of the multilayered governance system implemented for operating public schools. When contemplating broader education reforms, beyond home and school, parents must articulate their children's needs as citizenship brokers³ working via proxy⁴

¹ Tiffani N. Darden, *Defining Quality Education as a Government Interest: The U.S. Supreme Court's Refusal to "Play Nice" with the Executive Branch, Congress, State Supreme Courts, and the Community Voice*, 14 U. PA. J. CONST. L. 661 (2012).

² *Id.* This shift in the Court's current analysis of education policies would allay several concerns: (1) an ever-evolving state jurisprudence on education; (2) the need to consider regional and district-specific needs; and (3) that closing the achievement gap may require "something" different and yet unknown for poor and certain racial and ethnic minority communities. *See id.* at 697–98, 707, 716–17.

³ A broker is a person who functions as an intermediary between two or more parties in negotiating agreements, bargains, or the like. *See* OED ONLINE, <http://www.oed.com> (last visited Apr. 15, 2014) (defining "broker, n.").

⁴ A proxy is the agency, function, or power of a person authorized to act as the deputy or substitute for another or an ally or confederate who can be relied upon to speak or act in one's behalf. *See* OED ONLINE, <http://www.oed.com> (last visited Apr. 15, 2014) (defining "proxy, n.").

through an ineffective deliberative democracy and minimally realized participation. This statement applies most acutely to the parents of at risk students and the parents of immigrant children.

Education politics erect significant obstacles for parents, especially those advocating for policies and school-board representatives dedicated to the success of marginalized students. In this respect, the law underestimates the pivotal role parents serve in improving the academic performance of disadvantaged students. Therefore, a central question arises: Does *federal law* threaten to impede the marginalized parents' role as a citizenship broker, forced to work at a disadvantage on behalf of their innocently "at-risk" children?

As discussed in detail below, the Supreme Court defers to local government decisions when determining the constitutionality of school policies. After absorbing the Court's treatment of the Seattle School District's efforts to create a diversity policy in *Parents Involved in Community Schools v. Seattle School District No. 1*,⁵ the Court needs to reinvigorate its deference to local control by redefining the doctrine's scope. The Court's limited view developed focuses exclusively on the outcomes from school-board deliberations without appreciating that the school board represents the voice of citizens interested in the public school students' welfare.

Redefining local control and recognizing its potential to amplify the public's voice includes the responsibility of ensuring that "voice" means adequate representation through county and district school boards. In the education context, I believe that local control has been inappropriately disconnected from the historically established fundamental right of parents to direct their children's education. Reverence to this fundamental right would permit the expansion of local control, through accounting for political involvement, to include undocumented immigrants, and it would focus greater attention to the procedure and access hurdles in place that deter the involvement from socioeconomically disadvantaged parents.

With these concerns in mind, from a prospective stance, parents stand to serve as citizenship brokers for their children in the public education system. To achieve this future for their children, parents are citizenship proxies needed to advocate the educational quality concerns of their children in the present. As shown below, the school board represents a fulcrum to balance the parents' formal and informal obligations to their child's educational future because school-board composition affects student achievement. Therefore, the Supreme Court's doctrine should grapple with the intersection of the equal protection doctrine's deference to local control and the fundamental yet limited right for parents to control their child's education. If we tackle this problem at the political level, then there is no need to interfere with the well-grounded principle of parents not crossing over into controlling the day-to-day operation led by educational experts.

This Article considers the legal implications of school-board consolidations, a rapidly growing yet under-represented Latino population, and the increasing cost of

⁵ 551 U.S. 701 (2007).

the national interest-group influences on school-board elections. Part I focuses on the shared governance structure in the public education context and how these many layers threaten to suffocate the pathway for parents to interject their opinions. It also criticizes current parental engagement statutes implemented by state governments at the direction of federal mandates. Part II describes the inherent tension between parents and state authorities when making educational decisions. Courts must consider the fundamental right to parent when evaluating the constitutionality of using race and other categories to formulate reforms in the education context. This argument finds support in the clear advantages to local control and studies showing how parent participation improves educational outcomes.

Part III examines recent school-district-level events. These examples illustrate the challenges to protecting a space for parents of marginalized, at-risk children wanting adequate representation of their interests through the political process. Therefore, the traditional definition for local control must expand to include parents, and the Court's Fourteenth Amendment jurisprudence should reflect this expansion. Part IV concludes these arguments by considering the practical consequences associated with greater parent involvement in public schools.

I. EXPANDING THE TANGLED LANDSCAPE OF PUBLIC EDUCATION GOVERNANCE TO INCLUDE PARENTS IN THE LOCAL CONTROL DOCTRINE

In *Defining Quality Education as a Government Interest*, I argued that judges should forgo one-dimensional classifications and defer to policymakers at every level of elected government, determining constitutionality based on the fulfillment of state constitutional standards and the political process implemented to enact a given policy.⁶ A fine line exists between local control and judicial powers when declaring the constitutionality of education policies. The assigned level of scrutiny affects the leniency given to government actors. If state constitutions are the first step for litigants wanting to challenge any form of educational insufficiencies, then the Fourteenth Amendment serves as a backstop, requiring the Supreme Court to still defer to state policymakers and state courts. The Department of Education, through its regulations, also serves as a quality check for public education. But how does law account for political participation in reforming education policy?

Group conflict deriving from value differences centers on problem identification, program implementation, and outcome evaluation.⁷ One common challenge

⁶ See Darden, *supra* note 1, at 664.

⁷ See MICHAEL W. KIRST & FREDERICK M. WIRT, *THE POLITICAL DYNAMICS OF AMERICAN EDUCATION* 38 (4th ed. 2009). Kirst and Wirt suggest two propositions for explaining the relationship between politics and governance: (1) “*politics* is a form of social conflict rooted in group differences over values about using public resources to meet private needs” and (2) “*governance* is the process of publicly resolving that group conflict by means of creating and administering public policy.” *Id.* at 36 (emphasis added). Within local-educational governance, conflicts arise among the thousands of districts with regards to prioritizing their

expressed by the public involves its inability to participate in education reform to the same extent as other constituencies, such as teachers and professional reformers.⁸ Such sentiments lead to a loss of confidence in the system and, at worst, a retreat from public education.⁹ The next Part discusses the local control doctrine and why the traditional deference given to local school officials should be preserved, if and when parents are able to robustly and effectively participate in the decision-making process. Although laden with imperfection, as discussed below, local control of schools still offers invaluable advantages.

A. Why (or Why Not) Local Control?

Unlike the federal courts, federal, state, and local officials must answer to their constituents regarding the soundness of education reform. In addition, state and local officials are held accountable under their respective state constitutions, which have been interpreted to include the right to an adequate and/or quality education. Thus, a tension arises between elected officials crafting policies to support those struggling in the public education system and federal judges' encroachment on the role of state courts in their review of education policies. Who should prevail? In the first instance, federal courts should defer to school officials because the education context presents unique considerations. Even further, the legislative process calls on courts to study legislative records for legitimate support of policies, not merely pass judgment on the information used to resolve an issue but also to review which stakeholders chimed in and received legitimate consideration.

Although the Court's local control doctrine should dig deeper to appreciate the parent's role in school-district affairs, by appreciating them as citizenship brokers. The focus on local school-board actions emanates from their intermediary role in ensuring the execution of policies and procedures crafted to achieve state and federal standards.¹⁰ Officials need buy-in from the community on their policies and their station as policymakers to successfully manage a school district.

various concerns, challenges to education reform, and the disparate improvement rate for identifiable groups in response to change. *Id.*

⁸ *See id.* at 39.

⁹ *Id.*

¹⁰ *See* Max Neiman et al., *Examining Latino Representation on California's School Boards: Its Impact of Perceptions of District Problems, Priorities, and Policies*, CESAR E. CHAVEZ INST. POL'Y RES. SERIES, Oct. 2010, at 18, *available at* <http://cci.sfsu.edu/schoolboards> ("[S]chool board members make critical decisions regarding the distribution of resources through adopting annual school budgets, curriculum design regarding interpretation of state and national standards, disciplinary policies, negotiation of teacher contracts, and relations with parent teacher associations."); *see also* Luis Ricardo Fraga & Roy Elis, *Interests and Representation: Ethnic Advocacy on California School Boards*, 111 TCHRS. C. REC. 659, 660 (2009); Ashley D. Ross et al., *Latino Representation and Education: Pathways to Latino Student Performance*, 10 ST. POL. & POL'Y Q. 69, 72, 74 (2010).

School boards “tax, budget, spend, incur debt, hire, fire, bargain with labor, and set policy generally.”¹¹ Citizens experience direct access to the political process through elections and referenda on specific issues.¹² Some issues may never come before the political process due to their depressed social value or their advocates’ lack of resources necessary to move the issue along.¹³ In an ideal system, the school board acts as a liaison between community stakeholders and school administrators.¹⁴ In this layered bureaucracy, states provide oversight to monitor local school districts and hold them accountable for standards.¹⁵

Many reasons justify the traditionally held preference for local control over public schools.¹⁶ First, local decisions seem more democratic than decisions imposed by state and federal governments.¹⁷ Local politicians focus on a much smaller constituent base than state and federal officials.¹⁸ From the citizen’s viewpoint, local politicians are often more accessible and connected to the schools and their neighborhoods. The restricted constituent pool and better access translate into greater influence over education

¹¹ Aaron J. Saiger, *The School District Boundary Problem*, 42 URB. LAW. 495, 502 (2010) [hereinafter Saiger, *The School District Boundary Problem*].

¹² See KIRST & WIRT, *supra* note 7, at 101.

¹³ *Id.* at 134 (“Whether meeting or blocking a citizen demand, however, the board is not static nor are its members value free. They modify, regulate, innovate, or refuse political demands in response to a variety of value preferences.”).

¹⁴ See *id.* at 135. Unfortunately, political attitudes have led us to move away from the original conception of local control to directly include parents, but the more elaborate contemporary system still respects the role of school boards because this “level of government generally considered closest to the home and family serves to mitigate . . . threat[s] to family interests.” Richard Briffault, *The Role of Local Control in School Finance Reform*, 24 CONN. L. REV. 773, 785 (1992); see also Parker, *infra* note 34, at 1705–06; Aaron J. Saiger, *The Last Wave: The Rise of the Contingent School District*, 84 N.C. L. REV. 857, 863 (2006) [hereinafter Saiger, *The Last Wave*] (“American education begins with localities. Local control of schools is a nationwide and longstanding American practice.”); Benjamin Michael Superfine, *Stimulating School Reform: The American Recovery and Reinvestment Act and the Shifting Federal Role in Education*, 76 MO. L. REV. 81, 87 (2011) (“[E]ven though legal authority over education has technically rested with states, school boards and local communities have exercised much of the power to make educational decisions.”).

¹⁵ State governments establish school boards and delegate to local officials limited authority for operating the public schools. School boards are a creation of the state. See Briffault, *supra* note 14, at 777; Saiger, *The Last Wave*, *supra* note 14, at 865; Saiger, *The School District Boundary Problem*, *supra* note 11, at 509. States are free to strip them of control so long as there is a rational basis for decision. See, e.g., KIRST & WIRT, *supra* note 7, at 132; Briffault, *supra* note 14, at 777; Saiger, *The Last Wave*, *supra* note 14, at 915.

¹⁶ Saiger, *The School District Boundary Problem*, *supra* note 11, at 519–20.

¹⁷ See Briffault, *supra* note 14, at 797 (“Nonetheless, ‘local control as accountability and participation’ is certainly the least wealth-biased meaning of local control and the one that most resonates with the normative assumptions about local self-government that have long been basic to American political thinking.”).

¹⁸ KIRST & WIRT, *supra* note 7, at 145–46.

policymakers.¹⁹ Deciding policies through democratic deliberations and procedures inculcates local control to a greater degree than relying on the litigation process.²⁰ Although courts and federal agencies may impose national standards, the desire to uphold local implementation remains a central ideal.²¹ Second, policies enacted on the local level better reflect the nuanced circumstances experienced by the district's student population.²² Third, local control helps build public opinion for schools and participation.²³

Local control does not always work toward the noble liberal democratic goal of bringing together diverse citizens in educating children to live in a diverse society. Geographic boundaries, too often tracking property values, permit citizens to isolate themselves to the disadvantage of at-risk students.²⁴ Through local control, school districts bear a responsibility exclusive to their resident student population.²⁵ Professor Aaron Saiger argues that local control "inflicts homogeneity and stratification upon polities, limits the educational opportunity of poor students, and deprives all students of the experience of democratic schooling in diverse schools."²⁶ Consolidation and redistricting combat these downfalls to some extent but exacerbate other barriers to reform, such as finding common ground in a multiethnic electorate and balancing the interests of politically dominant and marginalized groups.²⁷ Rather than confront these challenges, upper- to middle-class families often form their own insular school districts.²⁸ Local control provides cover for citizens and parents attempting to shirk the greater community's challenges to quality, diverse educational opportunities.²⁹

¹⁹ Briffault, *supra* note 14, at 795 ("Administrators, education professionals, teachers' unions, business groups, politicians, and others all may seek to influence or control education decisions. Implicit in the 'local control as accountability' concept is the belief that the general public will have a better chance of influencing education decisionmaking and holding politicians, bureaucrats, and public employees accountable for educational performance, or the lack of it, if decision-making control is kept at the local level.").

²⁰ Parker, *infra* note 34, at 1753.

²¹ *See id.* at 1757.

²² *See* KIRST & WIRT, *supra* note 7, at 145–46; Parker, *infra* note 34, at 1753–55.

²³ KIRST & WIRT, *supra* note 7, at 146; Briffault, *supra* note 14, at 795.

²⁴ Briffault, *supra* note 14, at 803, 805 (describing "fiscal zoning" and economic barriers to community integration).

²⁵ Saiger, *The School District Boundary Problem*, *supra* note 11, at 504 ("[T]he territorially sovereign district, responsible only for its own resident students and not those nearby, has been a preeminent tool for resisting the racial integration of schools.").

²⁶ *Id.* at 524 (footnotes omitted).

²⁷ *See id.* at 495–97.

²⁸ *See* Erica Frankenberg, *Splintering School Districts: Understanding the Link Between Segregation and Fragmentation*, 34 LAW & SOC. INQUIRY 869 (2009) (analyzing the creation of new school districts in Jefferson County, Alabama).

²⁹ *See* Briffault, *supra* note 14, at 787 ("In communities where the parents of school-age children are in the minority, where some sizeable number of parents have chosen to send their children to private or parochial schools, or where parents and nonparents may be of different ethnic groups, local control of school budgets may harm, not help, parents' interests.").

