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## Does the African American Need Separate Charter Schools?

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### Introduction

In *Does the Negro Need Separate Schools?*, W.E. Burghardt Du Bois asked if “separate schools and institutions [were] needed” for the “proper education” of African Americans.<sup>1</sup> The existing system of public education in the United States includes some places that are excelling and some that are struggling.<sup>2</sup> Overall, the United States performs in the middle of the pack in many international comparisons.<sup>3</sup> In fact, the National Assessment of Educational Progress (NAEP) test—The Nation’s Report Card—shows that the kids of today are smarter than they have ever been, and our nation’s high school completion rates are at an all-time high.<sup>4</sup> It is also good news that Black-White high school completion rates narrowed

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1. W.E. Burghardt Du Bois, *Does the Negro Need Separate Schools?*, 4 J. NEGRO EDUC. 328, 328 (1935).

2. *See generally* NAT’L CTR. FOR EDUC. STATISTICS, U.S. STATES IN A GLOBAL CONTEXT: RESULTS FROM THE 2011 NAEP-TIMSS LINKING STUDY (2013), <https://nces.ed.gov/nationsreportcard/subject/publications/studies/pdf/2013460.pdf> (comparing performance by students in the United States and those in other countries and territories by linking the results of the Trends in International Mathematics and Science Study and the National Assessment of Educational Progress).

3. *Id.*

4. *See* NAT’L CTR. FOR EDUC. STATISTICS, STATUS AND TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS (2017), <https://nces.ed.gov/pubs2017/2017051.pdf> (examining the challenges and disparities faced by students of different races and ethnicities in the United States educational system).

between 1990 and 2015, and the Black-White gap is closing on the 4th and 8th grade NAEP.<sup>5</sup> However, there is also bad news: African American performance on the NAEP and in high school completion rates still lags behind that of Whites.<sup>6</sup>

In the United States' public education system, longstanding educational opportunity gaps have persisted in schools.<sup>7</sup> These gaps are not a coincidence, as the United States has a long history of legislative, executive, and judicial enactments that have purposefully codified unequal provision of resources for schools and neighborhoods.<sup>8</sup> In some quarters, this has translated into increased political support for market-based approaches to education (i.e., charter schools) that are run by for-profit and nonprofit organizations.<sup>9</sup> Longstanding inequality in education, combined with political, corporate, and foundation support, has empowered a popular public narrative that school choice and charter schools are valuable alternatives to neighborhood public schools.<sup>10</sup>

Charter schools, which typically receive public money and are privately operated, have grown rapidly in popularity since the enactment of the first charter school law in Minnesota in 1991.<sup>11</sup> A report by the National Alliance for Public Charter Schools (NAPCS) relayed that there are more than 6,800 charter schools enrolling an estimated 2.9 million students in the United States.<sup>12</sup> According to NAPCS, there are now “27 states with at least 50 operating charter schools and nearly 20 states with 100 or more charter schools.”<sup>13</sup>

5. *Id.* at 50–52, 84–86.

6. *Id.* at 46–48, 50–52, 84–86.

7. *Id.*

8. See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (arguing that racial discrimination and segregation are, at least in part, the result of state action).

9. BRIAN A. JACOB, BROOKINGS INSTITUTION, *THE EVOLUTION OF THE CHARTER SCHOOL MARKET AND THE NEXT GENERATION OF CHARTER SCHOOL RESEARCH* (Mar. 23, 2017), <https://www.brookings.edu/research/the-evolution-of-the-charter-school-market-and-the-next-generation-of-charter-school-research/> (“One rationale for charter schools is that they will introduce an element of market competition to the education sector.”).

10. See *id.*

11. Eugenia Toma & Ron Zimmer, *Two Decades of Charter Schools: Expectations, Reality, and the Future*, 31 *ECON. EDUC. REV.* 209, 209 (2012) (describing charter schools as a popular yet controversial innovation, born in Minnesota in 1991, within a larger school reform movement).

12. NAT'L ALL. FOR PUB. CHARTER SCH., *A CLOSER LOOK AT THE CHARTER SCHOOL MOVEMENT: CHARTER SCHOOLS, STUDENTS, AND MANAGEMENT ORGANIZATIONS 1* (Feb. 3, 2016), <https://www.publiccharters.org/publications/charter-school-movement-2015-16>.

13. *Id.* at 3.

Furthermore, a report released by the National Association for the Advancement of Colored People (NAACP) found that during the past decade, the number of students in charter schools has nearly tripled, with approximately 3.1 million students enrolled in 2016 to 2017.<sup>14</sup> In fact, one-in-eight African American students in the United States now attends a charter school.<sup>15</sup>

School choice and charter schools were a primary topic in the presenter and attendee conversations at the 2017 *Summit for Civil Rights* that was held at the University of Minnesota Law School in Minneapolis, Minnesota on November 9 and 10, 2017.<sup>16</sup> Conversations at the Summit considered whether charter schools were more segregated than traditional public schools and, if so, whether this was an acceptable outcome of school choice.<sup>17</sup> The Summit was intentionally held one year after the Electoral College selection of Donald Trump as president, and its focus centered on rebuilding a national civil rights coalition. Some proponents of charter schools, such as Success Academy CEO Eva Moskowitz, claim charter schools advance racial integration of children and give parents options for “[v]oluntary integration.”<sup>18</sup> It is well established that school choice and charter schools have the unequivocal support of President Donald Trump and Secretary of Education Betsy DeVos.<sup>19</sup> As a result, now is a watershed moment for school privatization and private control via school choice and charter schools.

Considering the rapid growth of charters in Minnesota since their inception and the current political context, it is crucial to ask and answer one question: Does the African American need separate charter schools? To address this question, we analyze legal precedents, scholarly research, and historical evidence. We begin

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14. NAACP TASK FORCE ON QUALITY EDUC., JULY 2017 HEARING REPORT 8 (2017), [http://www.naacp.org/wp-content/uploads/2017/07/Task\\_ForceReport\\_final2.pdf](http://www.naacp.org/wp-content/uploads/2017/07/Task_ForceReport_final2.pdf).

15. *Id.* at 10.

16. *Summary of Program*, THE SUMMIT FOR CIVIL RIGHTS, <https://summitforcivilrights.org/Program> (last accessed Apr. 17, 2018).

17. *Id.*

18. Eva Moskowitz, *Charting a Course to Integration: Let Charter Schools Help*, N.Y. DAILY NEWS (Dec. 7, 2016, 5:00 AM), <http://www.nydailynews.com/opinion/charting-integration-charter-schools-article-1.2901046>.

19. See, e.g., Chris Weller, *New Education Secretary Betsy DeVos Champions Vouchers and Charter Schools—Here’s What That Means*, BUS. INSIDER (Feb. 7, 2017, 12:39 PM), <http://www.businessinsider.com/what-are-charter-schools-2017-2> (“DeVos has expressed support for both [vouchers and charter schools] as alternatives to traditional public school . . . . In the past [Trump] has called public schools ‘a government-run monopoly.’”).

in Part I by revisiting several seminal cases related to segregation and schools. We review in Part II empirical research on charters and segregation. Then, in Part III we examine historical evidence to understand whether school choice and charters represent self-determination and empowerment for African Americans. We conclude by proposing an answer to Du Bois's century-old question about whether separate, segregated schools are in the best interests of African American communities: they are not.

