

The Sovereign School District: What the Structure of our Public Education System Teaches Children About Citizenship

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INTRODUCTION

I grew up in Port Jefferson, New York, a bucolic village on the North Shore of Long Island. Like me, the vast majority of children who live in the Village of Port Jefferson—population approximately 8,000—attend Port Jefferson Union-Free School District (“UFSD”).¹ Reflecting Port Jefferson’s demographics, Port Jefferson UFSD is well-resourced: the median household income in Port Jefferson is \$113,750, and the district spends more than \$23,000 per child on student instruction and support.² Also reflecting Port Jefferson’s demographics, Port Jefferson UFSD is racially and socioeconomically homogenous: 84 percent of its students are white, and less than 3 percent live in families with incomes below the poverty level.³

Port Jefferson UFSD serves most of Port Jefferson as well as a small, incorporated village fully encompassed within it, the Village of Belle Terre.⁴ The Village of Belle Terre is even wealthier and whiter than Port Jefferson: apparently, not a single family in Belle Terre lives in poverty.⁵ The median home price is over \$900,000.⁶ Growing up, the distinction between Port Jefferson and Belle Terre was fuzzy. The border between the two villages is nothing more than a small placard next to a stop sign on a sleepy, forested road.

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¹ *Port Jefferson Union Free School District, NY*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/3623490> (last visited Jan. 19, 2024).

² *Id.*

³ *Id.*

⁴ *See State and Local Elected Officials*, PORT JEFFERSON SCHOOL DISTRICT, https://www.portjeffschools.org/boe/elected_officials (last visited May 28, 2024) (noting the relevant elected officials); *see also* WESTERN SUFFOLK BOCES OFFICE OF SCHOOL PLANNING AND RESEARCH, LONG RANGE PLANNING STUDY: PORT JEFFERSON UNION FREE SCHOOL DISTRICT, <https://www.portjeff.k12.ny.us/download/PDFs/Bond2022/LongRangeUpdate2021-22.pdf> (2021–22) (encompassing the relevant villages).

⁵ *Quick Facts, Port Jefferson Station CDP, New York; Port Jefferson Village, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/portjeffersonstationcdpnewyork,portjeffersonvillagenewyork/PST045218> (last visited Jan. 30, 2024).

⁶ *Belle Terre, NY*, BEST PLACES, https://www.bestplaces.net/city/new_york/belle_terre (last visited Jan. 19, 2024).

I never truly understood why Belle Terre existed at all until my first year of law school, when I learned that the Village of Belle Terre was the site of an important Supreme Court case. Justice Douglas, writing for a seven-two majority, affirmed Belle Terre’s right to impose zoning regulations prohibiting more than two unrelated individuals from living together.⁷ The Court sanctioned Belle Terre’s goal of maintaining the Village as “[a] quiet place where yards are wide, people few, and motor vehicles restricted . . . where family values, youth values and the blessings of quiet seclusion and clean air make the area a sanctuary for people.”⁸

Port Jefferson UFSD does not, however, serve children who live in a hamlet abutting Port Jefferson’s southern border, Port Jefferson Station. Children who grow up in Port Jefferson Station go instead to the Brookhaven-Comsewogue UFSD.⁹ Port Jefferson Station has a slightly different demographic profile than the Village of Port Jefferson—it is the same size, but more diverse and less affluent.¹⁰ Growing up, children know Port Jefferson and Port Jefferson Station were distinct in a way that Port Jefferson and Belle Terre are not; the dividing line between Port Jefferson and Port Jefferson Station was, literally, a set of train tracks.

This distinction was mirrored in Brookhaven-Comsewogue UFSD, which was more diverse than Port Jefferson UFSD, spent less per pupil, had a larger student population, and served far more students living in poverty.¹¹ Families with young children were certainly aware of the distinctions: in a representative online discussion, parents agreed that despite their geographic proximity, Port Jefferson and Port Jefferson Station “are worlds apart” and “[n]ot even remotely in the same universe.”¹²

Port Jefferson and Port Jefferson Station may be distinct, but it is not immediately obvious *why*. They share the same physical space and are administered by the same local government.¹³ Indeed, if you ask someone what distinguishes the community of Port Jefferson from the community of Port Jefferson Station, residents are likely to point you to the schools. If your children attend Port Jefferson UFSD, you are part of the Port Jefferson community; if your children attend Brookhaven-Comsewogue UFSD, you are not.

But this distinction is tautological. Nothing essential distinguishes Port Jefferson from Port Jefferson Station—nothing meaningfully distinguishes

⁷ *Vill. of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

⁸ *Id.* at 1537.

⁹ See *District Our Schools*, COMSEWOGUE SCHOOL DISTRICT, https://www.comsewogue.k12.ny.us/district/our_schools (last visited May 28, 2024) (identifying the schools in Port Jefferson Station).

¹⁰ U.S. CENSUS BUREAU, *supra* note 4.

¹¹ *Brookhaven-Comsewogue Union Free School District, NY*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/3615780> (last visited Feb. 4, 2024).

¹² StephM & Crookhaven, *City-Data Forum: Port Jefferson Station*, CITY-DATA, <http://www.city-data.com/forum/long-island/912065-port-jefferson-station.html> (last visited Jan. 19, 2024).

¹³ Alex Petroski, *Village Seeking State Aid to Revitalize Port Jeff Station*, TBR NEWS MEDIA (Sept. 29, 2016), <http://tbrnewsmedia.com/village-seeking-state-aid-to-revitalize-port-jeff-station/>.

them at all, except the school district boundary lines. Whatever differences exist today between Port Jefferson and Port Jefferson Station, school district boundary lines likely contribute to them. Affluent families seek to locate in Port Jefferson because residency grants them access to a smaller, better-resourced school. Property values rise. Less affluent families are pushed out. Because of the United States' pervasive racial wealth gap,¹⁴ and the legacy (and ongoing practice of) illegal racial steering,¹⁵ the families entering Port Jefferson are disproportionately likely to be white. Port Jefferson's whiteness is, at least for some, implicitly or otherwise, an attractive (and wealth-generating) feature in its own right.

The reason Port Jefferson and Port Jefferson Station are distinct communities is because residents of each send their children to different schools. They send their children to different schools because the boundaries of each school district divide the two communities rather than include them both. If the district boundary lines tracked municipal boundaries—if, for example, a unified district encompassed the Town of Brookhaven, a municipality that residents of both Port Jefferson and Port Jefferson Station share membership in—then, over time, the distinctions between the two communities would collapse. The two communities would fund their children's education out of a common purse. Port Jefferson's relative appeal to homeowners would likely diminish too, and if home values diminished, the demographic differences between Port Jefferson and Port Jefferson Station might diminish also.

This article aims to call attention to an underappreciated but pervasive driver of inequality and the perpetuation of racial hierarchy: the political choice about where to draw school district lines. The impact of school segregation and inequality on American society is no secret. However, less attention has been paid to the school district itself as an institutional entity. The school district is a distinctly American institution justified in legal, educational, and political discourses for its supposed democracy-fostering features. According to the dominant narrative, school districts are democratic because they facilitate “local control” by communities over the public schools where they send their children. As the Supreme Court has written, “[local] control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society.”¹⁶ There is “[n]o single tradition in public education . . . more deeply rooted than local control over the operation of schools[.]”¹⁷ It is no doubt true that providing communities with the authority to govern their own school districts has

¹⁴ See, e.g., Thomas Shapiro, Tatjana Meschede, & Sam Osoro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, INST. ON ASSETS AND SOC. POL'Y (Feb. 2013), <https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/roots-widening-racial-wealth-gap.pdf>.

¹⁵ Ann Choi, Keith Herbert, & Olivia Winslow, *Long Island Divided*, NEWSDAY (Nov. 17, 2019), <https://projects.newsday.com/long-island/real-estate-agents-investigation>.

¹⁶ *Wright v. Council of Emporia*, 407 U.S. 451, 469 (1972).

¹⁷ *Milliken v. Bradley*, 418 U.S. 717, 741–42 (1974).

significant democratic appeal. Schools are a primary site for civic engagement, interpersonal bonding, and community-building; communities are, in at least some domains, better positioned to make choices about their children's education than distant state authorities. Local control may indeed enable "[e]ach locality . . . to tailor local programs to local needs," offering community members the opportunity to "participat[e] in the decision[-]making process that determines how [] local tax dollars will be spent."¹⁸

Yet the school district, as it has been enshrined in contemporary life, enables practices that are antithetical to American democracy. This is because the Supreme Court has defined local control to include two powers, understood as inherent rights of communities acting through school districts, that reproduce the very constitutional injuries identified in *Brown v. Board of Education*. These powers are the authority to fund local schools through local property taxes, and the authority to define the geographic boundaries one's own school community. Without basis in law and lacking in normative justification, the assignment of these powers to school districts endows them with the principles and powers of sovereignty.

These powers turn the logic justifying local control on its head. Rather than tasking functional communities with public school governance to facilitate democratic participation and decision making, the sovereign school district creates "perverse" communities that dispossess marginalized communities of the right and ability to exercise democratic control over their schools.¹⁹ The sovereign school district fosters communities which "limit interactions with, and therefore responsibility towards, other . . . residents of different socioeconomic" or racial identity, "reinforcing internal cohesion" but diminishing the possibility of multiracial, pluralistic "community building."²⁰ These communities are predicated on, and make concrete, racially exclusionary self-understandings that "permit and encourage" parents to "hoard [their] wealth on one side while children on the other side are left with little."²¹ By granting these powers to the sovereign school district, the law entrenches racial hierarchy, exacerbates interdistrict resource inequality, and undermines public education's democratic function.

This Article attempts to disturb the prevailing narrative, which treats the school district as essential and, in its institutional form, generally beneficial to the ideal of democratic self-governance, by illustrating and critiquing the conflation of local control with school district sovereignty. The former requires only that citizens of a community be granted authority to shape the schools they send their children to; the latter endows individual citizens with the right to fund schools through intradistrict property taxes

¹⁸ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 49–50 (1973).