In *Splintering School Districts: Understanding the Link Between Segregation and Fragmentation*, Professor Erica Frankenberg demonstrates through a case study of Jefferson County, Alabama, the ability of residents to split the county into small districts in the name of local control, which in turn perpetuates racial segregation.³⁰ Thus, these citizens constitutionally bypass mandatory desegregation requirements by using homogenous residential concentrations to form racially isolated districts around the Birmingham-metropolitan area.³¹ Professor Frankenberg addresses the idea of local government as antigovernment in that the citizens represent the “interests of a small, homogeneous group of residents from a larger government representing a more heterogeneous group; this prevents the development of a pluralistic perspective.”³² She concludes that these small districts have “limited democratic control and thwarted the development of regional policies where multiple constituencies had representation.”³³

Without question, local control presents land mines to achieving quality education for all public school students. However, a slight tweak to our local control doctrine would open the deliberative process to constitutional scrutiny. Looking past school board decisions and examining the deliberative process brings about a legitimacy not previously considered when implementing policies affecting race and wealth classifications. The next Part discusses the local control doctrine and why the traditional deference given to local school officials should be preserved, if and when parents are able to robustly and effectively participate in the decision-making process. Although laden with imperfection, as discussed below, local control of schools still offers invaluable advantages. Many scholars addressing the “local control” doctrine believe it to exist within the Fourteenth Amendment’s contours.³⁴ In looking back on these cases, I explore how the Court defines local control while avoiding a full account of its use and the resulting consequences.

³⁰ Frankenberg, *supra* note 28, at 903.

³¹ *Id.* at 870, 877–78 (using a case-study method of Jefferson County, Alabama, to show how within-district segregation may be on the decline based on district demographics, while during the same time period, between-district segregation continues to grow exponentially).

³² *Id.* at 882 (referring to Gregory Weiher’s argument).

³³ *Id.* at 883.

³⁴ Professor Wendy Parker provides a comprehensive review and analysis, explaining that the school desegregation movement from *Brown v. Board of Educ. (Brown II)*, 349 U.S. 294 (1955), to pre-*Parents Involved*, 551 U.S. 701 (2007), demonstrates an arc in the Court’s reliance on local control in determining the constitutionality of race-based education policies. See Wendy Parker, *Connecting the Dots: Grutter, School Desegregation, and Federalism*, 45 WM. & MARY L. REV. 1691, 1705–06 (2004); see also Philip T.K. Daniel & Mark A. Gooden, *Conflict on the United States Supreme Court: Judicial Confusion and Race-Conscious School Assignments*, 2010 BYU EDUC. & L.J. 81, 90–95 (discussing Justice Breyer’s dissent in *Parents Involved*); Preston C. Green, III, Julie F. Mead & Joseph O. Oluwole, *Parents Involved, School Assignment Plans, and the Equal Protection Clause: The Case for Special Constitutional Rules*, 76 BROOK. L. REV. 503, 515–16 (2011).

B. Local Control's Fair Weather Journey

Federal courts prefer to leave public-education decisions to local officials instead of inserting themselves in the school district's operational affairs.³⁵ Local control permits decisionmakers to create a system unique to their student population using their professional expertise, a capacity many judges lack.³⁶ In defining local control, the starting point with *Brown v. Board of Education* seems to encompass only the school board and state legislature.³⁷ This era, prior to the passage of the Civil Rights Act and greater Supreme Court intervention, marked a low point in local control's potential to enact equitable norms.³⁸

In *Brown I*, the Court recognized the local nature of education policies.³⁹ Justice Warren overruled "separate-but-equal" with a measured temperance.⁴⁰ The desegregation remedy required affirmative changes in state law, but the Court reserved to state and local officials the discretion to choose their methods.⁴¹ The Court delineated the role of school officials and the judiciary as follows: "School authorities have the primary responsibility for elucidating, assessing, and solving . . . [policy] problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles."⁴²

In applying *Brown's* desegregation principles, *Milliken v. Bradley*⁴³ presented an opportunity to fully explore the federal court's power to reform school districts in light of local and state violations.⁴⁴ The Court concluded that local control, a "deeply rooted" tradition,⁴⁵ served two functions: "maintenance of community concern and support for public schools"⁴⁶ and "quality of the educational process."⁴⁷ With regards to the community, quoting *San Antonio v. Rodriguez*,⁴⁸ the Court declared that "local

³⁵ See Parker, *supra* note 34, at 1695.

³⁶ See *id.* at 1698, 1746.

³⁷ See *id.* at 1706–13 (reviewing the cases following *Brown I* and the difficulties implementing the desegregation mandate due to obstruction on the local level and certain courts).

³⁸ See *id.* at 1716–17.

³⁹ See Philip T.K. Daniel & Patrick D. Pauken, *The PICS Decision—Academic Freedom v. Federalism: Consider the Constitutional Implications*, 18 TEMP. POL. & CIV. RTS. L. REV. 111, 133 (2008); Danielle Holley-Walker, *Educating at the Crossroads: Parents Involved, No Child Left Behind and School Choice*, 69 OHIO ST. L.J. 911, 926 (2008) (footnote omitted).

⁴⁰ See *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483, 495 (1954) ("We conclude that in the field of public education the doctrine of 'separate but equal' has no place.").

⁴¹ See *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 299 (1955).

⁴² *Id.*

⁴³ 418 U.S. 717 (1974).

⁴⁴ See *id.* at 721; see also Daniel & Pauken, *supra* note 39, at 134.

⁴⁵ *Milliken*, 418 U.S. at 741.

⁴⁶ *Id.*

⁴⁷ *Id.* at 742.

⁴⁸ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

control over the educational process affords citizens an opportunity to participate in decisionmaking, permits the structuring of school programs to fit local needs, and encourages ‘experimentation, innovation, and a healthy competition for educational excellence.’⁴⁹

In refusing to apply heightened scrutiny in *Rodriguez*, the Court seemed content to stray from the debates regarding quality education and the cost of providing such an undefined standard; instead, the Court advocated for local school officials to continue the “research and experimentation so vital to finding even partial solutions to educational problems”⁵⁰ with minimal interference from the bench.⁵¹ The Court extended the concept of local control to include not only the state’s autonomy but also that of local school districts to distribute funds and create programs fitting the community’s needs.⁵²

The Court’s reliance on local control to limit desegregation efforts and end federal oversight of desegregation decrees continued through the nineties.⁵³ Justice O’Connor succinctly stated, in *Missouri v. Jenkins*,⁵⁴ that:

Unlike Congress, which enjoys discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment, federal courts have no comparable license and must always observe their limited judicial role. Indeed, . . . federal courts are specifically admonished to take into account the interests of state and local authorities in managing their own affairs, in light of the intrusion into the area of education, where States historically have been sovereign, and to which States lay claim by right of history and expertise.⁵⁵

Brown marked the federal courts’ entrance into public-education reform. The nation’s social and political ideologies during the *Brown* journey required a strong, assertive court to tip the scales in a new direction toward racial equality. The Court explicitly acknowledged the law’s role in antagonizing oppressive social norms.⁵⁶ The supervisory role federal courts assumed through desegregation decrees proved an insurmountable challenge, and eventually, the judiciary retreated from this responsibility,

⁴⁹ *Milliken*, 418 U.S. at 742 (quoting *Rodriguez*, 411 U.S. at 50).

⁵⁰ *Rodriguez*, 411 U.S. at 43.

⁵¹ *Id.*; see also Daniel & Pauken, *supra* note 39, at 133.

⁵² *Rodriguez*, 411 U.S. at 49–50. According to the majority, this type of pluralism in public education policy “affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence.” *Id.*

⁵³ Frankenberg, *supra* note 28, at 879–80.

⁵⁴ 515 U.S. 70 (1995).

⁵⁵ *Id.* at 113 (citations omitted) (internal quotation marks omitted).

⁵⁶ See *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483, 489–90 (1954).

relying on deference to local control.⁵⁷ But why should this respect for local control not apply to all characteristics affecting a child's academic performance? As set forth in the following Part, the Court took a major detour from its deference to local control in *Parents Involved in Community Schools v. Seattle School District No. 1*,⁵⁸ a case involving two voluntary desegregation initiatives.⁵⁹

1. The Supreme Court's Frustration: From *Brown* to *Parents Involved in Community Schools*

The policies setting education-quality goals that gave rise to *Parents Involved in Community Schools* marked a new era in defining the relationship between local school districts and federal courts. Based on a number of factors, two districts implemented voluntary desegregation plans after a period of heavy community participation and district-specific need evaluations.⁶⁰ Yet, the Court reneged on its promised fidelity to local officials: A majority of the Court found their policies unconstitutional.⁶¹

After executing various unsuccessful assignment plans, the Seattle School Board began to consider a new assignment plan in the mid-nineties.⁶² In 1996, it adopted the Open Choice Plan, applying first only to elementary schools and then expanded to include secondary schools.⁶³ "The Board reviewed the assignment plan . . . annually."⁶⁴ In its first review, "the Board debated whether to continue to use the integration tie-breaker."⁶⁵ The Board decided in the affirmative and adopted a "Statement Reaffirming

⁵⁷ *Milliken I & II*, along with *Jenkins II*, brought back local control over school districts. See Daniel & Pauken, *supra* note 39, at 133; Parker, *supra* note 34, at 1722–28. *Dowell*, *Freeman*, and *Jenkins III* "[a]ll three start with a statement of the longevity of the case, recognize continued segregation, and ultimately afford immediate return of complete local autonomy." Parker, *supra* note 34, at 1730; see also Daniel & Pauken, *supra* note 39, at 122–24; Holley-Walker, *supra* note 39, at 924–25; Anne Richardson Oakes, *From Pedagogical Sociology to Constitutional Adjudication: The Meaning of Desegregation in Social Science Research and Law*, 14 MICH. J. RACE & L. 61, 62 (2008); Wendy Parker, *Limiting the Equal Protection Clause Roberts Style*, 63 U. MIAMI L. REV. 507, 522–23 (2009); Enid Trucios-Haynes & Cedric Merlin Powell, *The Rhetoric of Colorblind Constitutionalism: Individualism, Race and Public Schools in Louisville, Kentucky*, 112 PENN. ST. L. REV. 947, 964 (2008) ("[T]he *Dowell-Freeman-Jenkins* line of decisions stand for the proposition that federal court supervision is temporary and that local control should be returned as soon as practicable, even if there are substantial lingering vestiges of discrimination.").

⁵⁸ 551 U.S. 701 (2007).

⁵⁹ See *id.*

⁶⁰ *Id.* at 709–10.

⁶¹ *Id.* at 711; see Holley-Walker, *supra* note 39, at 913; Parker, *supra* note 57, at 533–34.

⁶² See Brief for Respondents at 5, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (No. 05-908).

⁶³ *Id.* at 5–6.

⁶⁴ *Id.* at 7.

⁶⁵ *Id.*

Diversity Rationale” in which it provided reasons and justifications behind the continued use of the integration tiebreaker.⁶⁶ The Board pointed to the positive effects of diversity, the negative effects of “racially isolated schools,” and its concerns regarding “giving an unqualified priority to students living closest to the over-subscribed schools would deny . . . [most] non-white students an opportunity to attend these schools.”⁶⁷

The following year, in the 2000 review, the Board again adjusted the assignment plan.⁶⁸ The Board determined that the integration plan would only apply to certain schools, to certain grades, and only in school’s racial composition a broad range during the assessment process.⁶⁹ In addition, the Board directed the superintendent to pay special attention to schools that were undersubscribed improving the quality of the schools.⁷⁰

As it began to develop an assignment plan, the Board reached out to the community. It conducted an extensive study that included public forums and focus groups.⁷¹ “[I]t . . . knew that its constituents continued to place a high value on racial diversity and equality of opportunity to attend quality schools.”⁷² The Board subsequently

adopted five “guiding principles” to be applied in development of a new assignment plan: 1) enable children to attend school close to home; 2) provide equal access to quality programs; 3) increase the percentage of families assigned in their first choice school; 4) maximize diversity within each school; and 5) minimize mandatory assignments based on race.⁷³

In Louisville, a similar assignment plan was implemented to achieve integration in schools. First, the Board adopted an open transfer policy; however, schools remained segregated.⁷⁴ Following a lawsuit, the Board was ordered “to create and to maintain schools with student populations that ranged, for elementary schools,

⁶⁶ *Id.* at 8.

⁶⁷ *Id.*

⁶⁸ *Id.* at 10.

⁶⁹ *Id.* at 10–11 (“[I]t determined that the integration tiebreaker should only apply when a school deviated by more than 15 percentage points from the overall racial composition of the District. . . . The Board also determined that the integration tiebreaker should not apply to grades 10 through 12. The Board additionally decided that the integration tiebreaker would no longer apply if a school’s racial composition came within the broad 30 percentage point range during the assignment process.”).

⁷⁰ *Id.* at 11.

⁷¹ *Id.* at 5.

⁷² *Id.* at 39.

⁷³ *Id.* at 5.

⁷⁴ *See* *Parents Involved in Cmty. Sch. v. Seattle Schs. District No. 1*, 551 U.S. 701, 814 (2007) (Breyer, J., dissenting).

between 12% and 40% black, and for secondary schools . . . between 12.5% and 35%.”⁷⁵ The district court also put forth an elaborate desegregation plan that required busing, among other things.⁷⁶ However, several years later, the Board revised its desegregation plan after realizing that many schools were no longer in compliance with the court’s orders.⁷⁷ Like the Seattle School Board, the Louisville School Board considered the voice of the community. “[I]t consulted widely with parents and other members of the local community, using public presentations, public meetings, and various other methods to obtain the public’s input.”⁷⁸ In 1996, the Board enlisted the help of a “‘Planning Team,’ community meetings, and other official and unofficial study groups . . . and considered proposals for improvement [to the assignment plan].”⁷⁹ Consequently, the Board modified the plan and redrew school assignment boundaries.⁸⁰ In addition, “Parent Assistance Centers” were established to assist parents and students “navigate the school selection and assignment process.”⁸¹

Of particular note, both school boards followed a similar process in implementing and adjusting assignment plans. Parental and community opinions were sought and considered prior to executing changes. The community’s collective desire to achieve diversity and equality in primary and secondary education was one of the primary motivations behind the various adjustment plans and continued efforts by the Boards to refine the plans.

Justice Thomas, supported by a plurality, argued that the school boards have “no interest in remedying the sundry consequences of prior segregation unrelated to schooling,”⁸² but the Court had no interest in these externalities when developing judicial remedies, and it had no interest in foreclosing local officials from fashioning remedies themselves.⁸³ Although Justice Kennedy concurred in the judgment, he observed that the plurality was mistaken “[t]o the extent the plurality opinion suggests the Constitution mandates that state and local school authorities must accept the status quo of racial isolation in schools.”⁸⁴ Kennedy also nodded to the deferential treatment of education experts:

If school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an

⁷⁵ *Id.*

⁷⁶ *Id.* at 814–15.

⁷⁷ *Id.* at 816.

⁷⁸ *Id.*

⁷⁹ *Id.* at 817.

⁸⁰ *Id.*

⁸¹ *Id.* at 818.

⁸² *Id.* at 760 (Thomas, J., concurring).