### I. Legal Decisions and Segregation

After *Plessy v. Ferguson*,<sup>20</sup> several cases were brought to challenge segregation in schools. For example, in a 1931 California superior court case, *Alvarez v. Board of Trustees of the Lemon Grove School District*, the court found that building a separate school for Mexican-American students in Lemon Grove, California violated the California Constitution.<sup>21</sup> Yet, it was not until two decades later, in the landmark case *Brown v. Board of Education*, that the United States Supreme Court examined the constitutionality of mandated racial segregation in public schools.<sup>22</sup> The effect of the decision in *Brown* was to “invalidate all state-imposed racial segregation.”<sup>23</sup> *Brown* had the potential to alter the codified structure of societal racism.<sup>24</sup> Indeed, it “was not so much a decision about racial segregation in education as it was a decision about the meaning of racial equality under the [F]ourteenth [A]mendment.”<sup>25</sup> *Brown* established a national precedent for the application of constitutional doctrine to school desegregation and the expansion of demands for racial integration within schools.<sup>26</sup>

But the attempts to desegregate schools did not end with *Brown*. In *Green v. County School Board of New Kent County*, the United States Supreme Court held that the freedom-of-choice plan

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20. 163 U.S. 537 (1896) (holding that separate but equal provision of services mandated by the state is constitutional under the Equal Protection Clause).

21. Robert R. Alvarez, Jr., *The Lemon Grove Incident*, 32 J. OF SAN DIEGO HIST. 116 (1986); Alicia Rivera, *The Lemon Grove Case and School Segregation in the Southwest*, 1 J. LATINO/LATIN AM. STUD. 105 (2004).

22. 347 U.S. 483 (1954) (holding that segregation in public schooling violates the Equal Protection Clause because separate facilities are inherently unequal).

23. Robert A. Sedler, *The Profound Impact of Milliken v. Bradley*, 33 WAYNE L. REV. 1693, 1693 (1987) (“[T]he effect of the Court’s holding in [*Brown*] was to invalidate all state-imposed racial segregation . . .”).

24. *Id.* (describing the ultimate effect of the Supreme Court in *Brown* as undoing “the official structure of societal racism that existed in the southern part of the nation”).

25. *Id.*

26. *Id.* at 1693–94.

in New Kent County perpetuated school segregation and inequality through the establishment of a dual school system.<sup>27</sup> The dual system extended not only to the composition of student populations in schools but also to school facilities, assignments, transportation, and extracurricular activities.<sup>28</sup> Consequently, the Court charged the board to take steps to convert the racially discriminatory system to one that was nondiscriminatory and constitutional.<sup>29</sup> The decision further noted that delays to desegregation were intolerable, reinforcing the importance of achieving racial integration within public schools.<sup>30</sup>

In *Keyes v. School District No. 1*, the Supreme Court held that the Denver school system had implemented an unconstitutional policy of racial discrimination for over a decade, which resulted in segregated schools.<sup>31</sup> Furthermore, this policy evidenced a larger systematic segregative design.<sup>32</sup> Consequently, the Court shifted the burden to the Denver school system to demonstrate that other segregated schools in its system were not a product of intent, establishing the precedent for a multidistrict desegregation remedy.<sup>33</sup> This decision furthered the national agenda of public school integration and established the accountability of school systems to address intentional occurrences of segregation.<sup>34</sup>

The Supreme Court also found that integration could be accomplished through busing.<sup>35</sup> In *Swann v. Charlotte-Mecklenburg Board of Education*, the Court held that federal courts in North Carolina could implement busing programs that increased racial integration across school districts.<sup>36</sup> Violations of mandates directed at desegregating schools in the state granted powers to the courts that were broad and flexible in order to remedy such

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27. 391 U.S. 430, 435, 439–42 (1968) (holding that freedom of choice desegregation plans that allow households to choose enrollment in Black or White schools do not accomplish *Brown's* dictates and may be unconstitutional).

28. *Id.* at 435.

29. *Id.* at 439–42.

30. *Id.* at 438.

31. 413 U.S. 189, 213–14 (1969) (holding that *de facto* segregation that substantially affects a school system can violate the Equal Protection Clause, even where no official laws or policies support such segregation).

32. *Id.* at 208.

33. *Id.*

34. *Id.* at 213–14.

35. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 30 (1971) (“[W]e find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation.”).

36. *Id.*

violations.<sup>37</sup> The Court further stipulated that these remedial plans could utilize mathematical algorithms or quotas as legitimate baselines for solutions, thereby supporting efforts to achieve the greatest possible degree of desegregation.<sup>38</sup>

The decisions in *Green*, *Keyes*, and *Swann* evidence that school segregation was an ongoing concern for the Court post-*Brown*. Furthermore, they show that urban school districts have been subject to challenges based on constitutional violations when they have a high degree of racial segregation. Once a dual school system is shown to exist as the result of intentional, discriminatory official action, states are under an affirmative duty to dismantle that dual, separate approach.

Following these decisions, the United States Supreme Court weighed in on the distinction between *de jure* and *de facto* segregation in *Milliken v. Bradley*.<sup>39</sup> The central issue posed in the case was whether a federal court could impose a multidistrict remedy to address segregation across school districts.<sup>40</sup> Previous rulings on segregation, as noted above, held that courts could impose plans to address violations of the Fourteenth Amendment due to racial segregation. The decisions acknowledged the racial demographic concentrations that could occur between school districts and recognized that attempts to address segregation within districts were often inadequate to achieve meaningful and lasting desegregation.<sup>41</sup> This was particularly true for Detroit, where attempts to increase integration within school districts had been largely unsuccessful. In metropolitan areas, school district boundary lines coinciding with racially driven municipality lines perpetuated the separation of students by race and class.<sup>42</sup> Despite the passage of the Fair Housing Act in 1968, there were few efforts

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37. *Id.* at 16.

38. *Id.* at 22–25.

39. 418 U.S. 717 (1974) (finding *de jure* segregated conditions in Detroit schools, but no evidence of *de jure* segregated conditions in the fifty-three outlying school districts); see also *Keyes*, 413 U.S. at 208 (emphasizing that the differentiating factor between *de jure* segregation and *de facto* segregation is “purpose or intent to segregate”).

40. *Milliken*, 418 U.S. at 721.

41. See, e.g., *Keyes*, 413 U.S. at 208 (holding that where there is a finding of intentionally segregative school board actions in a meaningful portion of a school system, there is a presumption that other segregated schooling within the system is not adventitious even if it is determined that different areas of a school district should be viewed independently of each other).