¹⁹ Nadav Shoked, *An American Oddity: The Law, History, and Toll of the School District*, 111 NW. U. L. REV. 945, 1005 (2017).

²⁰ *Id.*

²¹ Charles R. Lawrence III, *Forbidden Conversations: On Race, Privacy, and Community (A Continuing Conversation with John Ely on Racism and Democracy)*, 114 YALE L.J. 1355, 1377 (2005).

and to define the scope of their own community by fixing school district boundary lines.

This Article exposes the ideological underpinnings of school district sovereignty and its democracy-distorting consequences. It aims to highlight school district sovereignty as a political choice not compelled by, and in fact anomalous within, the law, and to begin developing an oppositional discourse. It proceeds in three parts. First, this Article briefly traces how, across a series of cases in the second half of the twentieth century, the Supreme Court moved away from *Brown v. Board of Education's* holistic concern for public education's democratic function and towards an overriding preoccupation with preserving school district sovereignty. This shift embraced a constitutional understanding of school district boundary lines as inviolable: it took for granted that (some) parents possessed an inherent right to control how their school districts were funded and who could attend their children's schools, a view at odds with black letter local government law and inconsistent with the Supreme Court's treatment of municipal boundaries in other domains.

Second, this piece examine how endowing school districts with the powers of sovereignty undermines the very function and purposes that public education is supposed to serve in a democratic society. This analysis is anchored in the vision of the prerequisites of democratic self-governance and theory of democratic equality that underpins the Supreme Court's seminal decision in *Brown*. Briefly summarized, these requirements include a polity composed of citizens that relate to each other on terms that recognize each other's and their own equality; a political process that enables deliberative decision-making among political equals; and outcomes that do not convey expressive or stigmatic harms towards any one social group. From here, this section describes the ways school district sovereignty frustrates meaningful democratic self-governance.

The primary democratic harm is that school district sovereignty perpetuates racial segregation in public education, inhibiting efforts to integrate public schools that should have been required in the aftermath of *Brown*. Yet school district sovereignty corrodes democracy in ways that are distinct from and go beyond its consequences for school desegregation. These second-order democratic harms emanate from the two anti-democratic powers that legal deference to school district sovereignty protects: control over funding and control over boundary-setting. Exercised together by school districts, these two powers give rise to a landscape of inequality that thwarts democratic community-building and democratic governance by (1) producing interdistrict inequalities that grant privileged communities full democratic rights while dispossessing marginalized communities of theirs, instantiating two tiers of citizenship among supposed democratic equals; and (2) fostering a deracialized or colorblind legal and popular understanding of education that assigns blame to marginalized communities for educational disparities that are, in truth, structural,

collective failings. In turn, this creates an educational landscape where democratic control is subsumed by private, individualized decision-making, diminishing public education's status as an issue of collective concern.

This Article concludes by beginning to sketch a conceptual framework for combatting the democracy-corroding effects of school district sovereignty. The most direct way to confront school district sovereignty would be to unbundle the powers that inhere in local control, moving away from a funding regime based on property taxes and reducing communities' power to establish their own school district boundary lines. Short of this, reform efforts should prioritize strategies that undermine school district sovereignty's self-perpetuating logic. These strategies should seek to destabilize privileged parents' settled expectations of what residence in any one school district accords them; build school districts into meaningful sites for participatory democratic governance; and empower marginalized communities to foster cross-racial political coalitions.

Ultimately, the goal of this Article is to denaturalize school districts and call attention to their crucial role in ordering American life. Where political actors choose to draw and maintain school district boundary lines does not reflect some essential, indivisible community: it constitutes communities, on both sides of the dividing line. Yet once the lines are drawn, they tend to disappear. You grow up knowing where your community ends, but you do not grow up knowing why.

I. HOW SCHOOL DISTRICT SOVEREIGNTY SUBSUMED PUBLIC EDUCATION'S DEMOCRATIC PRINCIPLES

A. *Public Education's Democratic Function.*

Since its inception, public education has played a central role in supporting the institutions and practices of democratic self-governance. This theory is rooted in the vision of Thomas Jefferson, who believed that public schools were necessary to create citizens capable of governing themselves through politics,²² and John Dewey, who saw public education as fundamental to establishing the preconditions of democratic life, which included the "recognition of common interests among citizens, and the related commitment to reconsider our individual interests in light of understanding the interests of others"—the knowledge, attitudes, and beliefs necessary for legitimate public decision-making in a pluralistic democracy.²³ These historical understandings informed the Supreme Court's approach to public education in *Brown v. Board of Education*. *Brown* is first and foremost about disestablishing state-sanctioned racial segregation in public education. But it is also a case about "citizenship, community, and the

²² See, e.g., Johann Neem, *Is Jefferson a Father of Democratic Education?*, 21 DEMOCRACY & EDUC. 2 (2013).

²³ AMY GUTMANN, DEMOCRATIC EDUCATION, 77 (rev. ed. 1999).

special role that public education plays in defining and creating community.”²⁴

Public education’s primary democratic function is to ensure that every citizen can participate in the process of self-governance on equal terms. In a liberal democratic society, schools are a primary site for conscious social reproduction: it is through schooling that one generation inculcates in the next a sense of themselves as situated within a society that is organized around a shared commitment to a set of (contested) values. Education is necessary for citizens to “participat[e] in democratic politics, to choos[e] among (a limited range of) good lives, and to shar[e] in the several sub-communities, such as families, that impart identity to the lives of its citizens.”²⁵ *Brown* recognizes this. Education is “the very foundation of good citizenship.”²⁶ It is “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”²⁷ It acculturates children to assume their place in a democratic society.

Democratic society is predicated on the idea of equal citizenship: within the political sphere, everyone has an equal opportunity to shape the governance decisions that bind them all equally.²⁸ To provide for equal citizenship, the state must provide every child equal access to the prerequisites of citizenship—to the institutions and experiences, like public education, that help children develop that which is required to fully participate in democratic life. Just as it is unconstitutional to formally exclude a group of children from the political community, it is profoundly antidemocratic to undermine equal citizenship by prohibiting certain classes of children from fully accessing the institutions that communicate what is needed to become a full and equal citizen. This is because education is a prerequisite for “performance of our most basic public responsibilities[.]”²⁹ Equal citizenship requires that *all* children have the opportunity to develop the skills and understandings that public education transmits. This is why it is “doubtful that any child may reasonably be expected to succeed in life if [they are] denied the opportunity of an education.”³⁰

This vision of the relationship between public education and citizenship presupposes a political process that demands educated citizens. It is predicated on “[t]he ideal of the autonomous individual capable of meaningful choice and informed decision[-]making[.]”³¹ Education is a foundation of democratic life because democratic self-governance requires

²⁴ Lawrence, *supra* note 21, at 1375.

²⁵ GUTMANN, *supra* note 23, at 42.

²⁶ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

²⁷ *Id.*

²⁸ See generally Robert Post, *Democracy and Equality*, 603 ANNALS AM. ACAD. POL. AND SOC. SCI. 24 (2005).

²⁹ *Brown*, 347 U.S. at 493.

³⁰ *Id.*

³¹ See Anne C. Dailey, *Developing Citizens*, 91 IOWA L. REV. 431, 432 (2006).

citizens who possess “the cognitive skills of information processing, logical analysis, and conceptual thinking” that enable them to “identify [their] beliefs, values, and commitments and to think and act in a manner consistent with those choices.”³² It is antithetical to democratic equality for the state to make second-class citizens, either formally (by differentially allocating citizenship rights) or functionally (by failing to provide them equal access to citizenship prerequisites like public education).

Depriving groups of children equal access to the prerequisites of citizenship also symbolically marks those children off as lesser members of the democratic community. For Black children, segregation “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”³³ This sense of inferiority “affects the motivation of a child to learn” and “has a tendency to [retard] the educational and mental development of [black] children[.]”³⁴ Children internalize that they are devalued by segregation: they recognize that the political community sees them as subordinate to “real” citizens. They experience formally democratic decision-making not as legitimate expressions of *their* community’s will, but as an imposition by the dominant group, as a form of oppression.³⁵

This “feeling of inferiority” is mirrored in white children’s unjust feelings of superiority, which foments racial oppression by legitimating their “unchecked white privilege.”³⁶ This is “dehumanizing” because it causes white children to pathologize their Black peers, inviting the former to “believ[e] in [their own] racial superiority[.]”³⁷ Racially segregated public schools condition all children to disbelieve in the foundational sociopolitical principle that, in America, citizens from different racial groups have equal worth. Citizens who come to understand that society sees members of their own race as inherently superior or inferior, and whose belief is produced and legitimated by the state, cannot be equal participants in democratic life.³⁸

In a democratic society, all citizens “have a just claim to stand in relations of equality with their fellow citizens.”³⁹ All citizens must be able to credibly see themselves as equals to their fellow citizen: they must credibly believe that their fellow citizen views them as equals too.⁴⁰ It is this mutual recognition of equality that instills in citizens “the warranted conviction that they are engaged in the process of governing themselves.”⁴¹ In a pluralistic society, democratic decision-making inevitably produces

³² *Id.* at 433.

³³ *Brown*, 347 U.S. at 494.

³⁴ *Id.*

³⁵ *Post*, *supra* note 28, at 27.

³⁶ Angela Onwuachi-Willig, *Reconceptualizing the Harms of Discrimination: How Brown v. Board of Education Helped to Further White Supremacy*, 105 VA. L. REV. 343, 347 (2019).

³⁷ *Id.*

³⁸ *See generally* ELIZABETH ANDERSON, *THE IMPERATIVE OF INTEGRATION* (2010).

³⁹ *Id.* at 18.

⁴⁰ *See Post*, *supra* note 28, at 29.