⁸³ *Id.*

⁸⁴ *Id.* at 788 (Kennedy, J., concurring); *see also* Jordan M. Steiker, Brown’s *Descendants*, 52 *How. L.J.* 583, 588 (2009).

equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race.⁸⁵

The general rebuke to local control did not go undetected by Justice Breyer's dissent. In *Parents Involved in Community Schools*, Justice Breyer wrote:

[A]s a judge, I do know that the Constitution does not authorize judges to dictate solutions to . . . problems. Rather, the Constitution creates a democratic political system through which the people themselves must together find answers. And it is for them to debate how best to educate the Nation's children and how best to administer America's schools to achieve that aim.⁸⁶

State constitutions incorporate core goals that protect against government abuses for minority groups. Thus, the Court should evaluate school reforms under state constitutional standards and accessibility to the political process. The Court needs to take a backseat to districts implementing innovative, community-supported solutions to close the achievement gap through addressing the special needs of groups targeted under the statute. Lawmakers must evaluate education issues through the lens of circumstances within their local community and then develop practicable solutions.

And so, it seems unfair to pretend as though we have not previously attempted to knock down the parent participation barrier. Although individual efforts have been less successful, Congress made efforts to include parents in No Child Left Behind.⁸⁷ The following Part reviews state government attempts to implement this principle of "family engagement."

2. Federal Mandates: State Obligations Versus Prerogatives for Parental Involvement

A trickle-down effect occurs when the federal government becomes involved in public education. And although the federal government attempts to protect the parents' role in educating their children, as discussed below, states gravitate to reforming education policy to align with federal mandates to receive additional funding. Family engagement laws and policies in public education seek to encourage the active participation of families in children's learning. These provisions facilitate an atmosphere in which schools and families work together to improve educational

⁸⁵ *Parents Involved*, 551 U.S. at 788–89.

⁸⁶ *Id.* at 862 (Breyer, J., dissenting).

⁸⁷ *See* 20 U.S.C. § 6318 (2006).

outcomes.⁸⁸ No Child Left Behind requires local-educational agencies to create policies that involve parents at the school level in the work needed to ensure improvement and to hold schools accountable.⁸⁹ But similar to the local control doctrine, acknowledged by the Supreme Court, this legislation fails to appreciate the need to realize this involvement at the school-board level. Working at the school-board level brings together diverse groups within the district and helps build a cohesive plan to improve all schools. Moreover, these federal prescriptions provide weak consequences for entities unwilling to comply with these requirements.

According to the National PTA, forty jurisdictions “have enacted laws directing school districts, boards of education, or schools to implement family engagement policies”;⁹⁰ eleven states “lack family engagement laws”;⁹¹ and at least five states “have advisory councils . . . with the power to influence policy related to family engagement.”⁹² Most notably, many states provide for improved communication, advisory councils, parent leadership, and strengthening local control, but very few states establish accountability and enforcement mechanisms for these participation goals.⁹³ In terms of accountability, a few states consider “family and community involvement” when accrediting districts and evaluating school principals.⁹⁴ Only a handful of states—Florida, Louisiana, and New Mexico—attach sanctions for districts that fail to comply with “family-school partnerships.”⁹⁵ These sanctions affect budget approval and programmatic grants.⁹⁶

Parental involvement measures vary from state to state. Most states implement policies that “encourage family engagement through legislation emphasizing public school policy.”⁹⁷ For example, Michigan law encourages family engagement by prompting school districts “to create voluntary contracts between educators and families” that facilitate familial participation in their children’s education.⁹⁸ Another method used to encourage family engagement in public schools is the establishment of advisory councils.⁹⁹ Advisory councils can operate at the state or local level or both.¹⁰⁰ Michigan created “school reform boards” that ensure academic objectives

⁸⁸ See NAT’L PTA, REFERENCE GUIDE: STATE LAWS ON FAMILY ENGAGEMENT IN EDUCATION 15 (2010) [hereinafter PTA REFERENCE GUIDE], available at http://www.pta.org/files/State_Laws_Report.pdf.

⁸⁹ See § 6318.

⁹⁰ PTA REFERENCE GUIDE, *supra* note 88, at 15.

⁹¹ *Id.*

⁹² *Id.*

⁹³ See, e.g., *id.*

⁹⁴ *Id.* at 16.

⁹⁵ *Id.* at 17.

⁹⁶ *Id.*

⁹⁷ *Id.* at 15.

⁹⁸ *Id.* at 16.

⁹⁹ *Id.* at 15–16.

¹⁰⁰ *Id.* at 16.

are achieved through various activities and programs.¹⁰¹ Massachusetts's legislature has also created advisory councils that operate in conjunction with the State Board of Education.¹⁰² Parents and students may participate on these councils, and state law mandates that one sitting member of the State Board of Education be an individual "who represents public school parents."¹⁰³

While some states provide incentives for developing engagement policies and hold school boards accountable for executing these policies,¹⁰⁴ other states impose sanctions.¹⁰⁵ States may provide grants and award programs based on different criteria.¹⁰⁶ Some states, such as Wisconsin and Minnesota, offer grants for underserved communities.¹⁰⁷ A Wisconsin grant targets school districts in which the majority of the student populations are low income.¹⁰⁸ To receive additional funding, schools are required to fulfill certain objectives, one of which is the engagement of "students and families in school decision-making."¹⁰⁹ Other states, including California, Oregon, and Tennessee, offer grants for resource centers that provide innovative family engagement programs, parenting classes, and family literacy.¹¹⁰

Because an increasing number of American families lack English fluency, a language barrier may prevent adequate and effective communication between educators and families.¹¹¹ However, many states recognize that "failing to engage these students and their families is both detrimental to student achievement and a lost opportunity for increasing English fluency, academic achievement, and civic participation among these families."¹¹² Consequently, many states seek strategies to engage and involve these families in public education policymaking.¹¹³

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 17 (noting that Colorado, Wyoming, South Carolina, and Florida all follow this practice).

¹⁰⁵ *See id.*

¹⁰⁶ *Id.* at 111.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* In Minnesota, grants are offered to schools in which students underperform, in an effort to provide funds to create programs that will encourage and improve student performance. *Id.* These programs seek to encourage "greater family engagement and the development of interventions to help the student succeed." *Id.*

¹¹⁰ *Id.* at 112 ("To qualify [for the Nell Soto Parent/Teacher Involvement Program grant], a majority of both families and educators must agree to specific terms . . . a majority of families must sign compacts in which they commit to be involved in their children's education . . . [and] educators must hold community-based meetings at least once a month.").

¹¹¹ *Id.* at 229.

¹¹² *Id.*

¹¹³ *See id.*

Twenty-one states have enacted legislation that encourages family engagement among non-English fluent parents: AK, AZ, AR, CA, CT,

Indiana and Wisconsin adopted such policies.¹¹⁴ Indiana law requires schools with “bilingual-bicultural programs” to create local advisory committees consisting of a majority of parents with children eligible to participate in these programs.¹¹⁵ Similarly, Wisconsin law provides for a bilingual-bicultural advisory committee consisting of “parents of students participating in the . . . programs”¹¹⁶ who are tasked with the “planning and evaluation of [said] programs.”¹¹⁷

Similarly, Rhode Island and Illinois enacted administrative measures that ensure bilingual families’ engagement.¹¹⁸ The former requires that English Language Learners (ELLs) be included in evaluation of its regulations,¹¹⁹ while the latter established a Department of Bilingual Education to focus primarily on “maximiz[ing] the involvement of bilingual families, teachers, community group representatives, and other individuals in the creation of departmental policy.”¹²⁰

A few states also adopted interesting statutes to encourage the participation of migrant families in education policy. For example, Minnesota law targets the participation of ELL students in the development of education policy.¹²¹ “The law requires local school districts to seek the views of families about the impact of programs on their children.”¹²² The implementation of these policies demonstrate the importance of “[e]nsur[ing] that all programs serving the ELL community include family and parent input in policymaking as well as in the design, evaluation, and implementation

FL, HI, ID, IL, IN, MA, MN, NE, NJ, NM, NY, NC, RI, UT, WA and WI.

Thirty states lack specific statutes relevant to non-English fluent family engagement: AL, CO, DE, DC, GA, IA, KS, KY, LA, ME, MD, MI, MS, MO, MT, NV, NH, ND, OH, OK, OR, PA, SC, SD, TN, TX, VT, VA, WV and WY.

At least two states mandate the communication occur including the creation of literature and printed information, in the family’s native language: MA and RI.

At least three states offer specific centers for non-English fluent parents: CA, NE, and UT.

At least five states include families who lack English fluency in school policy making: IL, IN, MN, NJ and WI.

Id.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 229–30.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 230 (“[Illinois] law further requires preference in staff hiring to be given to individuals who are natives of countries in which the languages included in the educational programs are spoken.”).

¹²¹ *Id.* at 230.

¹²² *Id.*

of programs.”¹²³ This brief overview demonstrates the varied attempts to involve parents in public schools. The landscape proves inconsistent in commitment to the cause, policy execution, and accountability measures. The next Part discusses how we reached our current system of layered public-school governance and in turn the need to reinvigorate the parents’ role.

II. GOVERNMENTAL OBLIGATION VERSUS PARENTAL RIGHTS

Local control must not stop with a school board’s decision. Instead, a court should explore parents’ and the community’s access to shaping school policy and reform. As discussed in Part I, *No Child Left Behind* contains strong parent participation provisions with absolutely no enforcement mechanisms.¹²⁴ Moreover, the pivotal role of school boards magnifies the importance of access prescriptions and public comment procedures. As federal involvement in public education increases and states take on a greater role implementing national expectations, the voice of local interest struggles to be heard. Fulfilling the noble origins of our public-education system requires wide political participation from every socioeconomic, racial, and ethnic affiliation.

A. Understanding the Origins of Local Control and Shared Governance

The common-school ideal, which emerged in the 1840s, envisioned an institutional standard based on universal social principles: responsible citizenship, shared morals, a national culture, and pathways to economic independence.¹²⁵ At this point in our history, centralized state- and federal-level controls over education were non-existent barriers to the local agenda.¹²⁶ Education governance enjoyed a measure of solitary confinement, separate from other functions imposed upon public officials.¹²⁷

In time, public education reform mushroomed into a complex governance web that strangled the community voice necessary to accomplish goals sought through well-intentioned, yet unsuccessful, bureaucratic restructuring and legislation. Local control gained a negative reputation in mainstream politics during the era of industrialization and growing immigrant populations within urban centers.¹²⁸ Local control meant a “decentralized school committee system rooted in ward politics, which

¹²³ *Id.* at 231.

¹²⁴ *See supra* notes 89–96 and accompanying text.

¹²⁵ KIRST & WIRT, *supra* note 7, at 6–7.

¹²⁶ *Id.* at 8 (“[A]t the state level . . . these generally were bare-bones units with scant power. . . . But it was not until after the Civil War, in 1867, that Washington created even a low-level Bureau of Education and gave it the modest chore of collecting education data and disseminating information about school organization and teaching methods.”).

¹²⁷ *See id.* at 6.

¹²⁸ *See id.* at 8–9.

provided *extensive opportunities for undue influence* as schools sought to cope with the immigrant waves overwhelming the cities.”¹²⁹ Wealthy businessmen and education professionals extinguished this form of local control by promoting citywide elections.¹³⁰ Their seemingly neutered message: “[T]ake education out of politics.”¹³¹ They reasoned that “[a] good school system was good for all, not for just one part of the community.”¹³² Thus, a centralized board should control public education led by a superintendent with the professional credentials required to endear a hefty degree of deference towards his decisions from board members.¹³³

According to its proponents, this new system would create systemic improvements and facilitate accountability.¹³⁴ However, an inevitable negative side-effect—which is still felt today—was the exclusion of “everyday” Americans attempting to participate in the political processes responsible for setting public education norms.¹³⁵ The connection between education officials and their constituents widened due to the successful Progressive-Era campaign, which centralized and professionalized local-education governance.¹³⁶ These egalitarian goals worked to the disadvantage of a democratic government enterprise. Influential parents’ groups advocated on behalf of school boards and their elitist citizen leaders, as opposed to the grassroots concerns percolating in the margins.¹³⁷

While the social tide and politically savvy strategies clouded local control’s reputation at the turn of the century, the Court and Congress necessarily exposed local misdeeds during the next historical era. For decades, states’ rights activists staved off federal involvement in public education behind the shield of their Tenth Amendment interpretations, which placed schools exclusively within the control of state governments.¹³⁸ This state choke hold on educational opportunities loosened

¹²⁹ *Id.* at 9 (emphasis added).

¹³⁰ *See id.* at 10.

¹³¹ *Id.*

¹³² *Id.* at 9.

¹³³ *Id.* at 10.

¹³⁴ *Id.*

¹³⁵ *Id.* at 10–11 (“The financial and professional leaders who deplored the politics and inefficiency of the decentralized ward system had another reason for disliking that arrangement: It empowered members of the lower and lower-middle classes, many of whom were working-class immigrants. Reformers wanted not simply to replace bad men with good; they proposed to change the occupational and class origins of the decisionmakers.”).

¹³⁶ *Id.* at 11 (“A classic 1927 study showed that upper-class professionals and big businessmen dominated the new centralized boards of education. . . . The new professional and managerial board members delegated many formal powers to school professionals, giving educators the leeway to shape schools to meet the needs of the new industrial society, at least as defined by one segment of that society: chiefly prosperous, native-born, Anglo-Saxon Protestants.”).

¹³⁷ *Id.* at 12.

¹³⁸ *Id.* at 13 (“Opponents had long argued successfully that because the Tenth Amendment to the Constitution left control of schools to the states, Washington had no constitutionally defensible role in education.”).

when the Supreme Court abolished separate-but-equal schools in the South by unanimous decision.¹³⁹ And nearly a decade later, President Lyndon Johnson passed the Elementary and Secondary Education Act (ESEA).¹⁴⁰ *Brown v. Board of Education*,¹⁴¹ the Civil Rights Act of 1964,¹⁴² and the ESEA¹⁴³ marked the parameters of acceptable federal involvement in the states' educational affairs: providing civil rights protections and funding for at-risk student populations.¹⁴⁴

These concerted acts by federal government branches launched an attack on the legitimacy of *local control* in the public education arena, especially in minority communities. Moreover, the mid-1970s "was the peak expansion period for new state court regulations on local schools, indicating that local schools could not be trusted to guarantee student rights or due process. The legalization of local education expanded through state education codes and through lawsuits increasingly directed at local authorities."¹⁴⁵ As a consequence, special interest campaigns became more prevalent.¹⁴⁶ And not long after, state agencies began harnessing control of public education.¹⁴⁷

Over the past two decades, several reforms in education governance—such as federal interventions via No Child Left Behind, more stringent state accountability schemes, shared increases in mayoral control, site-based management, and a rise in school choice popularity—have forced school boards to settle into an unfamiliarly weakened authority in relation to directing local policies.¹⁴⁸ In the 1990s, the federal role in public education expanded to holding public educators accountable for student achievement outcomes.¹⁴⁹ No Child Left Behind invited a new debate regarding the power balance between local, state, and federal governance for public education.