42. Sean F. Reardon & John T. Yun, *Integrating Neighborhoods, Segregating Schools: The Retreat from School Desegregation in the South, 1990–2000*, 81 N.C. L. REV. 1563, 1571–79 (2003) (examining the relationship between public school segregation by school district as compared with residential segregation by county).

at enforcement and subsequently little meaningful change.<sup>43</sup> The condition of extreme racial residential segregation and concentration that existed, when coupled with the structure of school district boundary lines, resulted in extreme segregation among schools.<sup>44</sup> Local district efforts, including the busing of students, did not fully address the systemic structures that perpetuated racial segregation within schools.<sup>45</sup>

Ultimately, the Supreme Court allowed what it identified as *de facto* segregation in *Milliken*.<sup>46</sup> It failed to hold districts responsible for desegregation across district lines if there was no evidence of an explicit segregative policy implemented by a school district.<sup>47</sup> When the Supreme Court ruled in *Brown* that separate educational facilities were inherently unequal, its argument was that legal segregation based on race inflicted a psychological wound on students of color, irrespective of equivalent schooling facilities and resources.<sup>48</sup> Yet *Milliken* appeared to invalidate this argument—the decision in this case allowed for the perpetuation of social stigma and inequality through the acceptance of *de facto* segregation.

During the 1970s and 1980s, “White flight” became synonymous with affluent and non-affluent White families fleeing the urban core of cities to remove themselves from neighborhood public schools increasingly populated by students of color.<sup>49</sup> This flight resulted in increased racial segregation among urban communities and within urban school districts.<sup>50</sup> As a result of the

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43. *Id.*

44. Nicholas Jacobs, *Understanding School Choice: Location as a Determinant of Charter School Racial, Economic, and Linguistic Segregation*, 45 EDUC. AND URB. SOC’Y 459 (2011).

45. See Reardon & Yun, *supra* note 42, at 1580 (“[I]n 2000, school segregation levels averaged only twenty-seven percent below residential segregation, a one-third decline in the effectiveness of school integration efforts between 1990 and 2000.”).

46. 418 U.S. 717, 745 (1974).

47. *Id.* at 746–47 (“The constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system in that district. Unless petitioners drew the district lines in a discriminatory fashion, or arranged for [W]hite students residing in the Detroit District to attend schools in Oakland and Macomb Counties, they were under no constitutional duty to make provisions for Negro students to do so.”).

48. Sean F. Reardon, *School Segregation and Racial Academic Achievement Gaps*, 2 RUSSELL SAGE F. J. SOC. SCI. 34, 34 (2016) (examining “sixteen distinct measures of segregation to determine which is most strongly associated with academic achievement gaps”).

49. See DAVID J. ARMOR, RAND CORP., WHITE FLIGHT, DEMOGRAPHIC TRANSITION, AND THE FUTURE OF SCHOOL DESEGREGATION 1 (1978), <https://www.rand.org/content/dam/rand/pubs/papers/2008/P5931.pdf>.

50. Anthony L. Brown, Julian Vasquez Heilig & Keffrelyn D. Brown, *From*



flight, the nation experienced a rising tide of *de facto* segregation, rather than *de jure* segregation. Anthony Brown, Julian Vasquez Heilig, and Keffrelyn Brown argued,

[a] growing and significant body of literature about the resegregation of schools . . . has come out of these considerations of *Brown*. This body of work has convincingly shown that what was achieved through *Brown* in the dismantling of the *de jure* racial segregation in [United States] schools has all been lost to *de facto* racist policies and practices that have thwarted the overall impact of the case. The striking data to come from this work plainly illustrates the failures of *Brown* in helping to desegregate schools.<sup>51</sup>

After *Milliken*, the re-segregation of schools was also facilitated by weak enforcement of civil rights provisions and continued judicial retrenchment on school integration, exemplified by *Board of Education of Oklahoma City v. Dowell* and *Freeman v. Pitts*, which diminished desegregation strategies and ultimately resulted in the release of hundreds of districts from their court-imposed desegregation orders.<sup>52</sup>

In fact, the Brookings Institution argued that the Supreme Court has simply given up on the ideal of integrating schools.<sup>53</sup> The Supreme Court ruled in *Parents Involved in Community Schools v. Seattle School District No. 1* that the Seattle and Louisville school districts' efforts using student racial classifications to achieve integration and avoid racial isolation through student assignment were unconstitutional.<sup>54</sup> "Consequently, districts that had been using policies to desegregate schools and achieve and maintain racial balance across campuses were denied the primary weapon with which they had historically combated segregation."<sup>55</sup>

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*Segregated, to Integrated, to Narrowed Knowledge: Curriculum Revision for African Americans, From Pre-Brown to the Present*, in *THE RESEGREGATION OF SCHOOLS: EDUCATION AND RACE IN THE TWENTY-FIRST CENTURY* 27–43 (Jamel K. Donner & Adrienne Dixon eds., 2013).

51. *Id.* at 27–28.

52. *Freeman v. Pitts*, 503 U.S. 467 (1992); *Board of Education of Oklahoma City v. Dowell*, 498 U.S. 237 (1991); Meredith P. Richards et al., *Achieving Diversity in the Parents Involved Era: Evidence for Geographic Integration Plans in Metropolitan School Districts*, 14 *BERKELEY J. AFR.-AM. L. & POL'Y* 65, 66–67 (2012).

53. Andre M. Perry, *How Charter Schools Are Prolonging Segregation*, *THE AVENUE* (Dec. 11, 2017), <https://www.brookings.edu/blog/the-avenue/2017/12/11/how-charter-schools-are-prolonging-segregation/>.

54. 551 U.S. 701 (2007) (applying a strict scrutiny framework to individual racial classifications in school district assignment plans).

55. Richards, *supra* note 52, at 67. See Erica Frankenberg, Genevieve Siegel-Hawley & Adai Tefera, *School Integration Efforts Three Years After Parents Involved*, 37 *HUM. RTS.* 10 (2010); ABBIE COFFEE & ERICA FRANKENBERG, *CIV. RTS. PROJECT/PROYECTO DERECHOS CIVILES AT UCLA TWO YEARS AFTER THE PICS DECISION: DISTRICTS' INTEGRATION EFFORTS IN A CHANGING CLIMATE*, (June 30,

It has been over sixty years since the Supreme Court ruled unanimously in *Brown* to abolish the separate-but-equal legal doctrine and Jim Crow segregation by race.<sup>56</sup> However, as this Part has shown, since then, courts have allowed *de facto* segregation to flourish. Now, schools in the United States are more segregated than they were at the time of the *Brown* decision.<sup>57</sup> While lax executive enforcement, judicial retrenchment, and White flight each played a part in re-segregation, in contravention of *Brown*, empirical research has demonstrated that charter schools have also influenced and intensified racial segregation across the nation.