⁴¹ *Id.* at 26.

outcomes that contravene many citizens' preferences. Accordingly, it is only when the decision-making process is conducted by "political participants . . . [who] treat all individuals affected by the political process as their equals[,] and who "render equal respect and concern . . . to people based on the capacity of all people to generate their own equally worthy visions of the good," that such decision-making can begin to be accepted as legitimate.⁴² Where this equality exists, even citizens who disagree with political choices can experience them as acts of "self-determination[,] because they recognize the government as "their own, as representing them . . . as in some way responsive to their own values and ideas."⁴³ By contrast, where there is foundational inequality, some citizens instead experience "collective decision making" as "oppressive and undemocratic."⁴⁴

As *Brown* understood, segregated public education makes the mutual recognition of political equality impossible: this is why "separate but equal" public education is "inherently" unconstitutional.⁴⁵ By contrast, integrated public education fosters foundational equality by powerfully signaling to children that they all start from a place of equal worth, that the State believes equally in their capacity to develop into citizens. Integrated schools also foster the kinds of interpersonal interactions and durable relationships that make mutual recognition of one another's equal humanity possible. Although *Brown* addressed the constitutional injury that inhered in racially segregated public schools, it pointed towards a broader principle: that any technique for organizing public schools which thwarts children's capacity to see each other and themselves as foundational equals undermines public education's democratic function.

II. THE TURN TOWARD MILLIKEN AND THE SACRED SCHOOL DISTRICT

As the Supreme Court sought to implement school desegregation in the aftermath of *Brown*, it could have drawn upon and further elaborated public education's democratic principles. When confronted with competing arguments about how to administer public education, it could have privileged approaches which ensured that children would grow up believing that children who did not look like them were, nonetheless, their equals as citizens. But this is not what the court did. Following *Brown*, the Court's attention to public education's democratic principles wavered. Instead, the court came to view the school district as the sole, and exhaustive, guarantor of public education's democracy-enhancing function. It reinforced this belief by deferring to the prerogatives of the school district and reflexively enlarging its institutional powers. In effect, the Court came to assert that

⁴² James S. Liebman, *Desegregating Politics: "All-Out" School Desegregation Explained*, 90 COLUM. L. REV. 1463, 1475 (1990).

⁴³ Post, *supra* note 28, at 27.

⁴⁴ *Id.*

⁴⁵ *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

protecting school district sovereignty was a legitimate goal in its own right, and that preserving school district sovereignty would, *ipso facto*, ensure the realization of public education's democratic function.⁴⁶ This evolution enshrined school district sovereignty in American law, while destroying the capacity of public schools to foster meaningful democratic life.

A. *The Turn from Democracy to Sovereignty.*

The Supreme Court initially recognized school districts as administrative realities, but not necessarily hallowed or sacrosanct institutions.⁴⁷ It acknowledged that school desegregation remedies would likely need to accommodate the fact of their existence given their universality, but the Court did not initially treat school districts as presumptively legitimate, constitutional, or democratic. Instead, the Court hoped that relying on school districts would enable local communities, instead of the federal courts, to manage the various administrative questions school desegregation implicated.

On re-argument in *Brown v. Board of Education (Brown II)*, the Supreme Court rejected the NAACP-Legal Defense Fund's proposal that school districts be afforded one year to achieve full desegregation.⁴⁸ Instead, the Justices would require school districts found to be in violation of *Brown I* to desegregate their schools with "all deliberate speed."⁴⁹ Undoubtedly, as has been extensively documented, the court was concerned that more rapid intervention would have produced unmanageable backlash among recalcitrant white communities and politicians.⁵⁰ But this concern was buried in the language of administrative necessity: the court would defer to local authorities who had "primary responsibility for elucidating, assessing, and solving" local educational challenges to provide solutions to the "varied local school problems" that desegregation efforts would inevitably confront.⁵¹

While the Court did not expressly endorse school districts as normatively appealing institutions, its formulation meant that the very same local school boards which had perpetuated unconstitutional conditions of segregation would, under federal supervision, be tasked with ending it. The Court permitted communities some measure of autonomy, channeled through the existing institutional apparatus of the school district, perhaps as a counterweight to its refusal to condone the communities' choice to maintain segregated schools. Yet this choice was not legally compelled. The Court could have ordered *states* to implement desegregation remedies by

⁴⁶ See *supra* Section II.A–B.

⁴⁷ See *supra* Section II.A–B.

⁴⁸ See Brief for Appellants in Nos. 1, 2 and 3 and for Respondents in No. 5 on Further Reargument at 10–11, 23, *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294 (1955).

⁴⁹ *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 301 (1955).

⁵⁰ See generally Michael J. Klarman, *How Brown Changed Race Relations: The Backlash Thesis*, 81 J. AMER. HIST. 81 (1994).

⁵¹ *Brown II*, 349 U.S. at 298–99.

abolishing recalcitrant local school districts or subjecting them to direct oversight.⁵² In the face of “massive resistance” from white parents,⁵³ however, the Court deferred to the very method of organizing public education that helped produce the unconstitutional conditions it had set out to solve.

The Court’s philosophical commitment to school districts deepened over time. In *Wright v. City of Emporia*, the court blocked a city’s effort to secede from a consolidated county district on the grounds that permitting it to do so would undermine the court-ordered desegregation plan.⁵⁴ Yet even then, the majority went out of its way to note that “[d]irect control over decisions vitally affecting the education of one’s children is a need that is strongly felt in our society.”⁵⁵ In truth, it was Chief Justice Burger’s dissent which presaged the Court’s emerging treatment of school districts, where he argued that “[t]o bar the city of Emporia from operating its own school system is to strip it of its most important governmental responsibility, and thus largely to deny its existence as an independent governmental entity.”⁵⁶ This presumed that municipalities possessed inherent or autonomous powers distinct from the sovereign state that grants their charter. This may have been true in Virginia where, uniquely among states, municipalities are accorded such powers in the state constitution.⁵⁷ Yet this logic would not be confined to Virginia. Instead, it laid the groundwork for the court’s animating normative framework in approaching public education.

The Court extended its assumption of municipal autonomy to school districts in *San Antonio Independent School Dist. v. Rodriguez*, when it refused to disturb a statewide school financing scheme that required each district to largely fund itself through property tax revenue.⁵⁸ This majority found no constitutional harm in the massive interdistrict funding disparities this funding system produced.⁵⁹ To justify its refusal to intervene, the Court cited its “lack of specialized experience and knowledge” relative to state and local educational authorities regarding “the most persistent and difficult questions of educational policy.”⁶⁰ But for the first time, a majority expressly justified its deference to local school boards on democratic grounds.

⁵² See *Lee v. Macon Cnty. Bd. of Educ.*, 267 F. Supp. 458 (M.D. Ala. 1967), *aff’d sub nom.*; *Wallace v. United States*, 389 U.S. 215 (1967) (ordering statewide desegregation); Symposium, *First Panel: Vindicating the Promise of Brown—School Desegregation and the Civil Rights Act—Past, Present, and Future*, 26 PAC. L.J. 772, 777 (1995) (“The resistance to desegregation was such that we came up with the statewide lawsuits. Slim Barrett, who’s here today, tried the *Lee v. Macon County* case, which was the first one. We went after all of the school systems that HEW could not get to desegregate on a statewide lawsuit. Once we got that established as a principle in *Lee v. Macon County*, we were able to bring statewide suits elsewhere.”).

⁵³ See, e.g., NAACP Legal Def. Fund, *The Southern Manifesto and “Massive Resistance” to Brown*, <https://www.naacpldf.org/brown-vs-board/southern-manifesto-massive-resistance-brown/>.

⁵⁴ *Wright v. Council of Emporia*, 407 U.S. 451, 469 (1972).

⁵⁵ *Id.*

⁵⁶ *Id.* at 479 (Burger, C.J., dissenting).

⁵⁷ *Id.*

⁵⁸ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

⁵⁹ *Id.*

⁶⁰ *Id.* at 42.

According to the Court, preserving local control was necessary to facilitate “continued research and experimentation” in education by encouraging “a large measure of participation in and control of each district’s schools at the local level.”⁶¹ The Court explicitly conceptualized school districts as sovereign entities, drawing an analogy to “the Nation-State relationship in our federal system.”⁶² Its claim that “[t]hese practical considerations, of course, play no role in the adjudication of the constitutional issues presented here” rang hollow to the children denied access to even a baseline level of equitable interdistrict funding.⁶³

Justice Marshall, dissenting separately, saw that deference to school districts did not inherently advance democratic principles. Invoking *Brown*, Justice Marshall argued that sanctioning a locally-derived funding scheme, even when it produced such stark interdistrict educational inequities, reflected an “unsupportable acquiescence [to] a system which deprives children in their earliest years of the chance to reach their full potential as citizens.”⁶⁴ While agreeing that “local control of public education, as an abstract matter, constitutes a very substantial state interest[,]”⁶⁵ he recognized that public education’s democratic purpose was not *actually* furthered by local control channeled through school districts drawn around highly unequal, racially stratified communities. If the majority had examined the practical effect of Texas’ funding system, Justice Marshall argued, the Court would have to recognize that it did not serve democratic principles when only those districts with sufficient property wealth could choose “the level of sacrifice they wish to make for public education.”⁶⁶

Importantly, Justice Marshall would have struck down the Texas school financing system as an inappropriate *means* of furthering the state’s legitimate goal of providing for democratic control over public education. Meaningful democratic control required a financing system that provided *all* communities with sufficient resources to fund an adequate public education by making tradeoffs among different educational policy options. Under this paradigm, the Court would have treated the funding system as a state policy choice that was acceptable to the extent it was tailored to the state’s compelling interest in providing communities with democratic control over public education. By contrast, the *San Antonio* majority treated school districts as sovereigns: as a sovereign, the school district had an inviolable right to raise its own revenues and dispose of them however the community pleased and, as citizens of a sovereign, district residents were shielded from claims made by anyone outside their sovereign’s boundary lines.

⁶¹ *Id.* at 43, 49.

⁶² *Id.* at 50.

⁶³ *Id.* at 58.