¹³⁹ See *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483 (1954).

¹⁴⁰ Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (codified as amended in scattered sections of 20 U.S.C.).

¹⁴¹ 347 U.S. 483.

¹⁴² Pub. L. No. 88-352, 78 Stat. 241.

¹⁴³ Pub. L. No. 89-10, 79 Stat. 27.

¹⁴⁴ See Superfine, *supra* note 14, at 87–88.

¹⁴⁵ KIRST & WIRT, *supra* note 7, at 14.

¹⁴⁶ *Id.* at 15 ("The national movements behind such programs, moreover, often spawned new local interest groups on such issues as civil rights, women's roles, special education, students' rights, and ethnic self-determination. . . . Indeed, big-city 'decentralizers' sought to reinstitute something resembling the old ward boards of education abolished at the turn of the century. They ended up winning partial decentralization through subdistrict board elections, with tighter oversight of superintendents.").

¹⁴⁷ *Id.* at 19, 21.

¹⁴⁸ Saiger, *The Last Wave*, *supra* note 14, at 860, 862 (arguing that legislation on the state and federal level, along with the charter school movement, effectively "constrain[ed] district flexibility and ratchet[ed] up their accountability," as compared to the exclusivity over school related decisions previously enjoyed by district officials).

¹⁴⁹ See *id.* at 873; Superfine, *supra* note 14, at 88.

For parental participation, this legislation still presented hope on the fronts of transparency and due process (the opportunity to be heard).¹⁵⁰

Based on the ever-growing federal role in public education, local school boards are facing an ever-growing deficit in their ability to affect educational policy.¹⁵¹ But how is local control defined? According to Professor Richard Briffault, “[c]ourts which have gotten past the simple invocation of the term [local control] generally present a laundry list of values: parents’ rights, community choice, efficiency and interlocal competition, educational excellence, accountability, and participatory democracy all have been proffered as possible explanations.”¹⁵² Local control brings greater attention to the parental voice’s ability to affect community schools, encourages the local media to focus on unique geographical educational concerns, and fosters the hope that everyone will pay greater attention to the local school board’s ability to effectuate the state and federal policies that we deem important to redirect the trajectory of public education.¹⁵³ The following Part sets forth data demonstrating that parent participation in the political process, a missing link in the legal doctrine concerning local control, produces positive educational outcomes for at-risk and minority students.

B. Why Develop a Protected Space for Parents Through School-Board Actions?

Parental involvement and social factors receive great weight when studying the predictive factors for student academic achievement. As exhibited in the Memphis and Shelby County consolidation, detailed below in Part III, suburban parents covet their ability to exert local control over school politics.¹⁵⁴ School-district boundaries permit these wealthier parents to inculcate themselves from the challenges facing urban school districts with majority poor and racial minority residents.¹⁵⁵ But the representation of racial and ethnic minorities on local school boards, referred to as “descriptive representation,” leads to education policies tailored for the specific

¹⁵⁰ See No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (codified as amended in scattered sections of 20 U.S.C.).

¹⁵¹ Superfine, *supra* note 14, at 95–96 (discussing the implementation of federal policy at the state level, which varies from every jurisdiction, and at the local and school level, which also varies); see also KIRST & WIRT, *supra* note 7, at 26.

¹⁵² Briffault, *supra* note 14, at 773.

¹⁵³ KIRST & WIRT, *supra* note 7, at 31–32.

¹⁵⁴ See Saiger, *The Last Wave*, *supra* note 14, at 867.

¹⁵⁵ *Id.* at 923–24 (“Nevertheless, suburban districts, organized to provide education with only minimal regard for the problems of poor communities, are now being ordered by state and national administrations—elected with suburban support—to pay heed, and allocate resources, to the poor and to other minorities within their borders. . . . Suburbanites, the primary beneficiaries of the status quo, have economic, political, and educational incentives to preserve both the localism and the publicness of their local, public schools.”).

challenges facing these groups, referred to as “substantive representation.”¹⁵⁶ More importantly, studies show that these policies may result in improved student performance.¹⁵⁷ But a token representative, marginalized and alone on a school board, will not produce these positive outcomes.¹⁵⁸

Presently, school boards select their members using three methods: appointments, at-large elections, and ward elections.¹⁵⁹ Studies show differing policy outcomes depending on the type of election employed in a district. A school district with at-large elections will elect fewer minorities, which results in fewer minority administrative and teacher hires, more minority students placed in low-status classes, and few minority students are placed in gifted classes.¹⁶⁰ On the other hand, when Hispanics are a majority in the school district, the hiring results and student placement numbers are the exact opposite.¹⁶¹ Ward or subdistrict elections produce greater minority representation.¹⁶² The nonpartisan at-large systems

increase the cost of citizen participation, make the bridge between representative and citizen more tenuous, and consequently muffle expression of the full range of political interests within a community. Those constrained citizens who are affected tend to be of lower socio-economic status, so that governing structures are clearly not value free. Rather, these reforms actually encourage the access and satisfaction of another group, middle-class and higher-status people.¹⁶³

¹⁵⁶ See ALBERT K. KARNIG & SUSAN WELCH, *BLACK REPRESENTATION AND URBAN POLICY* (1980) (study showing that greater black representation on school boards and city councils resulted in policies more favorable to the interests of this minority group); HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* (1967); Belinda I. Reyes & Max Neiman, *System of Elections, Latino Representation, and School Policy in Central California Schools*, in *LATINOS AND THE ECONOMY: INTEGRATION AND IMPACT IN SCHOOLS, LABOR MARKETS, AND BEYOND* 37, 38–39 (David L. Leal & Stephen J. Trejo eds., 2011); Kenneth J. Meier et al., *Structural Choices and Representational Biases: The Post-Election Color of Representation*, 49 AM. J. POL. SCI. 758, 759 (2005); Ross et al., *supra* note 10, at 72.

¹⁵⁷ See Kenneth J. Meier & Eric Gonzalez Juenke, *Electoral Structure and the Quality of Representation on School Boards*, in *BESIEGED: SCHOOL BOARDS AND THE FUTURE OF EDUCATION POLITICS* 199, 224 (William G. Howell ed., 2005); see also Kenneth J. Meier & Robert E. England, *Black Representation and Educational Policy: Are They Related?*, 78 AM. POL. SCI. REV. 392 (1984); Ross et al., *supra* note 10. *But see* Fraga & Elis, *supra* note 10.

¹⁵⁸ Meier et al., *supra* note 156, at 759; Neiman et al., *supra* note 10, at 25; Reyes & Neiman, *supra* note 156, at 47.

¹⁵⁹ Meier & England, *supra* note 157, at 401.

¹⁶⁰ KIRST & WIRT, *supra* note 7, at 110.

¹⁶¹ *Id.* at 110–11.

¹⁶² *Id.*

¹⁶³ *Id.* at 113.

At-large elections came about as a strategy to remove the political representation of marginalized groups, such as immigrants and the socioeconomically poor, and to immunize school boards from undue political influence.¹⁶⁴ Even though the malintent behind at-large elections may have subsided, the intended effect continues to erect an obstacle for electing black and Latino school-board members. School boards, regardless of the selection method, should act in the best interest of every constituent in the district, but studies show that the racial and ethnic composition of school boards are indeed reflected in adopted policies.¹⁶⁵ School-board members elected via an at-large system must appease the majority population, sometimes to the detriment of their black or Latino supporters, as opposed to ward or single-member districts that are held accountable by a racial or ethnic group with clearly identifiable interests.¹⁶⁶

Local school boards and representative racial balance underwent in-depth study when the black community gained political clout in certain regions throughout the country. Over the past decade, social scientists began to also focus on the disparity between Latino school board representation and the Latino student population. For example, the Latino student population in Central California increased from 400,000 to 580,000 students between the 1995–1996 and 2003–2004 school years, totaling forty-nine percent of the student population.¹⁶⁷ However, the Latino school board representation in this region rose only from 136 to 219 members during the same period in this region, totaling fifteen percent of all board members.¹⁶⁸ Professors Reyes and Neiman found that Latinos must comprise a supermajority of the student population in Central California districts before Latino representation will increase on district school boards.¹⁶⁹ Other studies surveying different regions support this conclusion.¹⁷⁰ Specific to election methods, Reyes and Neiman concluded (as supported by other studies involving black and Latino communities) that Latino candidates

¹⁶⁴ Neiman et al., *supra* note 10, at 4. *See generally* David L. Leal, Valerie Martinez-Ebers & Kenneth J. Meier, *The Politics of Latino Education: The Biases of At-Large Elections*, 66 J. POLS. 1224 (2004); Joseph Stewart, Jr., Robert E. England & Kenneth J. Meier, *Black Representation in Urban School Districts: From School Board to Office to Classroom*, 42 W. POL. Q. 287 (1989).

¹⁶⁵ *See generally* Judy Brown, *Redistricting Single-Member Districts After the 2010 Census: A Common Sense Approach to the Process for Texas Public School Districts*, 26 LEGAL DIG. TEX. SCH. ADMIN. 1 (2010).

¹⁶⁶ *See* Meier et al., *supra* note 156, at 760–61.

¹⁶⁷ Reyes & Neiman, *supra* note 156, at 42–43; *see also* Neiman et al., *supra* note 10, at 4 (discussing the 2008–2009 statistics).

¹⁶⁸ Neiman et al., *supra* note 10, at 8 & n.7; Reyes & Neiman, *supra* note 156, at 43. In approximately two-thirds of the districts located in Central California, there were no Latino board members elected during this time period. *Id.*

¹⁶⁹ Reyes & Neiman, *supra* note 156, at 44.

¹⁷⁰ *See, e.g.*, Fraga & Elis, *supra* note 10, at 670 (whether elected through at-large or a single-member/ward election, Latinos “were underrepresented in districts where they constituted less than 50% of the population”); Ross et al., *supra* note 10, at 82 (studying Texas districts).

fare better in districts with ward elections as opposed to at-large elections.¹⁷¹ Moreover, once a district elects one Latino board member, the likelihood of electing a second Latino member to the board greatly increases, which leads to more effective substantive representation.¹⁷²

The benefits of descriptive representation on school boards manifest in targeted policy development and classroom improvements.¹⁷³ On the policy level, Latino school-board members perceive the severity of problem areas differently than their white peers.¹⁷⁴ For example, in one study, a majority of white board members ranked state and federal mandates as a “serious” concern, and fewer than half ranked funding as a “serious” concern.¹⁷⁵ On the other hand, in the same study, only thirty-nine percent of Latino board members ranked state and federal mandates as a “serious” concern while sixty-four percent ranked inadequate funding as a “serious” concern.¹⁷⁶ In a follow-up report, the researchers showed that Latino board members cited the following concerns with at least fifteen percent more frequency than their white peers: curriculum decisions; improving relationships between board members and administrators; influencing the hiring of principals, teachers, and superintendents; and improving teacher working conditions.¹⁷⁷ With regards to priorities, both white and Latino board members recognized closing the achievement gap as a top priority; seventy-one percent of Latino representatives saw “advocating for immigrant students” as a high to very high priority as compared to forty-one percent of their white peers.¹⁷⁸ Increasing the number of black and Latino students going to college and increasing school-board representation for people of color was also a greater priority for Latino respondents as compared to white respondents.¹⁷⁹

With regards to student educational outcomes, although only an indirect correlation exists, the data demonstrates that political representation increases bureaucratic representation, which in turn increases the number of racial and ethnic minority teachers.¹⁸⁰ Latino school board representation correlates with employing a greater

¹⁷¹ Reyes & Neiman, *supra* note 156, at 44 (“[T]he proportion of Latino board members increases in jurisdictions that use ward elections. While 32% of at-large district elections have a Latino on the board, 81% of districts with ward elections have at least one Latino on the board.”).

¹⁷² *Id.* at 47–49.

¹⁷³ *Id.* at 57 (“Insofar as a greater presence of Latino administrators and teachers ultimately produces policies or provides environments that are conducive to improved performance among otherwise under-performing students, the system of electing school board members might be a critical, albeit indirect, factor shaping Latino student performance.”).

¹⁷⁴ Neiman et al., *supra* note 10, at 19–22; Reyes & Neiman, *supra* note 156, at 53–55.

¹⁷⁵ See Reyes & Neiman, *supra* note 156, at 55 fig.3.8.

¹⁷⁶ See *id.* at 53–55.

¹⁷⁷ Neiman et al., *supra* note 10, at 14.

¹⁷⁸ *Id.* at 23.

¹⁷⁹ *Id.*

¹⁸⁰ See Fraga & Elis, *supra* note 10, at 663; Ross et al., *supra* note 10, at 83.

number of Latino and bilingual teachers and Latino administrators.¹⁸¹ This increase proves especially important in states such as California, where, during the 2004–2005 school year, 45.9% of Latino students were ELL students, which represented approximately one-fifth (21.5%) of the total student population, and where 85.3% of state ELL students were Spanish language speakers.¹⁸² A similar correlation was found when studying black school board representation and an increase in black administrators.¹⁸³ Representation at the administrative and teaching levels translates into educational improvements.¹⁸⁴ For Latino students in Texas, an increased proportion of Latino teachers resulted in increased standardized test scores for Latino students.¹⁸⁵ Even though districts with Latino school-board members struggle with student-teacher ratios and teacher credentials, these numbers improve when Latinos are represented over a period of time on the district’s board.¹⁸⁶

Despite the irrefutable evidence that parent participation and minority member representation affects student achievement, public education’s burgeoning governance structure makes quality participation a more difficult task. Each example set forth in Part III involved a lawsuit. These pleas to the judiciary included allegations regarding procedural processes. In the education context, these participation deficiencies should also be grounded in the substantive due process right to parent. The next Part reviews this doctrinal foothold in protecting parents’ influence over their child’s educational track.

C. *The Fundamental Right to Parent*

Parents play an influential role in children’s upbringing. Inside the home, parents are typically the primary source of love, support, and wisdom. However, parental roles extend beyond the home. Parents possess a legally recognized fundamental right to direct the education of their children.¹⁸⁷ This right affords parents the opportunity to influence the policies that shape the course of their child’s education. As is the

¹⁸¹ Fraga & Elis, *supra* note 10, at 672 (finding that increased administrator representation only occurred in districts with a majority Latino population); Reyes & Neiman, *supra* note 156, at 49. See generally Luis Ricardo Fraga, Kenneth J. Meier & Robert E. England, *Hispanic Americans and Educational Policy: Limits to Equal Access*, 48 J. POLS. 850 (1986).

¹⁸² Fraga & Elis, *supra* note 10, at 666.

¹⁸³ See generally Stewart, England & Meier, *supra* note 164.

¹⁸⁴ Ross et al., *supra* note 10, at 82–84.