## II. Research on Charter Schools and Segregation

A conversation in the national public discourse about segregation in charter schools was recently renewed by an Associated Press (AP) analysis that found that charter schools are “among the nation’s most segregated” schools in the nation.<sup>58</sup> The AP examined national enrollment data and found that charters are “vastly over-represented among schools where minorities study in the most extreme racial isolation.”<sup>59</sup> Using data from 2014 to 2015, the AP found:

more than 1,000 of the nation’s 6,747 charter schools had minority enrollment of at least 99 percent, and the number has been rising steadily . . . . While 4 percent of traditional public schools are 99 percent minority, the figure is 17 percent for charters. In cities, where most charters are located, 25 percent of charters are over 99 percent nonwhite, compared to 10 percent for traditional schools.<sup>60</sup>

Research examining national and local data on the segregation of students in charter schools over the past ten years underscores the AP’s findings: the predominance of empirical research shows that charter schools are exacerbating existing patterns of segregation. The research has actually shown this for about two decades.<sup>61</sup>

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2009); Amy Stuart Wells & Erica Frankenberg, *The Public Schools and the Challenge of the Supreme Court’s Integration Decision*, 89 PHI DELTA KAPPAN 178 (2007).

56. 347 U.S. 483 (1954).

57. Richards, *supra* note 52, at 66.

58. Ivan Moreno, *US Charter Schools Put Growing Numbers in Racial Isolation*, AP NEWS (Dec. 3, 2017), <https://www.apnews.com/e9c25534dfd44851a5e56bd57454b4f5>.

59. *Id.*

60. *Id.*

61. GARY MIRON ET AL., SCHOOLS WITHOUT DIVERSITY: EDUCATION MANAGEMENT ORGANIZATIONS, CHARTER SCHOOLS, AND THE DEMOGRAPHIC STRATIFICATION OF THE AMERICAN SCHOOL SYSTEM 3 (Kevin Welnor et al. eds,

For example, using three national data sets, one research study found that charter schools are “more racially isolated than traditional public schools in virtually every state and large metropolitan area in the nation.”<sup>62</sup> What this means in practice is that in schools where White students are heavily overrepresented, White students have little exposure to minority students.

There is research that purports to find that charters are not fomenting segregation. A study funded by the Bill and Melinda Gates Foundation, which has committed to spend \$225 million in support of charter schools over the next five years,<sup>63</sup> was conducted by Vanderbilt University and Mathematica.<sup>64</sup> The study argued that charters are not increasing racial segregation.<sup>65</sup> However, a careful reading of this study reveals that in the majority of states examined, White and African American students and families were more likely to choose even more homogenous charter schools. Thus, one of the big problems with school choice is the recurring research finding that “[p]arents choose to leave more racially integrated district schools to attend more racially segregated charter schools.”<sup>66</sup> Peer-reviewed research has also demonstrated that the choice of African American and White families of schools with homogenous racial compositions “help[s] to explain why there are so few racially balanced charter schools.”<sup>67</sup>

The most recent research by the UCLA Civil Rights Project also showed charter schools are not only contributing to, but are

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2010); Wells & Frankenberg, *supra* note 55; Coffee & Frankenberg, *supra* note 55.

62. ERICA FRANKENBERG, GENEVIEVE SIEGEL-HAWLEY & JIA WANG, CIV. RTS. PROJECT/PROYECTO DERECHOS CIVILES AT UCLA, CHOICE WITHOUT EQUITY: CHARTER SCHOOL SEGREGATION AND THE NEED FOR CIVIL RIGHTS STANDARDS 80 (2010), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/choice-without-equity-2009-report/frankenberg-choices-without-equity-2010.pdf>.

63. Arianna Prothero, *Bill Gates Plans to Invest in Charter Schools' Big Weak Spot: Special Education*, EDUC. WEEK: CHARTERS & CHOICE BLOG (Oct. 20, 2017, 5:20 PM), [http://blogs.edweek.org/edweek/charterschoice/2017/10/bill\\_gates\\_plans\\_to\\_invest\\_in\\_charter\\_schools\\_big\\_weak\\_spot\\_special\\_education.html](http://blogs.edweek.org/edweek/charterschoice/2017/10/bill_gates_plans_to_invest_in_charter_schools_big_weak_spot_special_education.html) (committing to spend \$1.7 billion on K-12 education generally over the next five years, 15% of which is slated for charter schools).

64. RON ZIMMER ET AL., DO CHARTER SCHOOLS “CREAM SKIM” STUDENTS AND INCREASE RACIAL-ETHNIC SEGREGATION? (Oct. 25–27, 2009) (noting that this report was prepared for School Choice and School Improvement).

65. *Id.*

66. David R. Garcia, *Academic and Racial Segregation in Charter Schools: Do Parents Sort Students into Specialized Charter Schools?*, 40 EDUC. AND URB. SOC'Y 590 (2008).

67. Robert Bifulco & Helen F. Ladd, *School Choice, Racial Segregation, and Test-Score Gaps: Evidence from North Carolina's Charter School Program*, 26 J. POL'Y ANALYSIS & MGMT. 31 (2007).

*driving*, re-segregation of schools.<sup>68</sup> In fact, the study found that charter schools in Charlotte and Mecklenburg County are directly and indirectly undermining school district efforts to desegregate public schools. The two central findings of the UCLA Civil Rights Project study of charter school segregation were that:

[t]he departure of some middle-class, academically proficient students who are [W]hite or Asian from traditional public schools for charters directly made the task of socioeconomic and racial desegregation mechanically more difficult . . . [and] [t]he proliferation of charters in Mecklenburg County served as grist for the political activism of suburban parents who threatened a middle-class exodus from [Charlotte-Mecklenburg schools] to the charter sector if new assignment boundaries did not honor their current neighborhood school assignments.<sup>69</sup>

What were the results of the White and Asian exodus to charters and the resulting political pressure to ensure segregated boundaries? North Carolina districts, and Charlotte-Mecklenburg in particular, were once “the nation’s bellwether for successful desegregation.”<sup>70</sup> Now, because of charter schools, the district “exemplifies how charter schools can impede districts’ efforts to resist re-segregation.”<sup>71</sup> Charlotte-Mecklenburg schools are now part of the most racially-segregated large school system in North Carolina. Furthermore, while charter schools are framed nationally as an alternative to low-performing, urban schools for students in poverty, in Charlotte, the majority of charter schools are located in “suburban areas and serve primarily academically proficient, middle-class students who are [W]hite or Asian.”<sup>72</sup>

Critics have responded to the research findings by arguing that the public conversation about integration should be sidelined.

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68. JENN AYSCUE ET AL., CIV. RTS. PROJECT/PROYECTO DERECHOS CIVILES AT UCLA, CHARTERS AS A DRIVER OF RESEGREGATION (Jan. 30, 2018), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/charters-as-a-driver-of-resegregation/Charters-as-a-Driver-of-Resegregation-012518.pdf>.

69. *Id.* at 1.

70. ROSLYN ARLIN MICKELSON, STEPHEN SAMUEL SMITH & AMY HAWN NELSON, YESTERDAY, TODAY, AND TOMORROW: SCHOOL DESEGREGATION AND RESEGREGATION IN CHARLOTTE 3 (“Of the many school districts whose desegregation was triggered by the Supreme Court’s decision in *Swann*, [Charlotte-Mecklenburg School’s] experience was often viewed as among the most successful because of both the high levels of racial balance that were achieved in the 1970s and early 1980s, and according to the best available information, improved educational outcomes.”).