⁶⁴ *Id.* at 71–72 (Marshall, J., dissenting).

⁶⁵ *Rodriguez*, 411 U.S. at 126.

⁶⁶ *Id.* at 127–28.

Over the dissents of Justices White, Marshall, Brennan, and Douglas in *Milliken v. Bradley*⁶⁷ the majority accorded school districts another power of sovereignty: the right to territorial self-definition. The majority in *Milliken v. Bradley* refused to question school district boundary lines even though failing to do so ensured that the constitutional imperative requiring educational authorities to “make every effort to achieve the greatest possible degree of actual desegregation . . .” would not be achieved.⁶⁸ The majority disclaimed the federal judiciary’s authority to grant interdistrict relief in remedial desegregation cases. It declared that “the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country.”⁶⁹ It put school districts at the very core of America’s commitment to public education, asserting that “[n]o single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.”⁷⁰ Although the majority once again stated that school district boundary lines were not “sacrosanct,” its decision ensured that they would be.⁷¹

The majority invoked a parade of horrors that district consolidation would produce, including the “logistical and other serious problems attending large-scale transportation of students” and the “array of other problems in financing and operating this new school system.”⁷² At least implicitly, the majority expressed the view that the scale at which decision making would occur in a consolidated school district would have been both inefficient and undemocratic, that a consolidated district would abrogate the democratic rights of some communities contained therein.⁷³ Yet the majority never explained why these problems would only be present in a consolidated school district, and not in *every* school district. Under the majority’s logic, Detroit Public Schools—which served approximately 276,000 students at the time *Milliken* was decided—should have been understood as undermining the conditions of local control and violating many communities’ democratic prerogatives for the myriad self-defined

⁶⁷ *Milliken v. Bradley*, 418 U.S. 717, 762 (1974) (Douglas, J., dissenting); *id.* at 777–78 (White, J., dissenting); *id.* at 794 (Marshall, J., dissenting).

⁶⁸ *Id.* at 775 (White, J., dissenting) (quoting *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 26 (1971)).

⁶⁹ *Id.* at 741.

⁷⁰ *Id.* at 741–42.

⁷¹ *Id.* at 744.

⁷² *Id.* at 743.

⁷³ *Milliken*, 418 U.S. at 743.

communities within city boundaries.⁷⁴ Clearly, the district could have been broken down into more administrable sub-units: it certainly encompassed many communities that defined themselves as independent from and autonomous of others within Detroit Public Schools. The only distinguishing feature was that those sub-communities within Detroit Public Schools had not already marked themselves as distinct by drawing boundary lines around their self-defined “territory.”

The Court’s attachment to school districts cannot be understood as merely a concern for preserving the mechanisms of governance that local control facilitated. Michigan could have attempted to create a consolidated school district that preserved every citizen’s right to participate in the governance of the schools to which they sent their children. Instead, its concern for local control conflated democratic participation with community self-definition. Thus, local control came to mean much more than access to an institution and mode of governance through which democratic decision-making could be channeled: it became a sword that could be used to interpose against claims made by residents of neighboring areas asserting a different definition of what constituted the relevant community. The Court would not interrogate whether those definitions of community were the “right” ones, an issue the dissent thought ripe for adjudication in *Milliken*.⁷⁵ The court would not permit an inquiry into whether the definition of community best served public education’s democratic purposes, either. Instead, the majority reflexively deferred to the prerogatives of certain self-defined communities which previously had the power to draw school boundary lines.

Justice Marshall, writing again in dissent, refused to treat existing school districts as sovereigns whose boundary lines were inviolable. In contrast to the majority—which did not question the premise that suburban “communities” had a right to a school district whose boundaries encompassed them but excluded the City of Detroit—Marshall expressed warranted doubt that democratic control in suburbs required a boundary dividing them from Detroit Public Schools, arguing instead that “the city of

⁷⁴ The Court presumed that consolidation of small independent school districts would make local control impossible, without explaining how or why local control was possible in the substantially larger Detroit system. *See, e.g., Milliken v. Bradley*, 418 U.S. 717, 742–43 (1974) (“The Michigan educational structure involved in this case, in common with most States, provides for a large measure of local control, and a review of the scope and character of these local powers indicates the extent to which the interdistrict remedy approved by the two courts could disrupt and alter the structure of public education in Michigan. The metropolitan remedy would require, in effect, consolidation of 54 independent school districts historically administered as separate units into a vast new super school district.”) (internal citations omitted).

⁷⁵ *Id.* at 769 (White, J., dissenting) (“Finally, it is also relevant to note that the District Court found that the school district boundaries in that segment of the metropolitan area preliminarily designated as the desegregation area in general bear no relationship to other municipal, county, or special district governments, needs or services, that some educational services are already provided to students on an inter-district basis requiring their travel from one district to another, and that local communities in the metropolitan area share noneducational interests in common, which do not adhere to school district lines, and have applied metropolitan solutions to other governmental needs.”) (internal quotations omitted).

Detroit and its surrounding suburbs must be viewed as a single community.”⁷⁶ The suburbs could properly be considered part of the Detroit Public Schools community because both the city and its surrounding suburbs formed a “single cohesive unit,” recognized as “an area of economic and social integration”; for Justice Marshall, this justified judicial intervention mandating consolidation if a consolidated district would foster compliance with *Brown’s* constitutional mandate.⁷⁷

Justice Marshall concluded with the ominous but prescient prediction that the court’s failure to confront the problem of racially exclusionary, self-defining communities would have long-term democratic consequences. Just as the public’s “strident” opposition to desegregation remedies in the 1970’s was rooted in “[r]acial attitudes ingrained in our Nation’s childhood and adolescence,” so too would “allow[ing] our great metropolitan areas to be divided up each into two cities—one white, the other black[,]” lead society down a path that “our people will ultimately regret.”⁷⁸ Treating school districts as sovereign entities would cause a constitutional injury to go unremedied today, and it would ensure that children would grow up into adults unwilling and ill-equipped to recognize each other as equal citizens.

This move towards endowing the school district with sovereign powers enabled resistance to judicial interventions that would have required municipalities to reorganize in order to realize constitutional and democratic principles. The Court entrenched the sovereign school district as the privileged mechanism for administering public education. Going forward, the Court would continue to presume its democratic legitimacy—it would not ask whether this method of administering schools was consistent with public education’s democratic function. As Cheryl Harris has written, holding school district boundary lines functionally inviolable signaled to white parents that the factors that produced *de facto* segregation, like residential steering and exclusionary zoning, which school district boundary lines reflected and exacerbated, “would be left undisturbed.”⁷⁹ Extant self-determinations of who comprised the proper school district “community”—secured by those with access to the political power to draw and maintain school district boundary lines in the first place—would be accorded unquestioning judicial respect. Education funding systems that concentrated resources in privileged communities, thus perpetuating the very dynamics that made those communities privileged in the first place, were protected against illegitimate claims by citizens of *other* sovereigns. By eliding the sovereign school district’s democratic deficits and assuming its democratic legitimacy, the Supreme Court evaded its responsibility for ensuring that public education could fulfill its role in sustaining democratic life.

⁷⁶ *Id.* at 804 (Marshall, J., dissenting).

⁷⁷ *Id.*

⁷⁸ *Id.* at 814–15.

⁷⁹ Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1757 (1993).

B. *The Anomaly of School Districts at the Supreme Court.*

Milliken guaranteed that school districts would be afforded special status in American law. Fundamental black letter local government law holds that school districts, like all municipal governments, are administrative units created by sovereign states to effectuate governmental purposes, subject to revision, consolidation, and dissolution, and lacking entirely in “independent identity or constitutional status that makes them separate or in any way autonomous from state authority.”⁸⁰ This baseline legal principle should have dictated the outcome in *Milliken*. In Michigan, as the *Milliken* dissenters noted, it was a settled matter doctrinally that school districts were derivative entities of the state, lacking independent status in state law.⁸¹ Yet rather than following this principle and treating school districts like other municipal entities—as, in effect, a policy choice about how to structure government to advance some state interest, and thus subject to means-end scrutiny—the Court treated school districts as indivisible sovereign entities whose boundaries were legitimately beyond the reach of the judiciary.

The Court treated school districts as sovereign in part because it understood boundary lines as demarcating coherent, cohesive communities. Rather than view district boundary lines as encompassing contingent “communities,” the Court adopted a “naturalizing view of political geography” that endowed school district communities with “prepolitical meaning.”⁸² School district boundary lines were tautologically legitimated by the fact of the community within it, rather than appropriately viewed as the result of ongoing political contestation, as one potential (and incomplete) political settlement among many possibilities. In the post-*Brown* desegregation decisions recounted above, the Court would fall back on this view to “justify . . . failures to consider the effect of boundaries and space on racial segregation.”⁸³ Policymakers, politicians, and the public would follow suit. The school district, perhaps the quintessential derivative municipal entity in local government law, was instead endowed with the property of “sovereignty” or “territoriality,” as befitting an inviolable political community.⁸⁴ The first order political choice of where to fix the sovereign’s boundaries was encoded by law and then made invisible.

One core principle of territoriality is that the sovereign is indivisible: its boundaries cannot be altered without its citizens’ consent. In turn, school district residents, like citizens of a sovereign nation, are expected only to “seek[] to advance [their] welfare . . . while bearing no or very limited duties to outsiders.”⁸⁵ Education funding systems predicated on local property

⁸⁰ Myron Orfield, *Milliken, Meredith, and Metropolitan Segregation*, 62 U.C.L.A. L. REV. 363, 391 (2015).

⁸¹ *Milliken*, 418 U.S. at 794–95 (Marshall, J., dissenting).

⁸² Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1858–59, 1872 (1994).

⁸³ *Id.* at 1857.

⁸⁴ Aaron J. Saiger, *The School District Boundary Problem*, 42 URB. L. 495, 508–09 (2010).