¹⁸⁵ *Id.* at 84 (“In sum, the findings for Texas school districts demonstrate descriptive representation . . . has a powerful (albeit largely indirect) effect on substantive policy outcomes of interest to the Latino community. The election of Latino school board members is significantly related to the number of Latino administrators, which is associated with the number of Latino teachers. In turn, the number of Latino teachers influences Latino student performance.”).

¹⁸⁶ Reyes & Neiman, *supra* note 156, at 49.

¹⁸⁷ See *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925).

case of any elected position, board members are selected to serve the needs of the constituents, essentially placing parents at the forefront of their children's education.

The Supreme Court most often discusses the parents' substantive due process right to direct their child's education in cases involving First Amendment issues—the Establishment and Freedom of Expression. In the Court's education cases involving the Fourteenth Amendment, the school board serves as a surrogate for the majoritarian parent's position, and little attention is given to the nuances of school-board politics. To understand how the fundamental right of parents to control their child's education may apply when determining the constitutionality of policies invoking the Fourteenth Amendment, fundamental right as set forth under foundational education-law cases is explored below.

*Meyer v. Nebraska*¹⁸⁸ and *Pierce v. Society of Sisters*¹⁸⁹ marked the Court's entry into defining the intersection of education and parental rights. More specifically, *Pierce* and *Meyer* allowed the Court to consider the authoritative boundaries for states and parents in the education context.¹⁹⁰ In *Meyer*, the Court stated that “[c]orresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life.”¹⁹¹ In *Pierce*, the Court noted that “[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”¹⁹² Later, in *Prince v. Massachusetts*,¹⁹³ the Court explained that parental rights are not without limitation.¹⁹⁴ The majority stated that “the family itself is not beyond regulation in the public interest . . . neither rights of religion nor rights of parenthood are beyond limitation.”¹⁹⁵ These limitations came into question when the Court considered the ability of Old Order Amish families to remove their children from the public school system after the eighth grade.¹⁹⁶ In *Wisconsin v. Yoder*, the Court expressed that “[t]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”¹⁹⁷

The Supreme Court most recently confirmed these views in *Troxel v. Granville*,¹⁹⁸ in which it upheld the parents' right to control their child's visitation schedule with

¹⁸⁸ 262 U.S. 390 (1923).

¹⁸⁹ *Pierce*, 268 U.S. 510.

¹⁹⁰ See Paula Abrams, *The Little Red Schoolhouse: Pierce, State Monopoly of Education and the Politics of Intolerance*, 20 CONST. COMMENT. 61, 72–73 (2003).

¹⁹¹ *Meyer*, 262 U.S. at 400.

¹⁹² *Pierce*, 268 U.S. at 535.

¹⁹³ 321 U.S. 158 (1944).

¹⁹⁴ *Id.* at 166.

¹⁹⁵ *Id.*

¹⁹⁶ See *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

¹⁹⁷ *Id.* at 232.

¹⁹⁸ 530 U.S. 57 (2000) (plurality opinion).

parental grandparents.¹⁹⁹ The fundamental right to parent has been most elaborated on in state court rulings related to home schooling, custody, and visitation.²⁰⁰ Both federal and state courts have made clear that parents hold the authority to make decisions concerning the “care, custody, and control” of their children, which includes education.²⁰¹ The only pathway by which the state could supersede parents’ fundamental rights would be in cases where the parents were found unfit, the parents harmed the health or safety of the child, or the parents’ decisions caused significant social burdens.²⁰²

What does this mean with respect to political activism, representation, and reform in public education? In a democratic-education system, as envisioned by Professor Amy Gutmann, public-education policy requires a balance between state authority, parental rights, and professional educators.²⁰³ The intended goal entails “conscious social reproduction,” where students learn to appreciate diverse notions concerning life and eventually build the autonomous capacity to choose.²⁰⁴ Moreover, political majorities should shape policy, except in the limited circumstances of repression or discrimination.

Liberal democracy theorists debate the proper balance between parents’ right to control their child’s education, the state’s obligation to mold productive citizens, and a child’s autonomy.²⁰⁵ These scholars view children as members of their families

¹⁹⁹ *Id.* at 60–63.

²⁰⁰ *See, e.g., Ex parte E.R.G. & D.W.G.*, 73 So. 3d 634 (Ala. 2011) (holding that grandparent visitation statutes do not comply with the fundamental right to parent); *Jonathan L. v. Superior Court of L.A. Cnty.*, 165 Cal. App. 4th 1074 (2008) (holding that home schooling may be prohibited for children allegedly abused at home); *Dutkiewicz v. Dutkiewicz*, 957 A.2d 821 (Conn. 2008) (holding that a requirement to attend parent-education classes does not violate the fundamental right to parent); *State v. McDonough*, 468 A.2d 977 (Me. 1983) (upholding state-imposed home-schooling requirements); *Care & Prot. of Charles*, 504 N.E.2d 592 (Mass. 1987) (holding that home-schooling requirements do not run counter to the fundamental right to parent); *People v. Bennett*, 501 N.W.2d 106 (Mich. 1993) (upholding state-imposed home-schooling requirements); *In re Kurowski*, 20 A.3d 306 (N.H. 2011) (determining rights of divorced parents to choose educational course work for their child); *In re William L., Frank L., & Mark L.*, 383 A.2d 1228 (Pa. 1978) (holding that the termination of parental rights for a neglected child does not violate the fundamental right to parent); *Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993) (holding that the grandparent visitation statute violated the fundamental right to parent and the privacy right); *Crites v. Smith*, 826 S.W.2d 459 (Tenn. App. 1991) (finding that home-schooling requirements do not violate the fundamental right to parent); *Larson v. Burmaster*, 720 N.W.2d 134 (Wis. App. 2006) (holding that summer-homework requirement did not violate the fundamental right to parent and control child’s education).

²⁰¹ *See Troxel*, 530 U.S. at 66.

²⁰² *Wisconsin v. Yoder*, 406 U.S. 205, 233–34 (1972).

²⁰³ AMY GUTMANN, *DEMOCRATIC EDUCATION* 42 (1987).

²⁰⁴ *Id.* at 14.

²⁰⁵ Maxine Eichner, *School Surveys and Children’s Education: The Argument for Shared Authority Between Parents and the State*, 38 J.L. & EDUC. 459, 471 (2009).

and citizens of greater society, which creates a dual role for parents and government in controlling a child's educational experience.²⁰⁶ The ability of parents to relinquish a share of their authority to the state enables our liberal democracy to thrive.²⁰⁷

Scholars who rely too heavily on the political process to redeem the parents' right to control their child's education, through school board elections and other political actors, fail to recognize the limited schooling options available to some parents and the difficulties attendant to accomplishing reform exclusively through political action.²⁰⁸ Professor Maxine Eichner argues that

[b]ecause our nation believes that individual liberties are important, courts are generally treated as a crucial check on the political process, particularly where we are concerned that minority views may not be zealously guarded. To trust parents' interests in educating their children to the process of school board elections and hearings gives too little protection to these rights.²⁰⁹

The Supreme Court has yet to clarify the line between state and parental authority over a student's education.²¹⁰ Eichner proposes that parents' rights fall subordinate to state interests related to "developing civic virtues or autonomy,"²¹¹ and the state's interests fall subordinate to a "practice related to issues properly considered parental prerogatives."²¹² Providing a quality education through race- and/or socioeconomic-specific policies seems to fall into both realms, but why is there no mention of parents?

Professor Stephen Gilles, in *On Educating Children: A Parentalist Manifesto*,²¹³ also discusses the distribution of authority between parents and states in controlling a child's education.²¹⁴ Further, he examines whether the contention should be resolved through the political process or as a constitutional question.²¹⁵ He argues that

²⁰⁶ *Id.* at 462–63 (arguing that the state must play a role in determining education policy because state actors "have fewer conflicting incentives to ensure that students develop the dispositions and skills necessary for citizenship," "[s]chools . . . are better situated to teach children to recognize that their own way of life is one among many," and "some parents will deliberately seek to keep their children from developing particular civic virtues because they disagree with them").

²⁰⁷ *Id.* at 463.

²⁰⁸ *Id.* at 461 (critiquing Kathleen Conn, *Parents' Right to Direct Their Children's Education and Student Sex Surveys*, 38 J.L. & EDUC. 139 (2009)).

²⁰⁹ Eichner, *supra* note 205, at 465.

²¹⁰ *Id.* at 467.

²¹¹ *Id.* at 470.

²¹² *Id.*

²¹³ Stephen G. Gilles, *On Educating Children: A Parentalist Manifesto*, 63 U. CHI. L. REV. 937 (1996).

²¹⁴ *See id.*

²¹⁵ *Id.* at 947.

parents hold their child's best interest in educational achievement, more so than state actors and other parents; therefore, parents should possess primary educational authority over their children.²¹⁶ In looking to the political process, Gilles proposes that majorities will try to impose their values on the next person's child, and parents should be able to intervene unless their "choices are unreasonable and hence inimical to the child's best interest."²¹⁷ Professor Gilles concludes that parents should invoke a First Amendment right to educative free speech, worthy of political speech constitutional protection, when directing their child's education.²¹⁸ But with regard to their substantive due process rights under the Fourteenth Amendment, Gilles writes that "[t]his proposition unmistakably implies that government may not coerce the choices individuals make within the sphere of protected liberty so long as reasonable people can disagree about which choice is preferable."²¹⁹

III. CONTEMPORARY HURDLES TO PARENTAL INVOLVEMENT

Public schools represent a crucible for varying democratic values to meld in pursuit of a singular purpose: preparing future citizens. School-district consolidations, metro-area districts covering diverse socioeconomic populations, and districts with large undocumented populations require citizens to quibble over limited resources. Without a unified vision for a district, conflicts arise when distributing these resources needed to properly educate and provide programming for different student groups.²²⁰

School board politics unearth controversial debates surrounding local control, resources, and community participation. State-governed school boards also unhinge the doors on the country's socioeconomic and cultural divides, most evident in the public education context. The function of school boards differs greatly from other elected bodies: ensuring quality education. Attaining this goal on behalf of disadvantaged children requires parents to share equal access to local school boards. Their parents' voices receiving due recognition reflects the democratic principles underlying full citizenship.²²¹

The following Parts trace strained relationships and economic circumstances from around the country that highlight the need to reevaluate the constitutional imperative of parents as citizenship brokers on their children's behalf. In Chicago, Philadelphia, and Orleans Parish, non-elected education officials closed and/or converted

²¹⁶ *Id.* at 953, 956 (extending the argument to choosing teachers and viewing parents as consumers with expertise to demand the best for their child).

²¹⁷ *Id.* at 960.

²¹⁸ *Id.* at 1033–34.

²¹⁹ *Id.* at 1003–04.

²²⁰ See Thomas Kleven, *Federalizing Public Education*, 55 VILL. L. REV. 369, 374–75 (2010).

²²¹ See *id.* at 371 (arguing that "a social compact arising from and perpetuating power imbalances is unconscionable and not fully democratic").

neighborhood schools without acknowledging parent and community opposition.²²² In Memphis, parents negotiated an unprecedented consolidation with Shelby County public schools.²²³ In Wake County, socioeconomically disadvantaged parents found themselves outnumbered when more affluent parents funded the campaigns of candidates willing to overturn their voluntary socioeconomic integration plan.²²⁴ In Central California, members of a rapidly growing Latino immigrant population must send their children to public schools where Latinos are under-represented on school boards and many parents lack the status to vote for board members.²²⁵ These recent disturbances in local public education governance illustrate how current school board composition and practices threaten the parent's role as a citizenship broker and, in turn, the ability of local control to work to the benefit of at-risk students.

A. Executive Domination: Chicago, Philadelphia, and Orleans Parish

Dismal parallels arise when chronicling the school-closure decisions made in Chicago and Philadelphia during the 2012–2013 academic year: (1) the school boards' actions disproportionately affect low-income minority families;²²⁶ (2) parents and community members continuously expressed grievances based on the failure of non-elected school boards to heed their opinions throughout the decision-making processes;²²⁷ and (3) parents, along with activists, in both cities filed lawsuits alleging civil rights and procedural violations.²²⁸

In July 2013, local-education politics hit the world stage—straight from the public schools of Chicago²²⁹ to the desk of United Nations officials. The letter, entitled “Letter of Allegation Regarding the Closing of 49 Public Elementary Schools in Chicago, Illinois, United States of America,”²³⁰ did not lodge complaints about the

²²² See *infra* Part III.A.

²²³ See *infra* Part III.B.

²²⁴ See *infra* Part III.C.

²²⁵ See *infra* Part III.D.

²²⁶ See Motoko Rich & Jon Hurdle, *Rational Decisions and Heartbreak on School Closings*, N.Y. TIMES, Mar. 9, 2013, at A11; Noreen S. Ahmed-Ullah et al., *CPS Approves Largest School Closure in Chicago's History*, CHI. TRIB. (May 23, 2013), http://articles.chicagotribune.com/2013-05-23/news/chi-chicago-school-closings-20130522_1_chicago-teachers-union-byrd-bennett-one-high-school-program.

²²⁷ See Ahmed-Ullah et al., *supra* note 226.

²²⁸ See Kristen A. Graham, *Suit: Philly School-Closing Policy an Attempt to “Dismantle Traditional Public Schools”*, PHILLY.COM (June 7, 2012), http://articles.philly.com/2012-06-07/news/32079824_1_school-closings-charter-schools-new-schools; Press Release, Chic. Teachers Union, *Federal Lawsuits Seek to Halt Closings* (May 15, 2013) [hereinafter CTU Press Release], available at <http://www.ctunet.com/blog/federal-lawsuits-seek-to-halt-closings>.

²²⁹ *Highest Ranking Cities, 1790 to 2010*, U.S. CENSUS BUREAU, <http://www.census.gov/dataviz/visualizations/007/508.php> (last visited Apr. 15, 2014).

²³⁰ Midwest Coal. for Human Rights, *Letter of Allegation Regarding the Closing of 49 Public Elementary Schools in Chicago, Illinois, United States of America* (July 24,

failure of the government entities that typically garner our attention: that is, the federal government's inability to reauthorize No Child Left Behind or the state government's inability to distribute public-education funds equally. Instead, the drafters alleged human-rights violations, in part because parents unsuccessfully sought to influence the harsh decisions of locally elected and appointed officials that may jeopardize the prospects that a quality education will be offered to their children.²³¹ According to protesters, in the maze of education governance, local officials shunned the voice of parents and the community.²³²

On Wednesday, May 22, 2013, the Chicago Board of Education, which consists of various professionals appointed by the Mayor,²³³ voted to close fifty public schools, forty-nine elementary schools, and one high school within the district.²³⁴ This drastic measure represents the largest "mass school closing" in our nation's history.²³⁵ The district concentrated on underutilized facilities in an attempt to address its overwhelming budget deficit.²³⁶ However, either by coincidence or intent, these closings disproportionately affected racial minorities and disabled students: eighty percent of the displaced students identified as black, but only forty-two percent of the district's total student population identified as black.²³⁷ Focusing specifically on school populations, eighty-seven percent of the closing schools report a majority black student body.²³⁸ If we look into Chicago's school-closure history, transfer students and students currently enrolled in receiving schools face the challenge of attending overcrowded classrooms due to the school mergers, which impedes their opportunities for a quality education. And these opportunities seem further depressed by the prospect of transferring to schools with lower student achievement levels than their original school assignment.