71. CIV. RTS. PROJECT/PROYECTO DERECHOS CIVILES AT UCLA, CHARTER SCHOOLS ARE DRIVING SEGREGATION IN CHARLOTTE-MECKLENBURG SCHOOLS (Jan. 30, 2018), <https://www.civilrightsproject.ucla.edu/news/press-releases/2018-press-releases/charter-schools-are-driving-segregation-in-charlotte-mecklenburg-schools/>.

72. *Id.*

In response to the AP study, Howard Fuller, who has accepted millions of dollars in funding from a variety of foundations supporting school choice,<sup>73</sup> argued, “It’s a waste of time to talk about integration.”<sup>74</sup> He also said, “[h]ow do these kids get the best education possible?”<sup>75</sup> Media and empirical research, however, suggest that segregation is actually problematic for African American students as well as others.<sup>76</sup> A notable finding in the AP’s recent analysis is that high levels of segregation correspond with low achievement levels at schools of all kinds.<sup>77</sup> Bifulco and Ladd also found that choice was bad for achievement on average as “the relatively large negative effects of charter schools on the achievement of [B]lack students is driven by students who transfer into charter schools that are more racially isolated than the schools they have left.”<sup>78</sup>

In summary, after several decades, the promise of charter schools to foster integration and a less Balkanized society is clearly not being realized. Perry relayed:

When Martin Luther King Jr. said, ‘[w]e must never adjust ourselves to racial segregation,’ he wasn’t suggesting that [B]lack kids need [W]hite kids and teachers in the classroom with them to learn. King was acutely aware that segregation sustains racial inequality in schools and other institutions.<sup>79</sup>

The modern civil rights movement is expressing concern that charters have contributed to turning back the clock on segregation to pre-*Brown* levels. Civil rights organizations such as the NAACP, the nation’s largest and oldest civil rights organization, Journey for Justice Alliance, an alliance of charter parents and non-charter parents, and the Movement for Black Lives, a conglomeration of the nation’s youngest national civil rights organizations, led a charter moratorium movement in 2016.<sup>80</sup> Then, in 2017, at the NAACP national convention in Baltimore, more than 2,000 delegates passed a resolution, *Public and Charter Schools Fulfilling the Promise of Brown v. Board*, that decried the segregation of African American

73. Lyndsey Layton, *Howard Fuller: A Civil Rights Warrior or Billionaire’s Tool?*, WASH. POST (Sept. 9, 2014), [https://www.washingtonpost.com/local/education/howard-fuller-a-civil-rights-warrior-or-billionaires-tool/2014/09/09/3aedeff4-37c1-11e4-9c9f-ebb47272e40e\\_story.html?utm\\_term=.f079615ade74](https://www.washingtonpost.com/local/education/howard-fuller-a-civil-rights-warrior-or-billionaires-tool/2014/09/09/3aedeff4-37c1-11e4-9c9f-ebb47272e40e_story.html?utm_term=.f079615ade74).

74. Moreno, *supra* note 58.

75. *Id.*

76. *Id.*

77. *Id.*

78. Bifulco & Ladd, *supra* note 67.

79. Perry, *supra* note 53.

80. See Joan Richardson, *Charter Schools Don’t Serve Black Children Well: An Interview with Julian Vasquez Heilig*, 98 PHI DELTA KAPPAN 41 (2017).

students into under-supported public schools or charters.<sup>81</sup> Considering the back-and-forth about segregation in charter schools, the opportunity for parents and communities to self-determine and influence school governance to address opportunity and to access critiques of privately-managed schools using public dollars is under debate.

### III. School Choice, Charters, and Self-Determination

Policymakers, such as President Trump and Secretary DeVos, have argued that the crux of education reform strategies is leveraging school choice to improve educational outcomes for all students.<sup>82</sup> The mainstream jargon of education reform policy and advocates, however, exposes a near-fatal misunderstanding of the systemic issues that result in consistent and persistent inequitable outcomes for Black students.<sup>83</sup> The inevitable result is that school choice strategies ignore and leave intact structural barriers to the equitable access of educational opportunities and outcomes and result in the creation, maintenance, and reproduction of purposeful racial oppression.<sup>84</sup> The ultimate result of contemporary education

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81. See Julian Vasquez Heilig, *With Charter Schools, A Step Back to Segregation*, THE PROGRESSIVE (Aug. 30, 2017), <http://progressive.org/public-school-shakedown/with-charter-schools-a-step-back-to-segregation/>; NAACP Task Force on Quality Education, NAACP (July 26, 2017), [http://www.naacp.org/wp-content/uploads/2017/07/Task\\_ForceReport\\_final2.pdf](http://www.naacp.org/wp-content/uploads/2017/07/Task_ForceReport_final2.pdf).

82. See Weller, *supra* note 19; Jamie Gottlieb, *Harmonizing No Child Left Behind's Restructuring Provision and State Charter School Laws: The Need for Autonomy, Flexibility, and Adequate Resources*, 39 SETON HALL L. REV. 191, 191–93 (2009) (describing how the No Child Left Behind Act of 2001 mandated one hundred percent proficiency in reading and math and threatened severe sanctions for schools and school districts that fell short of that requirement).

83. Osamudia R. James, *Opt-Out Education: School Choice as Racial Subordination*, 99 IOWA L. REV. 1083, 1085 (2014) (problematizing the rhetoric of school choice); Rachael Gabriel & Jessica Nina Lester, *Race to the Top Era of Education Consulting: A Call to Reform the Reformers*, 5 INT'L J. EDUC. POL'Y 33, 36 (2011) (“By ignoring systemic inequities within and outside of schools these perceived educational crises, [sic] create a perpetual need for reform.”); Henry A. Giroux & Kenneth Saltman, *Obama's Betrayal of Public Education? Arne Duncan and the Corporate Model of Schooling*, 9 CULTURAL STUD. CRITICAL METHODOLOGIES 772, 774 (2009) (“At the heart of this plan is a privatization scheme for creating a market in public education by urging public schools to compete against each other for scarce resources and by introducing choice initiatives so that parents and students will think of themselves as private consumers of educational services.”); Kevin G. Welner, *Can Irrational Become Unconstitutional? NCLB's 100% Presuppositions*, 38 EQUITY & EXCELLENCE IN EDUC. 171, 171 (2005) (“The law holds schools responsible for student achievement, subjecting the schools to escalating penalties if some students fail to make adequate progress toward the hundred-percent target. That is, each student's test score is treated by law as if his or her school were entirely—100%—responsible for that score.”).