⁸⁵ *Id.* at 509.

taxes reinforce this bounded understanding of whose welfare the community is responsible for. The Court’s education jurisprudence would presume that it was natural and legitimate for school district residents to “address [their own] problems with [their] own resources, making very limited or no claims on others and not worrying about spillovers.”⁸⁶ Under the sovereignty paradigm, the only democratically legitimate way to administer public education was to respect district prerogatives: to hold one school district accountable for the problems of another, to allow outsiders to make demands on a school district’s resources, was akin to dispossessing sovereign citizens of their right to self-govern.

For the court to ascribe sovereignty to school districts rested on a view of the presumptive legitimacy of the political communities that the boundary lines encompassed. Yet the history of American school district formation did not justify such an understanding. School district boundary lines were pervasively shaped by efforts to define community through racial exclusion in order to maintain racial hierarchy. Thus, one reason school district boundaries track county lines in the South is because “segregation imposed diseconomies of scale on district operations and required larger land-area districts”—that is, school district boundary lines were expressly crafted to solve the problem of the inefficiency of operating dual systems serving one community and make racial segregation possible.⁸⁷ In the North, where school district boundaries are more frequently congruent with smaller municipal sub-entities, the process of municipal formation itself was frequently a means of enforcing racial segregation and hierarchy.⁸⁸ Municipal government formation permitted privileged white communities to directly pull levers of law and policy to exclude racial minorities through strategies like exclusionary zoning and selective annexation, while facilitating “private” acts of discrimination like redlining and racial steering.⁸⁹ In fact, during the “suburbanization boom” of the 1950s that produced many of the municipal boundaries the Court would eventually confront, “the most important predictor of the formation of new local governments was proximity to cities with large black populations that had the power to annex new territories.”⁹⁰ “New city formation functioned to block incorporation into mixed-race cities, where whites would have to share

⁸⁶ *Id.*

⁸⁷ William A. Fischel, *The Congruence of American School Districts with Other Local Government Boundaries: A Google-Earth Exploration* (rev. ed. Apr. 2010) (unpublished working paper), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=967399.

⁸⁸ See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (“Today’s racial segregation in the North, South, Midwest, and West is not the unintended consequence of individual choices and of otherwise well-meaning law and regulation but of unhidden public policy that explicitly segregated every metropolitan area in the United States.”).

⁸⁹ See generally Ben Marsh, Allan M. Parnell, & Ann Moss Joyner, *Institutionalization of Racial Inequality in Local Political Geographies*, 31 *URB. GEOGRAPHY* 691 (2010), http://www.cedargroveinst.org/Urban_Geography.pdf (describing various strategies for creating and perpetuating racially stratified municipalities including selective annexation and underbounding).

⁹⁰ ANDERSON, *supra* note 38, at 68.

public services and tax revenues with blacks.”⁹¹ School district boundary lines were where the Court found them in the twentieth century because of pervasive efforts to manipulate techniques of governance to entrench racial segregation and hierarchy. From the perspective of public education’s supposed democratic functions, these communities were clearly undeserving of the privileges of sovereignty—and the assumption of constitutional and democracy legitimacy—that the Court saw fit to extend.

Further, this judicial solicitousness towards municipal lines is anomalous within the Court’s jurisprudence. In election law cases, the Court routinely disestablished extant boundary lines that impeded superseding constitutional principles.⁹² When a state or locality is accused of racial gerrymandering—when it deprives minority voters of their right to an equal opportunity to participate in the democratic process—it is not exculpatory for the municipality to claim that its districts reflect a functional political community. The presence of a definable community may be a legitimate factor in redistricting, but “a state runs a risk of a legal challenge if it does not redraw boundaries to account for [shifts] in racial demography” because the Voting Rights Act and the Equal Protection Clause together impose “a continual duty to fulfill the requirements of those laws.”⁹³ Legal and constitutional imperatives do not typically yield to boundary lines selected and maintained by the state.

By contrast, when the Court adjudicates public education cases, it acts as if there is “no principle other than local control” to guide its decision-making.⁹⁴ As Myron Orfield has noted, there is no principled reason why the Supreme Court should “redraw[] [voting districts] to protect individual voting rights in spite of rational and legitimate local government interests” but remain unwilling to require “school districts . . . to cooperate with each other to protect the rights of black children to attend nonracially segregated schools[.]”⁹⁵ The principle that justifies this distinction—school district sovereignty—was not compelled by local government law or by the history of school district formation. When the contingent reality of where district boundaries lay undermined efforts to realize constitutional principles, and where an alternative arrangement could better meet that requirement were available, the Court need not have deferred to that contingent reality. Instead, the Supreme Court sacrificed democratic principles to respect a school district it had unnecessarily endowed with democratic legitimacy and the powers of sovereignty.

⁹¹ *Id.*

⁹² *See, e.g.,* Allen v. Milligan, 599 U.S. 1, 29 (2023) (noting that courts have redrawn congressional and state legislative districts on numerous occasions to comply with Section 2 of the Voting Rights Act).

⁹³ Christopher A. Suarez, *Democratic School Desegregation*, 119 PENN. ST. L. REV. 747, 773 (2015).

⁹⁴ *Id.* at 780.

⁹⁵ Orfield, *supra* note 80, at 414.

III. CITIZENSHIP AND DEMOCRACY WITHIN THE SOVEREIGN SCHOOL DISTRICT

The Supreme Court's embrace of the sovereign school district as a democratic ideal in its own right had significant consequences for the health of American democracy. The primary issue this shift occasioned was the one the *Milliken* dissenters were most concerned about: it undermined efforts to realize *Brown*'s constitutional requirement for desegregated public schools, exacerbating the problem while shifting it from one of intra- to inter-district racial isolation.⁹⁶ By deferring to the self-organized "citizens" of sovereign school districts, the Court disclaimed responsibility for interrogating whether boundary lines reinforced perverse community-formation; by entrenching a funding system largely dependent on intradistrict wealth, the court legitimized these "citizens'" efforts to exclusively concentrate resources on their own children, without regard for the resulting inequalities. In turn, school districts became more segregated and more unequal.⁹⁷

Yet the two features of school district sovereignty the court consecrated in its post-*Brown* education cases—deference to self-defined district borders and approval of funding schools predominantly through in-district property taxes—had profound consequences for American democracy that extend well beyond the constitutional injury of racial segregation. While racial segregation is itself inimical to democracy, undermining the possibility that citizens will recognize citizens of other races as equal members of a shared community and distorting democratic decision making by irrationally excluding minority voices, entrenching school district sovereignty also corrodes democracy in less visible ways. These effects largely go unnoticed because school district sovereignty is conflated with local control of public education. Whereas entrenching the former requires assigning to parents the rights of citizens of sovereign political communities, respecting the latter demands only respect for the institutions and practices that facilitate parental participation in the communal governance of their children's public schools. Fostering local control can, when appropriately circumscribed, be a good thing: it deepens a community's sense of responsibility for its children and supplies flexible context-specific education management. Local control can facilitate parental involvement that "probably improves academic

⁹⁶ See Kendra Taylor, Erica Frankenberg, & Genevieve Siegel-Howley, *Racial Segregation in the Southern Schools, School Districts, and Counties Where Districts Have Seceded*, 5 AM. EDUC. RSCH. ASS'N 1, 6 (2019), <https://journals.sagepub.com/doi/full/10.1177/2332858419860152>.

⁹⁷ Erica Frankenberg & Chungmei Lee, *Race in American Public Schools: Rapidly Resegregating School Districts* Harvard Univ.: C.R. Project (Aug. 2002), <https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/race-in-american-public-schools-rapidly-resegregating-school-districts/frankenber-rapidly-resegregating-2002.pdf> ("From the late 1960s on, some districts in all parts of the country began implementing such plans although the courts made it much more difficult to win desegregation orders outside the South and the 1974 Supreme Court decision against city-suburban desegregation made real desegregation impossible in a growing number of overwhelming minority central cities.").

achievement” and contributes to the creation of the civic institutions that engender the development of “genuine functional communities.”⁹⁸

Local control does not, however, demand the full suite of rights accorded to the citizens of sovereign school districts. The right to community self-definition and the hoarding of community resources are not inherent features of local control. These rights are not required for parents to vote in school board elections, organize extracurricular events, establish parent support groups, demand changes to the curriculum, and otherwise enjoy the benefits that emanate from participating in civic life. As the *San Antonio ISD* dissenters recognized, providing these rights undermines the very democratic goals to which local control aspires.⁹⁹ This occurs primarily in two ways: first, by producing interdistrict inequalities that dispossess marginalized communities of their capacity and right to exercise democratic control over public education, and second, by fostering a sense of community that is at once predicated on racial exclusion but blind to the role race plays in ostensibly democratic decision making. A closer examination of these two consequences of school district sovereignty reveals how a doctrine justified by public education’s fundamental importance to American democracy instead corrodes democratic life.

A. How School District Sovereignty Produces Inequalities that Diminish the Possibility of Democratic Governance in Marginalized Communities.

School district sovereignty perpetuates interdistrict inequality by shielding privileged communities from claims on their resources: school district “citizens” tax *themselves* to provide for *their own* welfare, without regard for the consequences imposed on outsiders. School district sovereignty marks privileged communities as distinct from marginalized ones and, in the process, exacerbates the magnitude of interdistrict inequality. As residents “sort[] themselves across districts by income,” districts that attract wealthier parents “become increasingly wealthy while those that fail become ever more poor and distressed.”¹⁰⁰ This produces a one-way ratchet effect: the “pull” to relocate into increasingly homogenous and well-resourced districts becomes stronger, as does the “push” to leave increasingly impoverished districts facing concomitantly magnified levels of concentrated need. At the same time, wealthy communities accrue further wealth by incorporating the value of living in a privileged school district into their property values, thus expanding the pool of resources they have

⁹⁸ Saiger, *supra* note 84, at 520.