But most disturbing, the Board's participation procedures seemed to quash the constitutional right of parents to represent their children's educational interests through a deliberative, democratic process. Quite simply, as stated by the Midwest Coalition for Human Rights, "[t]he right to participate lacks any meaning if the

2013) [hereinafter Letter of Allegation], available at <http://lnw.wbez.org/Letter%20of%20Allegation.pdf>.

²³¹ See *id.* at 9–10.

²³² See *id.* at 10.

²³³ See *Board Bios*, CHI. BOARD OF EDUC., <http://www.cpsboe.org/bios> (last visited Apr. 15, 2014).

²³⁴ See Ahmed-Ullah et al., *supra* note 226.

²³⁵ Mary Wisniewski, *Chicago Board Approves Largest School Closing*, REUTERS (May 22, 2013, 7:36 PM), <http://www.reuters.com/article/2013/05/22/us-usa-education-chicago-vote-idUSBRE94L15P20130522>.

²³⁶ *Id.*

²³⁷ Letter of Allegation, *supra* note 230, at 4–5 (citing Alex Keefe, *Emanuel: CPS School Closures 'Not Taken Lightly' but Must Be Done*, WBEZ 91.5 (Mar. 23, 2013), <http://www.wbez.org/news/emanuel-cps-school-closures-not-taken-lightly-must-be-done-106253>).

²³⁸ *Id.* at 4.

public's opinion is ignored."²³⁹ Parents protested, to no avail, through demonstrations at City Hall and more intimately through classroom sit-ins at neighborhood schools.²⁴⁰ According to the *Chicago Tribune*, "[o]ver 20,000 students, parents, and teachers voiced opposition in over 30 community sessions before the April school-closing list was issued. More than 9,000 attended meetings organized by the Chicago Board of Education in neighborhoods and public hearings by appointed judicial officers."²⁴¹

The Chicago Board of Education compounded the difficulties of formal participation in the deliberation process by implementing unprecedented rules for voicing public opinion. It limited the number of citizens eligible to speak before the Board and restricted the number of minutes allowed for individual comment.²⁴² It also placed strict parameters on reserving these speaking moments—citizens needed to either register online, call, or make their intentions to comment known in person.²⁴³ As aptly noted, "poor and working class citizens who do not own their own personal computers, or who are not able to access a computer at precisely 8:00 a.m. on the day of registration" were blocked from the process.²⁴⁴ Such people undoubtedly constitute the parents of poor, minority students in the Chicago area.

In response to the Chicago Board of Education's actions, the Chicago Teachers Union decided to sponsor a voter registration and education campaign to eventually replace the mayor and promote an elected school board.²⁴⁵ Through a more formal process, the city impaneled hearing officers to review the school closures.²⁴⁶ This panel expressed clear reservations with regard to the Board of Education's suggested school-closing list.²⁴⁷ Invoking legal action, the Chicago Teachers Union spearheaded the

²³⁹ *Id.* at 9.

²⁴⁰ *See id.* at 10; *see also* Kim Geiger, *People Protesting Planned School Closings Arrested at City Hall*, CHI. TRIB. (May 20, 2013), http://articles.chicagotribune.com/2013-05-20/news/chi-people-protesting-planned-school-closing-arrested-at-city-hall-201305201_1_chicago-teachers-union-53-elementary-schools-one-high-school-program.

²⁴¹ *Id.* (citing Noreen S. Ahmed-Ullah, *At Chicago School Closing Hearings, Crowds Fade*, CHI. TRIB. (Apr. 25, 2013), http://articles.chicagotribune.com/2013-04-25/news/ct-met-cps-closing-hearings-20130426_1_schools-chief-barbara-byrd-bennett-final-list-two-community-meetings).

²⁴² *See id.*

²⁴³ *See id.*

²⁴⁴ *Id.* (quoting George N. Schmidt, *Kafka on Clark Street*, SUBSTANCE NEWS (June 4, 2013), <http://www.substancenews.net/articles.php?page=4318>).

²⁴⁵ Noreen S. Ahmed-Ullah, *Teachers Union to Seek Ouster of Mayor, Other Officials*, CHI. TRIB. (Apr. 15, 2013), http://articles.chicagotribune.com/2013-04-15/news/chi-ctu-plans-election-voter-push-20130415_1_closings-one-high-school-program-chicago-teachers-union.

²⁴⁶ *See* Chuck Sudo, *10 CPS School Closings Opposed By Hearing Officers*, CHICAGOIST.COM (May 8, 2013, 10:00 AM), http://chicagoist.com/2013/05/08/some_cps_school_closings_opposed_by.php.

²⁴⁷ *Id.*

filing of three lawsuits.²⁴⁸ The federal claims came before a judge beginning July 16, 2013, with a four-day hearing to consider a preliminary injunction.²⁴⁹

On Thursday, March 7, 2013, the Philadelphia School Reform Committee voted to close twenty-three public schools.²⁵⁰ Similar to Chicago, the Board cited underutilization and a need to address its budget deficit as reasons for the excruciating and difficult decision.²⁵¹ Also, like Chicago, the people protested to no avail.²⁵² The School Reform Committee removed only four schools from the closure list after absorbing pointed accounts from concerned parents and community members.²⁵³ In additional daunting similarity, the demographic characteristics of displaced students facing these challenges in Philadelphia rang eerily similar to the students facing these challenges in Chicago,²⁵⁴ and their parents faced the same political hurdles to combat mandates imposed by unelected officials working to correct local problems without local input. According to one journalist's research:

In Philadelphia, black students comprise 81 percent of those who will be impacted by the closings despite accounting for just 58 percent of the overall student population. In stark contrast, just 4 percent of those affected are white kids who make up 14 percent of Philly students. And though they make up 81 percent of Philadelphia students, 93 percent of kids affected by the closings are low-income.²⁵⁵

The school-closure decisions came courtesy of a non-elected body appointed at the state level because Pennsylvania took control of Philadelphia schools nearly a decade ago.²⁵⁶ And finally, not unlike Chicago, the judiciary has found itself fielding lawsuits based on civil-rights and procedural violations.²⁵⁷

²⁴⁸ Noreen S. Ahmed-Ullah, *Hearings Today on Lawsuits Against CPS School Closings*, CHI. TRIB. (July 16, 2013), http://articles.chicagotribune.com/2013-07-16/news/ct-met-cps-federal-hearing-20130715_1_closings-today-chicago-teachers-union.

²⁴⁹ *See id.*

²⁵⁰ Jon Hurdle, *Philadelphia Officials Vote to Close 23 Schools*, N.Y. TIMES, Mar. 8, 2013, at A16.

²⁵¹ *Id.*

²⁵² *See id.*

²⁵³ *See id.*

²⁵⁴ *See id.* (noting that the majority of students in urban schools are either black or Hispanic).

²⁵⁵ Rania Khalek, *Philadelphia Is Closing 23 Schools While Building a \$400 Million Prison*, RANIAKHALEK.COM (June 5, 2013), <http://raniakhalek.com/2013/06/05/philadelphia-is-closing-23-schools-while-building-a-400-million-prison/>.

²⁵⁶ *See* Mike Dunn, *Lawmakers Debate Whether Phila. School Board Should Be Returned to Local Control*, CBS PHILLY (June 3, 2013, 11:52 AM), <http://philadelphia.cbslocal.com/2013/06/03/lawmakers-debate-whether-phila-school-board-should-be-returned-to-local-control/>.

²⁵⁷ *See* Graham, *supra* note 228.

While Chicago activists called on the United Nations to intervene, national activists called on Arne Duncan, the Secretary of the Department of Education, to intervene on behalf of these Philadelphian students.²⁵⁸ The letter points to the disproportionate effect of these school closures on black students, ELL students, and students from poor families.²⁵⁹ The letter also implores the federal government to heed the people's request to help fund public education instead of other public works projects, such as new prisons.²⁶⁰

The post-Hurricane Katrina governance reform of Orleans Parish public schools also provides a striking example of how parents can be thrust into the backseat of controlling their child's education. Professor Robert Garda recounts the New Orleans story in his article, *The Politics of Education Reform: Lessons from New Orleans*, which reveals how splintered and layered governance schemes smother parents while accomplishing inconclusive achievement gains for students.²⁶¹ For years prior to Hurricane Katrina, the Orleans Parish School Board experienced a turbulent relationship with the state government. The local school board steadily battled against state takeovers and the opening of charter schools to compete with traditional public institutions.²⁶² After Hurricane Katrina, the Orleans Parish School Board could not afford to reopen its public schools.²⁶³ This created a justifiable space for long-time Orleans Parish School Board opponents to seek federal funds allocated exclusively for charter schools in the district and for the state to take more control from the local school board.²⁶⁴ Local control advocates, predominately representing the black community, argued that the federal government's choice agenda, the state, and national

²⁵⁸ See Letter from Randi Weingarten, President, Am. Fed'n of Teachers, & Diane Ravitch, Historian, N.Y.U., to Arne Duncan, U.S. Sec'y of Educ. (June 28, 2013), available at http://www.aft.org/newspubs/press/ltr_secyduncan062813.cfm.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ Robert Garda, *The Politics of Education Reform: Lessons from New Orleans*, 40 J.L. & EDUC. 57, 58–59 (2011). Professor Kristi L. Bowman provides an in-depth analysis of the Michigan experience with state intervention with affairs typically reserved for the local school district, observing the challenges associated with such action. See Kristi L. Bowman, *State Takeovers of School Districts and Related Litigation: Michigan as a Case Study*, 45 URB. LAW. 1 (2013).

²⁶² See Garda, *supra* note 261, at 59–66 (describing the contentious political relationship during the pre-Katrina era between the state, school-board members, community leaders, and union members regarding legislative bills that allowed for state takeovers for failing schools and the creation of charter schools).

²⁶³ See *id.* at 67.

²⁶⁴ *Id.* at 67–68. Garda proposes that “[c]harter schools were adopted not because of superior educational performance, which was and is still uncertain, but because it was politically and financially expedient.” *Id.* at 69. He further argues that “[k]nowing that the OPSB could not re-open a sufficient number of schools and that charter schools alone could not fill the gap, Governor Blanco seized the opportunity for state takeover of the schools.” *Id.* at 70; see also Saiger, *The Last Wave*, *supra* note 14, at 886 (discussing the state takeover of the New Orleans schools in the aftermath of Hurricane Katrina).

special-interest groups, effectively silenced the voice of parents and stole power away from local citizens.²⁶⁵ In the end, the Orleans Parish schools were divided and directly controlled by the local school board, a state school board, or private charter school operators.²⁶⁶

The closest semblance of an expanded local control to include parents would be to enroll children in charter schools or one of the few schools operated by the local school board. But neither option provides for the robust, inclusive community voice necessary to achieve the goals sought through a unified local governance authority. If one were to apply the goals illuminated through a liberal democracy, parents and government may share authority for the schools remaining under the local school board's control, but only the highest-achieving schools would remain under this umbrella.²⁶⁷ These schools are not attended by a representative population of the district. For charter schools, parents may exercise great control over education decisions through choice, but the citizens' voice seems constrained by the wholly decentralized governance scheme, and disadvantaged parents may not hold the wherewithal to truly realize their first choice of schools.²⁶⁸

B. Consolidation of School Districts: The City of Memphis and Shelby County Merger

The school-district merger between the City of Memphis and Shelby County was the largest in American history and created a series of challenging transitions.²⁶⁹ The school districts immediately reconciled glaring administrative differences, such as teachers' unions, the management of transportation, textbook choices, and evaluation systems.²⁷⁰ However, the major rub may lie in reconciling the fissures along race and class lines. Beyond logistical challenges, lower-income minority parents must begin brokering the citizenship priorities owed to their children against a large constituency of suburban parents that fiercely opposed the consolidation.²⁷¹

²⁶⁵ See Garda, *supra* note 261, at 71, 84.

²⁶⁶ See *id.* at 76; see also Saiger, *The Last Wave*, *supra* note 14, at 887–88 (explaining in detail the statutory and governance structure established after the state takeover of the Orleans Parish schools).

²⁶⁷ See Garda, *supra* note 261, at 76–77.

²⁶⁸ *Id.* at 89 (“Enrollment barriers such as lack of information, complex enrollment procedures, and selective admission schools play a major role in the balkanization of New Orleans’ schools. . . . School choice, it seems, is reserved for well-informed, motivated parents with the time and resources to navigate the complex information gathering and registration process.”).

²⁶⁹ Sam Dillon, *Merger of Memphis and County School Districts Revives Race and Class Challenges*, N.Y. TIMES, Nov. 6, 2011, at A18.

²⁷⁰ *Id.* (“Memphis teachers are unionized, Shelby County’s are not; the county owns its yellow buses, the city relies on a contractor; and the two districts use different textbooks and different systems to evaluate teachers.”).

²⁷¹ *Id.*

The racial tension revolving around schooling in Memphis dates back to the 1960s. Back then, similar to people in other Southern pockets, white families moved to the suburbs or enrolled their children in private schools, to avoid school integration.²⁷² This resulted in an urban-school system servicing a vast majority of black students and a suburban school system servicing primarily white students.²⁷³ Eighty-five percent of students in Memphis, as compared to only thirty-eight percent in Shelby County, identify as black.²⁷⁴ The Memphis suburbs have experienced greater diversity as middle-class black families move out of the central city, but the Shelby County School Board regularly consists of all white members, and the area remains mostly segregated by race.²⁷⁵ The two districts also service families from different socioeconomic backgrounds, which is reflected in public school funding. The average family in Memphis earns \$32,000 per year, compared to the suburban family's average earnings of \$92,000 per year.²⁷⁶ Consequently, the Shelby County's 2010–2011 school budget totaled around \$363 million for 47,000 students.²⁷⁷ Memphis City's school budget totaled approximately \$890 million for 103,000 students.²⁷⁸ Even with the merger, advocates remain skeptical that the race and socioeconomic demographics will change because the district assigns students "to neighborhood schools and housing tends to be segregated."²⁷⁹

Tennessee administers three different types of public school systems: county school districts, special school districts, and municipal school districts. In 1982, Tennessee outlawed the creation of special school districts.²⁸⁰ City governments manage and fund municipal school districts.²⁸¹ Abolished municipal school districts become subsumed by the county, which holds the legal responsibility for providing a public education to all students residing within its borders.²⁸²

For more than ten years, Shelby County schools repeatedly petitioned the legislature to lift the ban on forming special districts.²⁸³ The schools wanted to become a special school district to gain greater financial independence, set permanent boundaries, and prevent consolidation with the Memphis City Schools.²⁸⁴ The Memphis

²⁷² Adrian Sainz, *In Memphis, Old Strife Heats up over Schools, Race*, FOXNEWS (Feb. 21, 2011), <http://www.foxnews.com/us/2011/02/21/memphis-old-strife-heats-schools-race/>.