84. See Steven L. Nelson, *Racial Subjugation by Another Name? Using Links in*

reform efforts is a set of undifferentiated policies that pathologize Black and Brown public school districts and scare, pressure, or otherwise coerce overextended and under-resourced school districts.<sup>85</sup>

Instead of providing material support to communities, education reform advocates and policies assume that poorer, chiefly urban, African American students, families, and communities will only experience educational success if they are forced to accept market-based educational options.<sup>86</sup> This argument is further extended to assert that those who fall victim to educational racism and educational oppression are to blame for their failure, rather than the racially subjugating educational system that created those conditions.<sup>87</sup> The practical outcome of education reform strategies that purport to close the opportunity gap is the disproportionate sanctioning and sabotage of predominantly Black and Brown school districts, especially such school districts that enroll high numbers of students from low-income households.<sup>88</sup>

Research on the importance of local governance suggests that representation on policy-making boards impacts the ability of African American students, parents, and communities to enact educational policies that advance educational equity.<sup>89</sup> Moreover,

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*the School-to-Prison Pipeline to Reassess State Takeover District Performance*, 9 GEO. J. L. & MOD. CRIT. RACE PERSP. 1 (2017) (discussing how the reconstitution and chartering of public schools in three predominately Black school districts has resulted in the perpetuation of the school-to-prison pipeline); see also Steven L. Nelson & Jennifer E. Grace, *The Right to Remain Silent in New Orleans: The Role of Non-Politically Accountable School Boards in the School-to-Prison Pipeline*, 40 NOVA L. REV. 447 (2016) (finding that the state takeover of public schools and the subsequent mass chartering of public schools in New Orleans resulted in the enhancement of the school-to-prison pipeline and that schools that experienced state takeover and subsequent chartering produced lowered academic outcomes than schools under the locally governed public schools).

85. Suzanna Klaf & Mei-Po Kwan, *The Neoliberal Straitjacket and Public Education in the United States: Understanding Contemporary Education Reform and its Urban Implications*, 31 URB. GEOGRAPHY 194, 195 (2010) (discussing how neoliberal educational and economic policies contribute to urban school districts feeling pressure to improve student test scores or face dire sanctions).

86. Erika K. Wilson, *Gentrification and the Urban Public School Reforms: The Interest Divergence Dilemma*, 118 W. VA. L. REV. 677, 698–711, 702 (2015).

87. David Arsen & Mary L. Mason, *Seeking Accountability Through State-Appointed Emergency District Management*, 27 EDUC. POL'Y 248 (2013).

88. See Klaf & Kwan, *supra* note 85, at 195 (arguing that urban schools and schools that serve historically disadvantaged populations are more likely to feel the pressure of neoliberal education reform policies).

89. *E.g.*, Kenneth J. Meier et al., *Structural Choices and Representational Biases: The Post-Election Color of Representation*, 49 AM. J. POL. SCI. 758, 759 (2005); 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, 288 (1989); Kenneth J. Meier & Robert E. England, *Black Representation and*

African American students, parents, and communities are more likely to achieve greater descriptive representation (the ability to place African American policymakers on boards) through election processes such as cumulative voting or through school board appointment.<sup>90</sup> Advocates for education reform policies argue ostensibly for increased parental involvement;<sup>91</sup> however, using school choice as a policy mechanism to reform educational practices has led to the removal of citizen control of public schools.<sup>92</sup> Some education-reform-oriented scholars have unabashedly called for the elimination of traditional school boards in favor of private school governance structures, in a moment of rare transparency in the education reform movement.<sup>93</sup> The current manifestation of school choice as educational policy diminishes the nexus of power between traditional citizen school boards and school operations,<sup>94</sup> thus undermining well established principles of democracy and local control of public schools.<sup>95</sup>

Education reform advocates and powerbrokers often ignore the aspirations and feedback of African American stakeholders after they are politically removed from school board power.<sup>96</sup>

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*Educational Policy: Are They Related?*, 78 AM. POL. SCI. REV. 392, 401 (1984).

90. See MICHAEL BERKMAN & ERIC PLUTZER, TEN THOUSAND DEMOCRACIES: POLITICS AND PUBLIC OPINION IN AMERICA'S SCHOOL DISTRICTS 147–49 (2005); Todd Donovan & Heather Smith, WASH. STATE INST. FOR PUB. POLICY, *Proportional Representation in Local Elections: A Review* (1994), [http://www.wsipp.wa.gov/ReportFile/1181/Wsipp\\_Proportional-Representation-in-Local-Elections-A-Review\\_Full-Report.pdf](http://www.wsipp.wa.gov/ReportFile/1181/Wsipp_Proportional-Representation-in-Local-Elections-A-Review_Full-Report.pdf); see also Ted P. Robinson, Robert E. England & Kenneth J. Meier, *Black Resources and Black School Board Representation: Does Political Structure Matter*, 66 SOC. SCI. Q. 976, 981 (1985).

91. See Jonathan C. Augustine & Craig M. Freeman, *Grading the Graders and Reforming the Reform: An Analysis of the State of Public Education Ten Years After No Child Left Behind*, 57 LOY. L. REV. 237, 241 (2011) (proposing that effective solutions to public education “requires a synergy among three groups: (1) the local school district or individual school; (2) the local community, particularly faith-based and business organizations; and (3) the students, parents, guardians or primary caretakers”).

92. Aaron J. Saiger, *The Last Wave: The Rise of the Contingent School District*, 84 N.C. L. REV. 857, 878–85 (2006).

93. Martha Abele Mac Iver & Douglas J. Mac Iver, *Which Bets Paid Off? Early Findings on the Impact of Private Management and K-8 Conversion Reforms on the Achievement of Philadelphia Students*, 23 REV. OF POL'Y RES. 1077 (2006).

94. See Arsen & Mason, *supra* note 87, at 248–252.

95. See James, *supra* note 83, at 1098 (“Although acknowledging that each ‘seductive’ wave of school choice has historically been characterized by elements that undermine both equality and democracy, scholars nevertheless conclude that ‘school choice itself is not bad’ and ‘can be a vehicle for valuable reform for parental and community engagement, and for educational innovation.’”).

96. ELIZABETH USEEM, JOLLEY BRUCE CHRISTMAN & WILLIAM LOWE BOYD, THE ROLE OF DISTRICT LEADERSHIP IN RADICAL REFORM: PHILADELPHIA'S EXPERIENCE UNDER THE STATE TAKEOVER, 2001–2006 (2006), <https://files.eric.ed.gov/fulltext/>



Likewise, the new structures of the politics of education often ignore claims that African American students, parents, and communities feel ostracized and disenfranchised by the school choice movement.<sup>97</sup> Little, if anything, changes about the roles and voices of African American stakeholders in the school choice movement, as these stakeholders are as marginalized, or more, in market-based schools as they are in traditional neighborhood public schools.<sup>98</sup>

The core of school choice policies is to restructure the governance and power of public schools by exchanging existing democratically elected policymakers with new private policy brokers.<sup>99</sup> The restructuring of public school governance in the school choice movement has disproportionately displaced African American education policymakers with White education policymakers.<sup>100</sup> The supermajority of school districts subjected to mass chartering are predominately minority,<sup>101</sup> and the impact of mass chartering is the disenfranchising of minority voters.<sup>102</sup> This

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97. See Nelson & Grace, *supra* note 84.

98. See James, *supra* note 83, at 1134. James concedes that Black parents may be opting out of traditional public schools but asserts that the action of opting out does not necessarily equate to full-fledged support of charter schools. Ultimately, James argues that

[g]iven the racialized realities of the current education system, choice is not ultimately used to broaden options or agency for minority parents. Rather, school choice is used to sanitize inequality in the school system; given sufficient choices, the state and its residents are exempted from addressing the sources of unequal educational opportunities for poor and minority students.