⁹⁹ Charles J. Ogletree Jr., *The Legacy and Implications of San Antonio Independent School District v. Rodriguez*, 17 Rich. J.L. & Pub. Int. 515 (2014) (explaining that Justice Marshall’s dissent “found the state’s only justification -- the importance of local educational control -- to be an excuse rather than a justification for the educational inequity that was presented to the district court” and also, “[t]he need for local educational control did not suggest that there also must be local fiscal control and -- even if local fiscal control was judged important . . .”) (internal citations omitted).

¹⁰⁰ *Id.* at 500.

available even as their level of baseline educational need diminishes due to the dispersion of less wealthy families in the face of rising property values.

While some states try to ameliorate interdistrict inequalities through state-level equalization systems, many do not, and even those that do are typically unable to fully close massive interdistrict funding gaps.¹⁰¹ Further, school district sovereignty attenuates political support for equalization efforts by making the school district community the node of political advocacy. Sovereignty legitimizes a community's demand for policies that improve their own schools but fail to address outsiders' problems. Because wealthy districts have greater property value and can achieve desired levels of education spending with a lower tax effort than poorer districts, there is limited political support for meaningful equalization efforts.¹⁰² Wealthy communities are incented to advocate for self-preservative policies that foreswear state or federal interference that would interfere with their sovereign community.

The democratic consequences of school district sovereignty are profound. This section highlights two ways that the interdistrict inequalities produced by school district sovereignty undermine the possibility of democratic control in marginalized communities: by *functionally* constraining the space for democratic decision making over public education, including by excluding parents in marginalized communities from public education's governance structures, and by laying the ground work for *formally* dispossessing marginalized communities of their right to exercise democratic control over public education. Viewed against privileged communities' sacrosanct right to exercise democratic control over their schools, this democratic disparity works to constitute two tiers of citizenship by marking off members of marginalized communities as pathologically deficient and democratically unworthy. In practice, guaranteeing the "sovereignty" of privileged school districts produces interdistrict inequalities so stark that marginalized communities are rendered unworthy of their core democratic rights.

1. *Diminishing marginalized communities' ability to realize their education policy preferences.*

The interdistrict inequalities that school district sovereignty entrenches diminishes the functional capacity of marginalized parents to collectively govern their communities' schools. Pervasive underfunding dramatically narrows the possible space for and scope of decision making over public education. This is because, as Justice Marshall rightly noted in his *San*

¹⁰¹ See, e.g., BRUCE D. BAKER & SEAN P. CORCORAN, THE STEALTH INEQUALITIES OF SCHOOL FUNDING: HOW STATE AND LOCAL SCHOOL FINANCE SYSTEMS PERPETUATE INEQUITABLE STUDENT SPENDING, CTR. FOR AM. PROGRESS, (Sept. 19, 2012), <https://www.americanprogress.org/article/the-stealth-inequities-of-school-funding/>.

¹⁰² See, e.g., Erin E. Kelly, Note, *All Students Are Not Created Equal: The Inequitable Combination of Property-Tax-Based School Finance Systems and Local Control*, 45 DUKE L. J. 397, 397–98 (1995).

Antonio dissent, a community's capacity to exercise local control is contingent on its capacity to (1) fund programs and initiatives it deems necessary to improving public schools within its district, and (2) make tradeoffs between funding for public schools and other priorities that residents in the district may have.¹⁰³ Functionally, a wealthier community has far greater democratic control over their public schools than a poorer one.

Yet even if funding levels are bolstered by state and federal equalization, poorer districts do not exercise anything approaching the same level of democratic control as wealthy ones: poorer districts definitionally serve student populations with much higher levels of concentrated need, demand a greater allocation of resources to achieve that which is possible with far fewer resources in a wealthy district, and are generally less effective at teaching students than districts with less concentrated poverty.¹⁰⁴ For example, the amount of funding required to ensure that all students in the 3rd grade are literate in a poor district is, generally, greater than the amount required in a wealthy one. The poorer district must devote a far greater share of its resources merely to ensuring basic competency or even providing a minimal level of stability and safety in school buildings. This is due to a combination of wealthier parents' greater capacity to invest in early education and other intellectually stimulating environments for their children pre-formal schooling, the accumulated disadvantage that accrues each year a child is enrolled in a lower-quality educational program, and the unique stressors children living in poverty face which inhibit effective teaching and learning in the classroom.¹⁰⁵ This restricts democratic control in poorer communities because the higher tax effort required to sustain a minimally adequate level of education leaves poorer localities with less

¹⁰³ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 73–74 (1973) (Marshall, J., dissenting) (“regardless of the enthusiasm of the local voters for public education, the second factor—the taxable property wealth of the district—necessarily restricts the district’s ability to raise funds to support public education.” Thus, even though the voters of two Texas districts may be willing to make the same tax effort, the results for the districts will be substantially different if one is property rich while the other is property poor. The necessary effect of the Texas local property tax is, in short, to favor property-rich districts and to disfavor property-poor ones.”).

¹⁰⁴ See Sean F. Reardon, Ericka S. Weathers, Erin M. Fahle, Heewon Jang, & Demetra Kalogrides, *Is Separate Still Unequal? New Evidence on School Segregation* 1 (Stanford CEPA, Ctr. for Educ. Pol’y Analysis, Working Paper No. 19-06), available at <https://cepa.stanford.edu/sites/default/files/wp19-06-v082022.pdf> (“The association of racial segregation with achievement gap growth is completely accounted for by racial differences in school poverty (termed ‘racial economic segregation’). Thus, racial segregation is harmful because it concentrates minority students in high-poverty schools, which are, on average, less effective than lower-poverty schools.”).

¹⁰⁵ Daniel Schneider, Orestes P. Hastings, & Joe LaBriola, *Income Inequality and Class Divides in Parental Investments*, 83 AM. SOCIOLOGICAL REV. 475, 477 (2018), <https://journals.sagepub.com/eprint/jn7n8iH98Gua7KIdEeWk/full> (“Examining parental investments of money and time along the axes of education and income shows clear stratification. There are substantial differences in parents’ expenditures on children by parents’ income group. . . . Parental time investments in children are also strongly patterned by socioeconomic status. . . . There also appear to be widening gaps by class in parental investments of time.”); Clancy Blair, & C. Cybele Raver, *Poverty, Stress, & Brain Development: New Directions for Prevention and Intervention*, 16 ACAD. PEDIATRICS 30, 30 (2016), <https://www.academicpedsjnl.net/action/showPdf?pii=S1876-2859%2816%2900026-7> (“Effects of poverty on brain development start early and are seen in infancy.”)

revenue to devote to ameliorating background conditions like childhood poverty, leaving already disadvantaged parents with comparatively less discretionary income to invest in their children's wellbeing.¹⁰⁶ On the whole, wealthier communities are characterized by less extra-educational need, which translates into reduced demands on educational spending, even as they retain greater flexibility to make tradeoffs holistically due to the lower tax effort required to maintain high quality schools.

2. Diminishing marginalized communities' capacity to participate in the collective governance of their public schools.

Beyond constraining marginalized communities' policy choices in administering their schools, the massive interdistrict inequalities school district sovereignty facilitates also works to exclude marginalized parents from the governance process itself. This exclusion emerges from the lived experience of attending and attempting to exercise democratic control over underfunded school districts serving student populations with high levels of concentrated poverty. Whereas citizens in privileged communities exercise control over their schools through participating in various formal and informal governance mechanisms, citizens in marginalized communities often experience schools as institutions of oppression and control. In the former, governance structures invite citizens in, enabling them to exercise influence over the collective management of their children's education; in the latter, governance structures are inaccessible, unwieldy, and undemocratic. This differential character "construct[s] systematic forms of inequality and exclusion, exacerbating systemic racial and economic inequities."¹⁰⁷ Parents experience governance not as the fulfillment of a civic responsibility and exercise of a right of citizenship, but as "domination," as "arbitrary" power that "undermines freedom" and constructs two classes of citizenship.¹⁰⁸ This experience can be illuminated through the lens of what legal scholar K. Sabeel Rahman calls "exclusionary strategies."¹⁰⁹ These strategies work to inhibit marginalized citizens' capacity to exercise their right as citizens to participate in the governance of the collective civic institutions upon which they and their community depend.¹¹⁰

The first exclusionary tactic Rahman identifies is bureaucratization, which arises when "policymakers deliberately make the process of accessing or enrolling in vital services difficult for a specific subset of the population."¹¹¹ As discussed previously, the funding system that school

¹⁰⁶ See, e.g., CATHERINE BROWN, SCOTT SARGRAD, & MEG BANNER, HIDDEN MONEY: THE OUTSIZED ROLE OF PARENT CONTRIBUTIONS IN SCHOOL FINANCE, CTR. FOR AM. PROGRESS (Apr. 8, 2017), <https://www.americanprogress.org/article/hidden-money/>.

¹⁰⁷ See K. Sabeel Rahman, *Constructing Citizenship: Exclusion and Inclusion Through the Governance of Basic Necessities*, 118 COLUM. L. REV. 2447, 2450 (2018).

¹⁰⁸ *Id.* at 2458.

¹⁰⁹ *Id.* at 2447.

¹¹⁰ *Id.* at 2447–48.

¹¹¹ *Id.* at 2452.

district sovereignty enables undermines marginalized children's access to even the minimally adequate education necessary to develop into a full and equal citizen. But this lack of resources also undermines marginalized districts' capacity to maintain safe, modern, healthy public-school buildings. In marginalized districts, decrepit school facilities are shockingly common.¹¹² School buildings lack adequate heating and ventilation, expose children to toxic chemicals, fail to provide sufficient classroom space, and cause children to miss school by necessitating school closures due to weather and by exacerbating (or causing) severe respiratory ailments and other illnesses,¹¹³ as the COVID-19 pandemic illustrated. Many districts are forced to shutter schools, sometimes unexpectedly, requiring children to travel for hours to attend unfamiliar schools and imposing significant burdens on caregivers.¹¹⁴ They must navigate byzantine enrollment processes that benefit families with the cultural and resource capital necessary to work the system. Once they get to school, marginalized children are subjected to intrusive "security" measures, enforced by "school resource officers" that transform schools from welcoming communities into heavily-policed institutions of control.¹¹⁵ They experience disciplinary policies that pathologize Black children's behavior and literally exclude them from school buildings through disproportionate suspensions and expulsions.¹¹⁶ Enrolling in, accessing, and maintaining a connection to the public school is transformed from a building block of everyday community life into an ordeal that both symbolically and meaningfully excludes marginalized citizens.