²⁷³ *Id.*

²⁷⁴ Dillon, *supra* note 269.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ Sainz, *supra* note 272.

²⁷⁸ *Id.*

²⁷⁹ Dillon, *supra* note 269.

²⁸⁰ See TENN. CODE ANN. § 49-2-501(b) (2013).

²⁸¹ *Id.* § 49-2-402.

²⁸² See *id.* § 49-2-1002(d).

²⁸³ See Campbell Robertson, *Memphis Votes for County to Run Schools*, N.Y. TIMES, Mar. 9, 2011, at A16.

²⁸⁴ See *id.*

City Schools objected to lifting the ban because a status change would have resulted in substantial revenue losses for the Memphis school district.²⁸⁵

In November 2010, the Republican Party gained a majority in the state legislature, after which the Shelby County Schools once again sought to become a special district.²⁸⁶ In response to Shelby County Schools' efforts to pursue special district status, the Memphis City Schools introduced a resolution to surrender the district's charter and hand control over to the county.²⁸⁷ The Memphis City Board passed this resolution and agreed to place the question before the local electorate.²⁸⁸ The surrender of the charter gained wide support from Memphis citizens.²⁸⁹ The City's defensive action provided cover against Shelby County drawing a boundary around its schools, resulting in the taking of approximately \$100 million a year from Memphis's already underfunded public schools.²⁹⁰ Many Memphis City school students felt that the merger will also provide better educational opportunities for Memphis students.²⁹¹

After the resolution passed and a referendum appeared inevitable, State Senator Norris-Todd introduced "Senate Bill 25" to address the consolidation issue.²⁹² The bill also called for a three-year transition period, with a planning commission composed of twenty-one members.²⁹³ In addition, the bill contained a provision permitting the creation of one or more special districts.²⁹⁴ The same day Norris-Todd filed the bill, "the group Citizens for Better Education and two individuals filed suit in Chancery Court . . . seeking a court order directing the Shelby County Election Commission to put a charter surrender referendum on the ballot and set a date for the election."²⁹⁵ Litigation involving consolidation of the school boards ultimately

²⁸⁵ *See id.*

²⁸⁶ *See Sainz, supra* note 272.

²⁸⁷ *See* Christina Samuels, *Memphis School Board to Allow Consolidation Vote*, EDUC. WEEK (Dec. 21, 2010, 5:20 PM), http://blogs.edweek.org/edweek/District_Dossier/2010/12/memphis_school_board_to_allow.html.

²⁸⁸ *See id.*

²⁸⁹ *See, e.g.*, Jamel Major, *Pastors Announce Support for MCS Charter Surrender*, WLOX.COM (Feb. 18, 2011, 4:53 PM), <http://www.wlox.com/story/14059491/pastors-announce-support-for-mcs-charter-surrender>.

²⁹⁰ *See Sainz, supra* note 272.

²⁹¹ *See, e.g., id.*

²⁹² Press Release, Shelby Cnty. Mayor's Office, Mayor Luttrell Supporting State Lawmakers' Effort to Ensure Orderly Transition of Schools (Feb. 3, 2011), *available at* <http://shelbycountyttn.gov/index.aspx?NID=1399>.

²⁹³ *Id.*

²⁹⁴ Jackson Baker, *Haslam Signs SB25, the Norris-Todd Bill*, MEMPHIS FLYER (Feb. 11, 2011, 1:36 PM), <http://www.memphisflyer.com/JacksonBaker/archives/2011/02/11/haslam-signs-sb25-the-norris-todd-bill>.

²⁹⁵ Bill Dries, *Lawsuit Filed as Norris Submits Legislation in Schools Standoff*, MEMPHIS DAILY NEWS (Jan. 13, 2011), <http://www.memphisdailynews.com/news/2011/jan/13/lawsuit-filed-as-norris-submits-legislation-in-schools-standoff>.

boiled down to two constitutional questions involving the decision of Memphis City schools to surrender its charter and certain provisions in the Norris-Todd bill.²⁹⁶

Federal District Judge Hardy Mays affirmed the constitutionality of both the Board's surrender and the Norris-Todd bill.²⁹⁷ But most importantly, Judge Mays deemed the then-current Shelby County Board unconstitutional because it included no Memphis residents and ruled that school authorities needed to gather the necessary information for a plan to ensure the rights and privileges of Memphis City teachers during the transition.²⁹⁸

Following the court's ruling, both boards met and voted to approve the settlement agreement.²⁹⁹ The Memphis City School Board appointed five representatives to the twenty-one member transition commission responsible for making recommendations on the consolidation.³⁰⁰ In the interim, a twenty-three member unified board, including Memphis City Schools members, will operate the schools.³⁰¹

C. Wealth Disparities and Political Representation: The Wake County Saga

The Wake County experience with a voluntary student-assignment policy based on socioeconomic status highlights how public opinion shifts and how local school politics directly affects school policies. As trailblazers, in 2000, Wake County's school board implemented an income-based integration plan as an alternative to using race.³⁰² Nearly ten years later, and after measured success integrating students, voters elected a majority of school-board members intent on eliminating the plan.³⁰³ On March 23, 2010, the Wake County School Board voted five-to-four to end the socioeconomic

²⁹⁶ Jackson Baker, *Judge Mays Rules!: It's Basically Norris-Todd as MCS-SCS School Merger Goes Through*, MEMPHIS FLYER (Aug. 8, 2011, 3:30 PM), <http://www.memphisflyer.com/jacksonbaker/archives/2011/08/08/judge-mays-rules-its-norris-todd-as-mcs-scs-school-merger-goes-through>.

²⁹⁷ *Id.* However, Judge Mays did decline to rule on the future enabling of new, special school districts. *Id.* The transfer of control was set to begin during the 2013–2014 school year with the complete dissolution anticipated for August 2014. *Id.*

²⁹⁸ Zack McMillin, *Judge in Merger Suit Rules Memphis City Schools Will 'Cease to Exist' in 2013*, COM. APPEAL (Aug. 8, 2011, 2:52 PM), <http://www.commercialappeal.com/news/2011/aug/08/judge-merger-suit-rules-memphis-city-schools-will/>.

²⁹⁹ Bill Dries, *Two School Boards Approve Consolidation Court Settlement*, MEMPHIS DAILY NEWS (Aug. 26, 2011), <http://www.memphisdailynews.com/news/2011/aug/26/two-school-boards-approve-consolidation-court-settlement/>.

³⁰⁰ *Id.*

³⁰¹ Zack McMillin & Jane Roberts, *Shelby County, Memphis School Boards Unanimously OK Merger Deal*, COM. APPEAL (Aug. 25, 2011, 2:02 PM), <http://www.commercialappeal.com/news/2011/aug/25/shelby-county-schools-board-approves-merger-deal?print=1>.

³⁰² Stacy Teicher Khadaroo, *Busing to End in Wake County, N.C. Goodbye, School Diversity?*, CHRISTIAN SCI. MONITOR (Mar. 24, 2010), <http://www.csmonitor.com/usa/education/2010/0324/busing-to-end-in-wake-county-n.c.-goodbye-school-diversity>.

³⁰³ *Id.*

busing policy and to develop attendance zones closer to students' homes.³⁰⁴ The new board members, elected to form a majority for replacing the integration plan, received campaign support from a strong parent coalition.³⁰⁵

Education reforms, whether achieved through litigation or policy, require community engagement for sustainability.³⁰⁶ The level of community involvement occurring after the election and before the vote to end socioeconomic diversity led one group to file a lawsuit alleging open meetings violations.³⁰⁷ In 2010, after the Board's meetings generated public attention and desire to attend, it enacted a policy of issuing tickets to attend the Board meeting in order to limit the anticipated crowd, and it began to broadcast the meetings live through cable television and the internet.³⁰⁸ On July 20, 2010, around 1,000 people, including the state NAACP, local churches, student groups, and civil-rights organizations, rallied in downtown Raleigh streets to fight the new assignment plan.³⁰⁹ The supporters and opponents of the Wake County School Board majority held a march on the same day by lining up to get the ticket to attend the school-board meeting.³¹⁰

Wake County and the State of North Carolina filed a lawsuit against the school board, claiming that the meeting attendance policy was illegal because citizens had the right to attend those meetings.³¹¹ The court held that the measures that the Board provided for public access to its meeting in this case were proper under state law, which required the Board "to take reasonable measures to provide for public access to its meetings."³¹² The court further held that the underlying purpose for the new policy was "[t]he maintenance of safety and security for members of the public, members of the Board, staff and the press,"³¹³ and it was "reasonable."³¹⁴ However, the court held that "[a] ticketing procedure requiring a ticket holder to remain on the premises for hours preceding a meeting,"³¹⁵ the "[c]omplete exclusion of members

³⁰⁴ *Id.*

³⁰⁵ T. Keung Hui et al., *NAACP Takes Wake to Feds*, NEWSOBSERVER.COM (Sept. 26, 2010), <http://www.newsobserver.com/2010/09/26/703383/naacp-takes-wake-to-feds.html>.

³⁰⁶ See generally Amanda R. Broun & Wendy D. Puriefoy, *Public Engagement in School Reform: Building Public Responsibility for Public Education*, 4 STAN. J. C.R. & C.L. 217 (2008).

³⁰⁷ Bob Geary, *Does "Open Meetings" Law Mean Wake School Board Meetings Must Be Open?*, INDY WEEK (May 6, 2010, 1:13 PM), <http://www.indyweek.com/citizen/archives/2010/05/06/does-open-meetings-law-mean-wake-school-board-meetings-must-be-open>.

³⁰⁸ See T. Keung Hui, *Wake to Require Tickets to Watch School Board Meeting*, NEWSOBSERVER.COM (Mar. 22, 2010), <http://www.newsobserver.com/2010/03/22/402420/wake-to-require-tickets-to-watch.html>.

³⁰⁹ See *Wake Schools Diversity-Policy Supporters Rally in Raleigh*, WRAL.COM (July 20, 2010), <http://www.wral.com/news/education/story/7994560/>.

³¹⁰ See Geary, *supra* note 307 (suggesting the difficulty of obtaining a ticket).

³¹¹ See *Garlock v. Wake Cnty. Bd. of Educ.*, 712 S.E.2d 158 (N.C. Ct. App. 2011).

³¹² *Id.* at 174 (citation omitted).

³¹³ *Id.* at 164.

³¹⁴ *Id.*

³¹⁵ *Id.* at 175.

of the public from meetings of the COW prior to the meeting,”³¹⁶ and the failure “to make accommodations for members of the public who are disabled [are] unreasonable.”³¹⁷ Even so, the court held that “[t]here are no grounds in law to invalidate any action of the Board.”³¹⁸

The NAACP’s complaint alleged that “[t]he Board was implementing the will of a well-organized and vocal set of parents who want to live in racially-isolated neighborhoods and send their children to racially-isolated schools.”³¹⁹ Parents opposing the plan argued that “busing for the purpose of economic diversity poses an unfair burden on families, in terms of costs to the district and in time that children could spend on learning rather than being transported.”³²⁰

The buzz surrounding the Wake Board of Commissioners’ elections, held shortly after the Board decision, focused on the candidates’ positions on the community school policy. For the most part, the candidates’ opinions divided along party lines: Republicans supported the Board vote and Democrats supported the socioeconomic integration plan.³²¹ However, one Republican candidate expressed concerns about “the way the school board majority pushed through the assignment change with little regard for community comment or influence.”³²² Another Republican candidate, also focusing on inclusion, stated that he did not “think it [was a] good idea to substitute one set of dissatisfied parents with another set of dissatisfied parents.”³²³

The newly elected Wake County School Board adopted a neighborhood school plan instead.³²⁴ The socioeconomic integration plan attempted to create a sixty-forty ratio of students not requiring subsidized lunches and students requiring subsidized lunches, respectively.³²⁵ The suggested replacement policies sparked heated public discussion.³²⁶ The Board approved the Wake School Choice Plan on October 18, 2011, by a six-to-two vote.³²⁷ Gary Joyner, Chairman of the Chamber of Commerce’s Board

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.* at 164.

³¹⁹ Hui et al., *supra* note 305 (quoting the NAACP complaint).

³²⁰ Khadaroo, *supra* note 302.

³²¹ See, e.g., Ned Barnett, *NC: Wake Commission Candidates’ Stands on Schools Will Be Key on Election Day*, AM. INDEP. (Oct. 19, 2010, 2:48 PM), <http://www.americanindependent.com/149927/nc-wake-commission-candidates-stands-on-schools-will-be-key-on-election-day> (summarizing eight candidates’ stances “on the question of neighborhood schools”).

³²² *Id.* (quoting Republican Joe Bryan).

³²³ *Id.* (quoting Republican Tony Gurley).

³²⁴ See Michael Winerip, *Seeking Integration, Whatever the Path*, N.Y. TIMES, Feb. 28, 2011, at A11.

³²⁵ *Id.*

³²⁶ See *id.* (comparing meetings to “a Cartoon Network” special).

³²⁷ Odile Fredericks, *Wake School Board Adopts Choice-Based Student Assignment Plan*, CAROLINA PARENT (Oct. 19, 2011), <http://www.carolinaparent.com/articlemain.php?wake-school-board-adopts-choice-based-student-assignment-plan-3069>.

of Directors, commented that “[t]he mix of students this plan cares about most is a mix that provides every child with an opportunity to succeed and schools staffed by excellent principals and strong teachers,”³²⁸ and student achievement, together with stability, proximity, and choice, are the plan’s proxy for diversity.³²⁹ This “new paradigm of choice” did not directly resolve the diversity question, which is the main topic in this battle.³³⁰ Opponents said that it would cause racial “segregation” and “high-poverty” in certain schools because, in Wake County, the neighborhoods were “still mostly defined by race and socioeconomic status,”³³¹ which may negatively affect children.³³²

The NAACP filed a civil-rights lawsuit against the school board on the grounds that an estimated seven-hundred initial student transfers increased racial segregation, which violated the prohibition of using federal funds for a discriminatory purpose.³³³ On January 25, 2012, the Wake Education Partnership reported that “the district would immediately have more than two dozen high-poverty, low-performing schools if the new student-assignment policy were to be solely based on the neighborhoods students live in.”³³⁴ Professor Richard D. Kahlenberg, a leading researcher and commentator on socioeconomic integration, expressed the same concerns.³³⁵

D. The Immigrant Voice

For many immigrant parents, their initiation into and only engagement in U.S. politics stems from their participation in the public education system.³³⁶ Veronica Velez intuitively argues that

[a]s Latinas/os rapidly become the majority in California’s public schools, finding ways to increase the Latina/o parental voice

³²⁸ *Wake School Board Members Open to ‘School Choice’ Plan*, WRAL.COM (Feb. 11, 2011), http://www.wral.com/news/education/wake_county_schools/story/9101385/.