*Id.*

99. See Robert A. Garda, Jr. & David S. Doty, *The Legal Impact of Emerging Governance Models on Public Education and Its Office Holders*, 45 URB. L. 21 (2013); see also Gottlieb, *supra* note 82, at 204 (“Restructuring has been largely an urban phenomenon. In the 2005–06 school year, approximately ninety percent of schools in restructuring were located in urban districts.”).

100. See Nelson & Grace, *supra* note 84.

101. See Joseph O. Oluwole & Preston C. Green III, *State Takeovers of School Districts: Race and the Equal Protection Clause*, 42 IND. L. REV. 343 (2009) (arguing that all but three districts taken over in 2004 had high minority populations); see also Danielle Holley-Walker, *Educating at the Crossroads: Parents Involved, No Child Left Behind and School Choice*, 69 OHIO ST. L.J. 911 (2008); see also PATRICIA CAHAPE HAMMER, APPALACHIA EDUC. LAB., CORRECTIVE ACTION: A LOOK AT STATE TAKEOVERS OF URBAN AND RURAL DISTRICTS (2005); see also LIZ ARASIM, SEN. FISCAL AGENCY, STATES’ INTERVENTIONS IN SCHOOL DISTRICTS (1999).

102. See Steven L. Nelson & Heather N. Bennett, *Are Black Parents Locked Out of Challenging Disproportionately Low Charter School Board Representation? Assessing the Role of the Federal Courts in Building a House of Cards*, 12 DUKE J. CONST. L. & PUB. POL’Y 153, 193 (2016) (arguing that the mass chartering of public schools has resulted in the systematic exclusion of Black parents and that neither the Voting Rights Act of 1965 nor the Equal Protection Clause of the Fourteenth Amendment serve to adequately protect the rights of Black stakeholders to equitably

supports African American school board members' feelings of being targeted for reconstitution.<sup>103</sup> The expressed will of those most impacted are shunted even when education reform policies are implemented in a less hostile manner.<sup>104</sup> Additionally, those most directly affected by education reform policies and processes experience great difficulty in obtaining inclusion into the educational policy process that is privately managed.<sup>105</sup> The disenfranchisement of African American students, parents, and communities is of paramount concern because market-based policies that fail to include the perspectives of local stakeholders produce lower academic outcomes as compared to education reform policies that receive local support.<sup>106</sup> Federal and state courts have approved of and justified the setting aside of African American peoples' right to self-govern using arguments based in the extraordinary necessity of state intervention in otherwise local educational matters.<sup>107</sup> Federal and state education reform policies granted states broad powers to intervene (and sometimes directly manage) local school districts. This has led to the disproportionate usurpation of African American political power in the politics of education and the creation of private-management policies and practices.<sup>108</sup>

Market-based education reform policies and practices are anti-democratic and anti-African American.<sup>109</sup> They seek to control

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participate in the politics of education); *see also* Steven L. Nelson, *Killing Two Achievements with One Stone: The International Impact of Shelby County on the Rights to Vote and Access High Performing Schools*, 13 HASTINGS RACE & POVERTY L.J. 225, 266–70 (2016) [hereinafter, Nelson, *Killing Two Achievements*] (comparing charter school laws in Florida and Louisiana and finding that Florida's efforts to protect the local control of public schools has resulted in higher academic outcomes for charter schools than has been the case in Louisiana); *but see* Steven L. Nelson, *Could the State Takeover of Public Schools Create a State-Created Danger? Theorizing at the Intersection of State Takeover Districts, the School-to-Prison Pipeline, and Racial Oppression*, 27 NAT. BLACK L.J. 1, 1, 10–11 (2018) (hypothesizing that the Due Process Clause of the Fourteenth Amendment may be a more appropriate constitutional provision to disrupt the alienation of Black voices in educational policy).

103. *See* Oluwole & Green, *supra* note 101.

104. *See* Arsen & Mason, *supra* note 87.

105. *E.g.*, Kesi Foster, "Pushed Out of School for Being Me": *New York City's Struggle to Include Youth and Community Voices in School Discipline Reform*, 42 VOICES IN URB. EDUC. 43 (2015) (outlining New York City as an example).

106. *See* Nelson, *Killing Two Achievements*, *supra* note 102, at 227–239, 266.

107. *Cf.* Nelson & Bennett, *supra* note 102 (arguing the excuse of necessity is often used as a means of obtaining federal control over schools).

108. *See* Justin D. Smith, *Hostile Takeover: The State of Missouri, the St. Louis School District, and the Struggle for Quality Education in the Inner-City*, 74 MO. L. REV. 1143 (2009); *see also* Arsen & Mason, *supra* note 87.

109. *See* Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy*

African American communities by regularizing power and aligning local behaviors in predominantly Black cities to Eurocentric governmental norms.<sup>110</sup> Since education reform has the outcome of replacing African American leadership with White leadership, it is arguable that education reform seeks to subjugate African American communities by dictating what African American people can do with their bodies, restricting what kinds of political thought and participation African American people may engage in, and minimizing the educational opportunities for African American communities—all under the guise of choice.<sup>111</sup>

Education reform policies and practices have sustained a legacy of *othering* Blackness and things associated with Blackness (for example, urban public schools) by viewing Blackness with a deficit perspective and glossing over structural policies, procedures, and practices that maintain, enhance, and reproduce racial oppression.<sup>112</sup> Courts have failed to apply traditional civil rights constitutional provisions and statutes to halt states' infringement of African Americans' right to choose those who govern schools,<sup>113</sup> notwithstanding the fact that states disproportionately target predominately African American school districts for education reform processes.<sup>114</sup> Administrative challenges to inequitable approaches to education reform do not hold significantly more promise than do legal challenges.<sup>115</sup>

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*and Discourse*, 55 THEORY INTO PRAC. 11, 12 (2016) (arguing that education policy has historically and contemporarily treated Black people as something other than human); *see also* Michael J. Dumas, 'Waiting for Superman' to Save Black People: Racial Representation and the Official Antiracism of Neoliberal School Reform, 34 DISCOURSE: STUD. IN THE CULTURAL POL. OF EDUC. 531 (2013) (using the popular pro-charter school documentary *Waiting for Superman* to highlight the multitude of ways that contemporary education reform expresses anti-black, pathologized concepts of Black students, parents, and communities).

110. *See* Antonia Darder, *Racism and the Charter School Movement: Unveiling the Myths*, TRUTHOUT (Nov. 30, 2014), <http://www.truth-out.org/opinion/item/27689-racism-and-the-charter-school-movement-unveiling-the-myths>; *see also* Nelson & Grace, *supra* note 84; Klaf & Kwan, *supra* note 85, at 199 (applying Foucauldian concepts of power to the contemporary education reform policies).