The second exclusionary tactic is privatization and financialization, which occurs when a governance authority "transfers the financing and control of these goods from public hands to private operators and financial investors, introducing problematic revenue-generating incentives and shrouding the goods from greater public accountability."¹¹⁷ This occurs frequently in financially distressed districts which, while retaining their formal "sovereignty," are instead governed by private entities expressly shielded from community accountability. In some districts, this occurs through the widespread transference of responsibility for operating

¹¹² See, e.g., Corsica D. Smith, *Continued Disparities in School Facilities: Analyzing Brown v. Board of Education's Singular Approach to Quality Education*, 3 TENN. J. OF RACE, GENDER, & SOC. JUST. 39 (2014).

¹¹³ See, e.g., Andre M. Perry, *Baltimore Students Need More Than Space Heaters; They Need Justice*, BROOKINGS (Jan. 10, 2018), <https://www.brookings.edu/articles/baltimore-students-need-more-than-space-heaters-they-need-justice/>; Elinor Simons, Syni-An Hwang, Edward F. Fitzgerald, Christine Kielb, Shao Lin, *The Impact of School Building Conditions on Student Absenteeism in Upstate New York*, 100 AM. J. PUB. HEALTH 1679, 1679–85 (2010) (documenting correlation between school facilities issues like poor ventilation, mold, and plumbing issues with student absenteeism).

¹¹⁴ See, e.g., Carrie Spector, *Research Finds Racial Disparity in School Closures*, PHYS ORG (Oct. 23, 2023), <https://phys.org/news/2023-10-racial-disparity-school-closures.html>.

¹¹⁵ See, e.g., Jack Denton, *When Schools Increase Police Presence, Minority Students Are Harmed Disproportionately*, PAC. STANDARD (Feb. 15, 2019), <https://psmag.com/education/after-parkland-schools-upped-police-presence-has-it-made-students-safer>.

¹¹⁶ See, e.g., Brenda L. Townsend, *The Disproportionate Discipline of African American Learners: Reducing School Suspensions and Expulsions*, 66 EXCEPTIONAL CHILD. 381 (2000).

¹¹⁷ Rahman, *supra* note 107, at 2452.

ostensibly public schools to private for-profit “Education Management Organizations.” For-profit school operators are legally accountable to shareholders and their private owners and must deliver educational services at a sufficiently low-cost to generate a profit on the per-pupil funding the company receives to educate each child.¹¹⁸ Even non-profit charter school operators have the potential to introduce distorting financial incentives, as their sustainability depends on their capacity to attract sufficient numbers of students—and in some cases, sufficient numbers of the right kind of students (e.g., those who need less resources to adequately educate)—leading to ethically dubious practices like paying families to enroll their children in certain schools.¹¹⁹ Although non-profit charter operators may be *accountable* to public entities, they are *governed* by independent charter school boards frequently comprised of private sector leaders and donors whose children are not enrolled in the school they manage.¹²⁰ Privatization and financialization also arises from the wide-spread outsourcing of contracts for school support services to privately-managed for-profit companies, whose profit imperatives may lead to decision making that prioritizes factors other than academic success.¹²¹ Decisions about how to administer public schools are transformed from publicly accountable community decisions aiming to promote educational achievement into opaque decision making by private actors with self-serving financial motivations.

The third exclusionary tactic is fragmentation, which arises when governance structures make it harder for marginalized communities to hold authorities accountable by “limit[ing] putative equal access regimes through decentralization and the imposition of state or local jurisdictional boundaries.”¹²² School district sovereignty itself guarantees a fragmented governance regime. While the right to an adequate public education is typically derived from state constitutions, the entity primarily responsible for ensuring that right is vindicated is the local school district. In this balkanized system, the devolution of authority to sovereign school districts differentially empowers each community’s governing authority the power to deliver a quality public education. Citizens in marginalized communities are substantially less capable of asserting political pressure to achieve their educational goals because their district is substantially less capable of marshalling the necessary resources to achieve them.

¹¹⁸ See Mark Binelli, *Michigan Gambled on Charter Schools. Its Children Lost.*, N.Y. TIMES (Sept. 5, 2017), <https://www.nytimes.com/2017/09/05/magazine/michigan-gambled-on-charter-schools-its-children-lost.html>.

¹¹⁹ See, e.g., Rachel M. Cohen, *Cash Incentives for Charter School Recruitment: Unethical Bribe or Shrewd Marketing Technique?*, INTERCEPT (May 18, 2018, 12:57 PM), <https://theintercept.com/2018/05/18/charter-school-recruitment-financial-incentives/>.

¹²⁰ See J. Celeste Lay & Anna Bauman, *Private Governance of Public Schools: Representation, Priorities, and Compliance in New Orleans Charter School Boards*, 55 URB. AFFS. REV. 1006 (2017).

¹²¹ See, e.g., Sean Cavanaugh, *Schools Evaluate Whether to Privatize Support Services*, EDUC. WEEK (Apr. 22, 2013), <https://www.edweek.org/ew/articles/2013/04/24/29ii-privatize.h32.html>.

¹²² Rahman, *supra* note 107, at 2452.

Fragmentation also occurs when marginalized communities are required to further decentralize governance authorities within their own district boundaries. For example, in some under-resourced, predominantly minority-serving school districts, financial pressures have occasioned the wholesale transfer of governance authority from local school boards to charter-management organizations (CMOs).¹²³ There may be dozens or even hundreds of CMOs operating schools within a single school district, some of which are outposts of national organizations, each with its own governance board. Parents experience their own locally controlled school district not as a unified entity but instead as an assortment of independent providers they must navigate between to find an adequate option for their child. The school district, a supposed building block of collective civic life, becomes something akin to a technology platform, ostensibly maintaining some measure of oversight authority through the process of selecting education “providers” but devolving the actual administration of public schools entirely to independent entities. These independent entities are even less capable of delivering the kind of systemic or structural reform necessary to achieve educational equity for the community as a whole, diminishing parents’ capacity to wield political pressure to effectuate better district-wide outcomes, especially relative to parents’ in truly unified, consolidated school districts.

A final exclusionary tactic, one not expressly contemplated by Rahman’s framework, is when marginalized communities are formally dispossessed of their legal governance rights. The mechanism by which this occurs is the takeover, wherein the state eliminates or significantly diminishes a local school board’s governance authority and assigns it to itself or to an ostensibly independent entity.¹²⁴ Typically, state laws trigger mandatory takeovers of school districts that face a risk of fiscal insolvency or persistently fail to meet academic benchmarks. While these legal consequences attach only to the “failing” district, that district’s “failure” to meet state benchmarks typically results from the predictable consequences of underfunding, exacerbated by the socioeconomic sorting that school district sovereignty facilitates.

When student populations drop precipitously—for example, due to post-industrial urban depopulation in the Midwest—school districts suffer a loss of revenue and a diminished funding base due to their reliance on local property taxes. Sovereign boundary lines give relatively privileged parents the option to flee to a nearby suburb, cabining the effects of a metropolitan-wide economic crisis within the most marginalized districts.¹²⁵ In this way, the *Milliken* Court’s decision to endow school district’s with sovereign

¹²³ See, e.g., Emmanuel Felton, *New Orleans Argues Whether an All-Charter City Can Be Truly Democratic*, THE NATION (May 21, 2019), <https://www.thenation.com/article/archive/new-orleans-public-education-charter-democracy/>.

¹²⁴ See Kristi L. Bowman, *State Takeovers of School Districts and Related Litigation: Michigan as a Case Study*, 45 URB. LAW. 1 (2013).

¹²⁵ Orfield, *supra* note 80, at 437.

territoriality “made local self-government in Detroit and Michigan’s other predominantly black cities impossible” because it gave privileged white families the assurance that “it was safe to flee and that [the court] would protect them” without regard for the children left behind.¹²⁶ This creates the conditions that demand state intervention—a rapidly diminished tax base, an increasingly needy student population, and the collective traumas of deindustrialization are a recipe for financial distress and academic struggles. Unsurprisingly, then, it is disproportionately predominantly Black communities that are subject to state takeovers. According to one study, more than “50 percent of . . . black citizens [in Michigan] lived in cities where local control was removed” as of 2013.¹²⁷ “Nearly 85 percent of takeovers occur in districts where blacks and Latinos make up the majority of the student population . . .” and states are far more likely to retain local school boards when they takeover majority white districts.¹²⁸

Takeovers aim to reverse the dynamics that perpetuate depopulation by curing whatever governance failures ostensibly caused the school district’s distressed condition. During a takeover, the entity or individual assuming governance responsibility is supposed to do so temporarily, for only whatever period of time is necessary to cure the defect that triggered the takeover in the first place—generally, fiscal strain or persistent academic underperformance. In practice, takeovers are rarely successful in improving a district’s financial position or academic performance,¹²⁹ likely because those conditions are caused by underlying interdistrict structural inequalities as opposed to than the district’s own governance failings.

Further, the conceptual underpinnings of dispossessing marginalized school districts of local control to reverse depopulation are confused, at best. If democratic control is a fundamental aspect of effective school governance, it seems exceedingly unlikely that depriving a community of even the formal authority to govern its own schools will catalyze meaningful progress towards a thriving public education system. Nor is it likely to incent other families to join that community—indeed, it is likely instead to drive remaining families with means away. Takeovers typically give rise to a host of conditions that would be unthinkable in predominantly white school districts. These conditions include deferring educational decision making to unelected, unaccountable technocrats funded by national foundations and supported by for-profit consultants, the proliferation of charter schools that prioritize performance on high-stakes test and implement strict codes of school discipline, and dramatic policy overhauls that frequently include

¹²⁶ *Id.* at 452.