³²⁹ *Id.*

³³⁰ Bob Geary, *Choice Plan Offers a Way Forward in Wake Schools Debate*, INDY WEEK (Feb. 16, 2011), <http://www.indyweek.com/indyweek/choice-plan-offers-a-way-forward-in-wake-schools-debate/content?oid=2032476&mode=print>.

³³¹ Stephanie McCrummen, *Republican School Board in N.C. Backed by Tea Party Abolishes Integration Policy*, WASH. POST (Jan. 12, 2011, 12:38 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/11/AR2011011107063.html>.

³³² *See, e.g.*, Press Release, NAACP, N.C. State Conference, Statement by Rev. Dr. William J. Barber II (Oct. 30, 2009) (“When children are packed into the most underfunded, most segregated, most high-poverty schools, it is nothing but a form of institutionalized child abuse.”).

³³³ *See* McCrummen, *supra* note 331.

³³⁴ Dakarai I. Aarons, *N.C. District Moves Away from Promoting Diversity*, EDUC. WEEK, Apr. 7, 2010, at 3.

³³⁵ *See id.*

³³⁶ *See* John Rogers et al., *Civic Lessons: Public Schools and the Civic Development of Undocumented Students and Parents*, 3 NW. J. L. & SOC. POL’Y 201, 202–03 (2008).

in school and civic reform is not only important, but essential to (1) better serve the needs of Latina/o students and their families, and (2) create democratic collaborations among schools and their communities for the purpose of improving the educational outcomes of Latina/o children.³³⁷

Children born to immigrant parents, even those with citizenship status, experience detrimental cultural, legal, and policy exclusions.³³⁸ These students' lack of access to government-sponsored health and education programs jeopardizes their equal opportunity to ascend the social ladder. According to a recent study, "[o]nly 37 percent of Latino children with immigrant parents and 42 percent of Latino children with U.S.-born parents are enrolled in early education programs."³³⁹ Although some states—even in the Deep South—attempt to combat these statistics, others remain complacent.³⁴⁰ And the immigrant issue does not apply only to Latina/o parents, especially with regards to socioeconomic status and its known effects on education achievement.³⁴¹

Undocumented parents engage most through speaking with their children's teachers and administrators and by participating in the Parent-Teacher Association and other school meetings.³⁴² Although these acts may seem small in scale, these activities allow undocumented parents to understand public institutions and build a network of other parents sharing similar concerns.³⁴³ Vote dilution as a product of at-large school board elections represents a historical problem in places in the Deep South, where civil-rights groups have asked courts to dismantle these systems and draw smaller districts.³⁴⁴ Immigrant parents currently find themselves engaged in a similar civil-rights struggle. California provides a poignant example of these parents' legal-advocacy efforts.

At-large elections in many California districts present a political representation issue for the Latina/o community. Around ninety percent of the state's school boards use at-large voting, in addition to many city councils and other local boards.³⁴⁵ The

³³⁷ Veronica Nelly Velez, *Challenging Lies LatCrit Style: A Critical Race Reflection of an Ally to Latina/o Immigrant Parent Leaders*, 4 FIU L. REV. 119, 143 (2008).

³³⁸ *See id.* at 122.

³³⁹ Esther Yu-Hsi Lee, *How the Immigration Status of Latino Parents Impacts Their Kid's Health and Education*, THINK PROGRESS (July 24, 2013, 1:58 PM), <http://thinkprogress.org/immigration/2013/07/24/2343281/immigrant-children-health-academic-success/>.

³⁴⁰ *See id.* (discussing Texas and Alabama).

³⁴¹ *See id.*

³⁴² Rogers et al., *supra* note 336, at 212.

³⁴³ *Id.* at 213.

³⁴⁴ *See generally* Ross J. Adams, *Whose Vote Counts? Minority Vote Dilution and Election Rights*, 35 WASH. U. J. URB. & CONTEMP. L. 219 (1989) (analyzing vote dilution in a number of political bodies, including school boards).

³⁴⁵ Mitchell Landsberg, *Making Sure Minorities' Votes Count*, L.A. TIMES, Jan. 4, 2009, at B1, B10.

California Voting Rights Act has sought to remedy this issue where plaintiffs demonstrate that an at-large system impairs the ability of a minority group to influence the outcome of an election.³⁴⁶

Some areas, such as the Madera Unified School District, are more than eighty-percent Latino, yet only one Latino serves on the school board.³⁴⁷ In September 2009, the Madera County Superior Court invalidated the results of the November 2008 school-board elections.³⁴⁸ The judge ruled that the at-large system violated the California Voting Rights Act and required the district to be divided into seven trustee areas, with candidates to run in each.³⁴⁹ This case followed a similar ruling in Modesto, California, and twenty-four other districts received letters from the Lawyers' Committee who sued Modesto, warning them that their current systems were in violation.³⁵⁰ This caused several districts to examine their racial demographics to determine whether minority communities were under-represented in school board elections.³⁵¹ One of these districts, Riverside County, passed the proposal of such a study with a six-to-three vote.³⁵² Fresno County also found that twenty-eight districts were not in compliance and made plans to have all of those districts change their voting systems.³⁵³ The Lawyers' Committee put Santa Clara on notice because it has an all-white City Council, despite the significant percentage of Latinos and Asians in the city.³⁵⁴ Other places, such as Tulare, settled and agreed to move to district-based voting systems.³⁵⁵ Places that have not as readily made plans to overview their systems are being sued.³⁵⁶

IV. PUTTING THEORY INTO ACTION: APPLYING PARTICIPATORY STANDARDS TO CURRENT CHALLENGES AND LOOKING FORWARD

School closures, consolidations, and disputes surrounding local politics wreak upheaval on the community, typically resulting in disproportionate adverse effects

³⁴⁶ *Id.*

³⁴⁷ *Id.* at B10.

³⁴⁸ *Id.* at B1.

³⁴⁹ *Id.*

³⁵⁰ *Id.* at B10.

³⁵¹ Leslie Parrilla, *School Boards Study Voting Demographics*, PRESS-ENTERPRISE, May 29, 2010, at A1.

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ Lisa Fernandez, *Santa Clara Threatened with Lawsuit over Lack of Minorities on City Council*, CONTRA COSTA TIMES (June 9, 2011, 4:19 PM), http://www.contracostatimes.com/ci_18241572#.

³⁵⁵ See Mike Hazelwood, *Residents Sue Tulare's Hospital District*, TULARE ADVANCE-REGISTER, Aug. 14, 2007; Press Release, Lawyers' Comm. for Civil Rights of the S.F. Bay Area, *City of Tulare Prepares for Switch to District-Based Election System* (Mar. 22, 2011), available at http://www.lccr.com/pdf/3.22.11Tulare_CVRA_Pressrelease.pdf.

³⁵⁶ See, e.g., Fernandez, *supra* note 354.

on low-income and minority residents. Wake County parents felt disempowered when they were not able to afford a school board that would preserve socioeconomic integration plans.³⁵⁷ And Memphis parents must have felt leery about joining forces with parents who vehemently contested comingling urban and suburban resources.³⁵⁸ Moreover, Chicago and Philadelphia parents took to the streets with national powerhouses to avoid their children walking through gang territory, and the cities patronized their requests without giving their voices due regard.³⁵⁹

In these difficult financial times for government institutions, school-district consolidations provide an additional example of how marginalized groups may find themselves excluded from larger reform questions and political participation at the local level. In Tennessee, budgets exacerbate race conflicts.³⁶⁰ Beyond the administrative hassles, parents from different socioeconomic and racial backgrounds will need to come together to support the students in this newly formed district. If parents with limited resources face inevitable battles to secure their children's future, then the system should respond on a procedural level. Federal courts must recognize that parents in Chicago, Philadelphia, and California, based on their substantive due process right to parent, require access to the local political machine that shapes their children's opportunities as productive citizens. Lower-income minority parents must begin brokering the citizenship priorities owed to their children against a large constituency of suburban parents who fiercely oppose consolidation. The community must bridge the differences between race and socioeconomic classes.

These examples point to disappointing conclusions. Undocumented parents face the threat of exclusion in the political process of school-board elections because they lack the right to vote in elections. Poor parents face the threat of exclusion in the political process because they cannot afford the electoral campaigns necessary to place their candidate on the ballot; in other instances, they cannot afford the grassroots efforts necessary to overcome centralized governance. Therefore, in addition to recognizing quality education as a government interest, the Supreme Court should also consider the political processes underlying the adoption of education reforms.

Specific to public education, reasonable people may most readily voice their concerns through their local school board. The Voting Rights Act,³⁶¹ as interpreted by the Supreme Court in *White v. Regester*³⁶² and *Thornburg v. Gingles*,³⁶³ contemplates the meaningful representation of minority groups.³⁶⁴ But representation alone

³⁵⁷ See *supra* Part III.C.

³⁵⁸ See *supra* notes 272–79 and accompanying text.

³⁵⁹ See *supra* notes 250–57 and accompanying text.

³⁶⁰ See *supra* notes 276–79 and accompanying text.

³⁶¹ Pub. L. No. 89-110, 79 Stat. 437 (1965).

³⁶² 412 U.S. 755 (1973).

³⁶³ 478 U.S. 30 (1986).

³⁶⁴ *Id.* at 80 (determining that drawing multi-member versus single-member districts impermissibly discriminated against black voters); *White*, 412 U.S. at 765 (upholding the lower

does not guarantee access to decision-making processes that affect the quality of education provided in public schools. Professor Rebecca Brown argues that “a long and consistent practice of the Supreme Court supports indirect judicial supervision of legislative functions through scrutinization of resulting legislation for evidence of malfunction or structural compromise.”³⁶⁵ She observes that, in order to achieve this goal, the Court aggressively interprets “substantive constitutional standards that are within its sphere of enforcement, such as individual rights provisions.”³⁶⁶ In examining the justifications for majority rule, Brown notes that each incorporates an assumption of equality between citizens participating in the process.³⁶⁷ To fulfill this equality norm requires more than access to the polls or simply not acting to harm minority group members; instead, “the deliberative-democracy model recognizes the same essential place for consultation and persuasion in the making of law that appears to be included in the minimal constitutional principle of equal participation reflected in the Supreme Court’s vote-dilution and equal protection decisions.”³⁶⁸ Therefore, constitutional political access includes “an entitlement to both fair participation in the process of selecting representatives and the opportunity to influence the decisions and positions of representatives once they are elected.”³⁶⁹

In *Federalism All the Way Down*,³⁷⁰ Professor Heather Gerken argues that viewing “federalism without sovereignty” allows us to consider special purpose institutions at the local level, which includes school boards.³⁷¹ In turn, this broadened definition of federalism may increase the political influence of marginalized groups.³⁷² In her words, “the power minorities wield is that of the servant, not the sovereign; the insider, not the outsider. They enjoy a muscular form of voice—the power not just to complain about national policy, but to help set it.”³⁷³ With this conception of federalism, Professor Gerken suggests that equality norms and rights found in the First and

court’s order to remove multi-member districts as constitutional based on previous discrimination against black and Mexican voters).

³⁶⁵ Rebecca L. Brown, *The Logic of Majority Rule*, 9 J. CONST. L. 23, 25 (2006).

³⁶⁶ *Id.* at 29.

³⁶⁷ Three justifications are given: (1) the historical primacy of majority rule in the United States; (2) majority rule promotes utilitarianism; and (3) majority rule that “advance[s] the individual values of civic virtue and intellectual character that are important to republican theory.” *Id.* at 32.

³⁶⁸ *Id.* at 39.

³⁶⁹ *Id.* at 41. Professor Brown suggests that the second principle may be fulfilled through lawmakers providing reasons for their decisions. *Id.*

³⁷⁰ Heather Gerken, *Federalism All the Way Down*, 124 HARV. L. REV. 4 (2010).

³⁷¹ *Id.* at 21.

³⁷² *Id.* at 6–11.

³⁷³ *Id.* at 7–8. In explaining this argument further, Professor Gerken writes that “the servant possesses power to push back, even resist, because he is inside the system, not outside of it. As insiders to the system, servants exercise a muscular form of ‘voice,’ as they can set policy rather than merely complain about it.” *Id.* at 39.

Fourteenth Amendments gain structural support.³⁷⁴ The theory of federalism-all-the-way-down resonates well with local control through school boards.³⁷⁵ Both scholars and the Court recognize the potential advantages to preserving the local control of public education despite the national government's role.³⁷⁶ If correct, this permits traditionally marginalized groups to more fully participate in governance.³⁷⁷

In the last several years, many changes have occurred on the local level that threaten the ability of our most vulnerable students to be satisfactorily represented through school boards.³⁷⁸ Structural reforms, economic downturn, and demographic shifts have affected high-profile districts. The Common Core provisions may seem to undercut the possibilities for parents to edge into meaningful partnerships with the education system. As we move ever closer to a common standard for quality public education, we must remain equally conscious of children's only direct representatives in this democratic process: their parents.

In California, Latina/o parents may not have a final say on whether ELL students should receive a bilingual, immersion, or content-based transition. However, these parents need a venue to air their opinions. Similarly, Memphis parents should have a voice in disturbing resources to better educate their children. And state or local control should not dominate the conversations in Chicago and Philadelphia regarding school closures: The community holds a stake in decisions affecting the safety and quality of education provided to their children.

CONCLUSION

Public education disappointments reignite ingrained conflicts between government decision-making bodies and their constituents. Local school board activities, more so than state and federal agencies, magnify these entrenched challenges. Across the country, school districts confront unique regional differences that morph from common cores—economic distress and binding cross cultures to build a strong

³⁷⁴ *Id.* at 9.

³⁷⁵ *Id.* at 38 (“School committees wield power not because they preside over their own empires, but because state legislatures depend on them to help run the education system. States and local officials administering federal law can edit the law they lack the power to authorize precisely because they are inside the system, not outside of it.”).

³⁷⁶ *Id.* at 30 (“The institutions that make up federalism-all-the-way-down ensure variation in the identity of the decision-makers *and* in the context in which a decision is made. Some feature direct participation by everyday citizens, some are small and deliberative, some reach decisions unmediated by political parties or electoral politics, and some sound in a bureaucratic cadence. Some allow durable minorities to rule; others empower transitional minorities. To the extent that the majority and minority disagree, federalism-all-the-way-down allows them to revisit that conflict in different contexts featuring different power dynamics.”).

³⁷⁷ *Id.* at 47.

³⁷⁸ *See, e.g., supra* Part III.

public education system. As set forth, politics plays a role in stabilizing institutions able to produce quality educational programs. If not careful, the parents of already marginalized students who desperately need representation may be ostracized. Parents unlock the door to enabling the future generation's renewed hope through academic achievement. Expanding local control to provide not only deference to school officials, but also a conscious review of parent and community participation in policymaking, would evoke the true meaning behind our Equal Protection Clause and deliberative democracy.