111. *Id.*

112. *See* Klaf & Kwan, *supra* note 85, at 200 (noting that neoliberal education reform policies contribute to placing blame on communities that are subjected to education reform policies and practices and linking neoliberal education reform policies to hindering academic growth of urban schools and the stripping away of political power and authority from communities impacted by education reform policies).

113. *See generally* Nelson & Bennett, *supra* note 102 (discussing whether there exist certain restraints which lead to a disproportionate selection of Whites on appointed charter school boards in New Orleans).

114. *See* Oluwole & Green, *supra* note 101, at 344.

115. *See* Wilson, *supra* note 86 ("The controversial nature of privatizing the

Ironically, market-based education reform policies, which profess to increase community engagement and parental control of educational decision-making, produce considerably less parental control of the politics of education in predominately African American schools and school districts.<sup>116</sup> Research from the social sciences suggests that African American students, parents, and communities are actively resisting and rejecting market-based education reform policies;<sup>117</sup> this resistance, however, is to no avail.<sup>118</sup> Well-funded school choice advocates stridently move ahead with market-based policy that dispossess African American communities of their sense of community ownership and belonging and their right to self-determination.<sup>119</sup>

The market-based education reform movement's attacks on African American access to the electoral franchise in the context of the politics of education and the creation of market-based education policy and processes work in concert with similar social policies that attack African Americans' right to vote more generally. Examples of such attacks include felony disenfranchisement policies, strict voter identification laws, and efforts to truncate voting times and relocate polling places, all of which limit African Americans peoples' ability to vote.<sup>120</sup> These attacks compound other attempts to exclude African Americans from the governance structure of public schools in predominantly Black jurisdictions. For instance, state intervenors in Michigan—people who take over public schools with the support of the state government—are not required to comply with open access laws that assure public transparency of, and offer

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schools led to strong reactions from the public, however, including student, teacher, and community groups.”).

116. See Nelson & Bennett, *supra* note 102; see also, Augustine & Freeman, *supra* note 91 (arguing for legislative policies accompanying No Child Left Behind policies that encourage parental involvement).

117. See Vaughn Byrnes, *Getting a Feel for the Market: The Use of Privatized School Management in Philadelphia*, 115 AM. J. OF EDUC. 437 (2009).

118. See generally Kevin Lawrence Henry, Jr. & Adrienne D. Dixon, “*Locking the Door Before We Got the Keys*”: Racial Realities of the Charter School Authorization Process in Post-Katrina New Orleans, 30 EDUC. POL’Y 218 (2016) (highlighting how Black stakeholders were disallowed the ability to charter schools in New Orleans’ charter school reform through practice rather than policy).

119. See Don Sawyer, *I Ain’t Do Nothing: The Social and Academic Experiences of Black Males in a Dismantled School*, SYRACUSE U. SURFACE 107–09 (2013) (PhD dissertation, Syracuse University) (on file with author).

120. See Deborah M. Keisch & Tim Scott, *U.S. Education Reform and the Maintenance of White Supremacy through Structural Violence*, 3 LANDSCAPES OF VIOLENCE 1 (2015).

opportunities for meaningful participation in, education policy decisions by government officials.<sup>121</sup>

Efforts to separate African Americans from involvement with and influence in governmental decisions in the school choice movement contribute to and support the narrative that education reform policies and practices are thinly veiled attempts to shift the balance and site of political power in educational systems that are becoming increasingly diverse, as opposed to true attempts to improve academic outcomes for African American students.<sup>122</sup> The result of distancing African Americans from the politics of education undermines potential coalitions with other marginalized communities, reducing opportunities to address the structural issues that bring about inequity and inequality.<sup>123</sup> Courts, policymakers, and education reformers uphold and reinforce cultural deficit model thinking that faults African Americans, not an inequitable system, for poor academic outcomes.<sup>124</sup> Thus, market-based school reform is aimed at reforming African Americans and not reforming the system.<sup>125</sup> At the core, school choice policies have served to implant White policymakers and disallow African American stakeholders.

### Conclusion

The *Summit for Civil Rights* brought together stakeholders such as civil rights lawyers, scholars, political leaders, community leaders, labor unions, and the faith community to reignite the historic coalition that fought for civil rights and to form a modern political alliance—and to realize the more fully inclusive society that Dr. Martin Luther King, Jr., Thurgood Marshall, and A. Philip Randolph expected when they defeated Jim Crow. To ignite progress, the Summit sought to begin the renewal of the coalition by fomenting local and national networks and connections for a multi-racial, grassroots political movement for “a racially integrated and united country with sustained prosperity for all.”<sup>126</sup>

In the plenum education forums, the discussion focused on the triumphs and failures of the past and examined the changed political and social landscape of education reform today. The

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121. See Arsen & Mason, *supra* note 87.

122. *Id.*

123. See James, *supra* note 83, at 1087.

124. *Id.*

125. *Id.*

126. THE SUMMIT FOR CIVIL RIGHTS (2017), [https://scholarship.law.umn.edu/lawineq\\_symposia/2017/summit/](https://scholarship.law.umn.edu/lawineq_symposia/2017/summit/) (last accessed May 4, 2018).

presenters and attendees discussed their learned experiences as stakeholders of our nation's public education system. Notably, the small group education forum discussion quickly turned to school choice, charter schools, segregation, and self-determination. We viewed these components of the arguments in the small group discussion as an opportunity to elucidate and delve deeply into charter schools to inform the new civil rights coalition about the legal, empirical, and historical evidence about school choice.

To conclude our discussion about school choice and charters, we return to W.E. Burghardt Du Bois' resolution in *Does the Negro Need Separate Schools?*<sup>127</sup> For our purposes we have utilized a replacement method for his original language by inserting the terms from the modern debate about the education of African Americans in charter schools and neighborhood public schools. We believe that Du Bois' nearly century-old thoughts are sobering and equally salient for today's debate about school choice and integrated schools.

It means this, and nothing more. To sum up this: theoretically, the [African American] needs neither segregated [charter] schools nor mixed [neighborhood public] schools. What he needs is Education. What he must remember is that there is no magic, either in mixed [neighborhood public] schools or in segregated [charter] schools. A mixed [neighborhood public] school with poor and unsympathetic teachers, with hostile public opinion, and no teaching of truth concerning [B]lack folk, is bad. A segregated [charter] school with ignorant placeholders, inadequate equipment, poor salaries, and wretched housing, is equally bad. Other things being equal, the mixed [neighborhood public] school is the broader, more natural basis for the education of all youth. It gives wider contacts; it inspires greater self-confidence; and suppresses the inferiority complex. But other things seldom are equal, and in that case, Sympathy, Knowledge, and the Truth, outweigh all that the mixed [neighborhood public] school can offer.<sup>128</sup>

The concise empirical research and historical evidence in this article demonstrate the problematic ways in which school choice and charter schools have played an increasing role in racially segregating the United States' schools and have fomented associated deleterious outcomes. Therefore, all things are not equal, and Du Bois' proposition suggests that "mixed" neighborhood schools are the more natural and beneficial approach for the education of African American students in public schools.

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127. See Du Bois, *supra* note 1.

128. *Id.*