¹²⁷ *Id.* at 455.

¹²⁸ See DOMINGO MOREL, TAKEOVER: RACE, EDUCATION, AND AMERICAN DEMOCRACY 50 (Oxford Univ. Press) (2018).

¹²⁹ See Alan Greenblatt, *The Problem With School Takeovers*, GOVERNING (May 21, 2018), <https://www.governing.com/archive/gov-school-takeovers-newark-new-jersey.html> (discussing studies arguing that takeovers “do very little if anything to improve student performance, while dramatically driving up rates of [teacher] turnover.”).

mass school closures, teacher layoffs, and increased reliance on unproven educational technology.¹³⁰

Given that takeovers are typically unsuccessful as alternative governance strategies, it is appropriate to view them as part of a legal regime that punishes and pathologizes “undeserving” or “flawed” communities by recharacterizing collective social failures as individual ones. Subjecting these communities to invasive supervision reinforces stereotypical notions of its members’ lack of autonomy, competence, and commitment to education. In this view, certain communities do not get democratic rights because they are thought to be incapable of exercising them. State takeover regimes reflect a “moral construction” of the purportedly contingent condition that causes the state to retract certain citizens’ democratic rights, ascribing reason for dramatic state intervention to the communities’ “flawed character” rather than the state’s own failures to create a society where all communities can exercise meaningful democratic self-governance.¹³¹ It treats citizens of those communities not as “equal citizens of the state,” with the same rights as all other citizens to make claims on the state’s responsibility to provide for their welfare, but as “subjects of a state that sees them as a social problem.”¹³² This treatment embodies and expresses negative, stereotypical attitudes, casting residents in struggling districts as “second-class citizens.”¹³³ It reinforces culturally-determinate and essentialist understandings that ascribe school district performance to certain communities’ lesser moral worth and lesser commitment to their children, rather than the structural conditions that privileged communities’ help create and which the notion of school district sovereignty hides from legal or political concern.

B. How School District Sovereignty Produces Racially Exclusionary Community Identities While Eliding the Function of Race in Public Education.

School district sovereignty further corrodes democracy by reifying racially exclusionary community-formation while, at the same time, obscuring the central role race plays in constituting the “communities” that school district boundary lines reflect. The harm is deeper than the fact of racial segregation alone: the features of school district sovereignty, the establishment of sacrosanct district boundary lines through which governance and funding are conducted, makes racially identifiable

¹³⁰ See, e.g., Molly Gott & Derek Seidman, *Mapping the Movement to Dismantle Public Education*, JACOBIN (June 4, 2018), <https://jacobin.com/2018/06/public-education-privatization-koch-brothers-teachers>.

¹³¹ Danielle Keats Citron, Comment, *A Poor Mother’s Right to Privacy: A Review*, 98 B.U. L. REV. 1139, 1145 (2018).

¹³² *Id.* at 1146.

¹³³ *Id.* (citing KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* 113 (2017)) (explaining how aggressive state interventions presuppose that targeted population is less-than-equal and signal that targets are dependent subjects in need of saving from themselves, rather than autonomous equal citizens of the polity).

communities coherent, politically salient, and legitimate, without acknowledging race as the central organizing principle. Instead, the school district serves as a bloodless stand-in.

School district sovereignty contributes to what John O. Calmore terms the “racialization of space,” which he defines as “the process by which residential location and community are carried and placed on racial identity.”¹³⁴ Space becomes “racialized” when patterns of residential location are fixed along racially identifiable lines, transforming location into “an index of the attitudes, values, behavioural inclinations, and social norms of the kinds of people who are assumed to live [there].”¹³⁵ Racialized space encourages non-residents to adopt culturally deterministic or biological supremacist models that ascribe residents’ outcomes to the “fact” of their race. It invites people to assume that marginalized communities look and act a certain way because they live in a certain place, and they live in a certain place because they look and act a certain way. This elides the background structural conditions that produce concentrated poverty and the dynamics of racial sorting in the first place. Latent racial prejudices supply non-residents with “‘common sense’ explanations” for what happens to certain people who live only in certain areas: the realities of living in concentrated poverty then produce outcomes which confirm that underlying prejudice.¹³⁶

By constructing political space along racially identifiable lines, the features of school district sovereignty allow privileged white communities to maintain racial hierarchy without forcing them to confront the moral discomfort of acting in a consciously discriminatory way. They permit white citizens to claim that racial segregation arises naturally, without the need for overt exclusion or violence. This makes inequality a natural feature of political geography, a condition that arises out of the differential capacities of citizens of different sovereign communities rather than a common, intertwined societal failing. It excludes marginalized citizens from the community of citizens who can make legitimate claims on governing authorities with the power to meet their political demands, who can enact policies that would help to disestablish racial hierarchy. As Gregory Weiher has written:

The drawing and redrawing of political boundaries is a more subtle strategy than confrontation, but its effects are more pervasive and enduring. Indeed, if political boundaries are appropriately drawn, confrontation is not required to maintain racial separation. The “second class citizen,” though he or she may be relatively disadvantaged, may

¹³⁴ John O. Calmore, *Racialized Space and the Culture of Segregation: “Hewing a Stone of Hope from a Mountain of Despair”*, 143 U. PA. L. REV. 1233, 1235 (1995).

¹³⁵ *Id.* at 1236 (alteration in original).

¹³⁶ *Id.* at 1242–43 (“This reciprocal, or mutual, causation of race and representation is also a significant aspect of racialization and racial formation. Social situations give rise to the circumstances and the structures of inequality that sustain particular notions of race.”).

nevertheless gain some satisfaction by insisting upon the rights shared by all citizens. The non-citizen, one who is outside the political space, can make no claim upon the resources or guarantees of the polity, no matter how wretched may be his or her situation. Political boundaries that give geographic manifestation to racial antipathies permit citizenship to be manipulated to serve racial purposes.¹³⁷

In this manner, school district sovereignty enforces racial hierarchy while obviating the need for the kinds of overtly racially discriminatory acts that would trigger judicial intervention under modern day Equal Protection Clause doctrine. Sovereign boundaries assign problems produced by all of society to the residents of a circumscribed political entity, explain those problems as resulting from that community's own failings, and then preclude that community's residents from making claims for redress on the authorities actually capable of delivering meaningful relief.

School district sovereignty provides a mechanism for acting upon the latent biases that racialized space perpetuates and confirms. The "cost" of avoiding disfavored racial space is low, at least for relatively well-off parents: they can simply move into another school district with minimal disruption to their lives, guaranteeing their child's access to schools within an agreeable racial community but still benefiting from access to the broader metropolitan region.¹³⁸ Parents who flee urban school districts need not acknowledge the role racial prejudice plays in that choice. The choice to move to a different community on the grounds that it has "better schools" is an available explanation for a choice that is motivated, at least indirectly, by race and which perpetuates racial hierarchy; it is, for many Americans who hold otherwise liberal racial views, a morally palatable grounds for a decision that otherwise cuts directly against their stated values. School district sovereignty rationalizes prejudice-informed choices by concretizing and making visible the consequences of educational disparities: it is generally at the unit of the school district that the data wealthy and white parents ostensibly select upon, such as test scores, class sizes, per-pupil funding, and student demographics, are reported. These decisional factors are legible without reference to a parent's underlying racial views—they are "facts" that provide parents with the information they need to make the best choices for their children. But this process, shielded from judicial intervention by the doctrine of school district sovereignty, reproduces and exacerbates the underlying interdistrict inequalities that fuel racial and socioeconomic stratification, and thus undermine the possibility of true democratic equality between the citizens of different, highly unequal school district sovereigns.

¹³⁷ ANDERSON, *supra* note 38, at 64.

¹³⁸ See, e.g., Saiger, *supra* note 84, at 504.

1. *Fostering colorblindness and suppressing political discourse about race.*

School district boundary lines that entrench racialized space exacerbate the inequalities that racially identifiable school districts produce by directing attention away from systemic, collective efforts to improve public education and towards opportunity-hoarding by privileged communities.¹³⁹ Racialized space gives white parents a “rational” reason to avoid sending their children to “urban” districts, because the dynamics that concentrated poverty produces within school systems *are* undeniably harmful to children, and can justify efforts (by all parents) to seek out other options for their children.¹⁴⁰ This child-serving rationale supplies “already advantaged communities [with] a positive, legally sanctioned, and politically persuasive rationale for making choices that further cement advantage for their children.”¹⁴¹ These choices, in the aggregate, entrench the subjugation and exclusion of marginalized citizens from the democratic community. White parents’ perception of racialized space has significant consequences for the long-term health of American democracy because it incents them to deprive their children of opportunities for meaningful cross-racial interactions at a formative age, supplying instead an early lesson in racial discomfort, avoidance, and bias that children quickly pick up on.¹⁴²

This dynamic prefigures and reinforces the Supreme Court’s turn towards color-blindness as the defining principle animating the Equal Protection Clause. The Court has adopted an aspirational goal of colorblindness as a present-day constitutional norm mandating equal treatment of all individuals without accounting for their race. Yet the Court fails to account for the conditions in which colorblindness would produce equality; colorblind justice could only be possible when racial prejudice, discomfort, and avoidance are no longer salient within democratic decision making and when the inequitable social conditions that racial ordering has produced are disestablished. This assumption of the normative desirability of colorblindness permits political leaders to “effectively ignore the legacy of public policies that resulted in inequality,” including the school district boundary lines that produce and reinforce racialized space, legitimating the choices of parents by permitting them to “seek separate schools for their children and/or those who can afford to live in relatively homogeneous

¹³⁹ See, e.g., Genevieve Siegel-Hawley, Sarah Diem, & Erica Frankenberg, *The Disintegration of Memphis-Shelby County, Tennessee: School District Secession and Local Control in the 21st Century*, 55 AM. EDUC. RSCH. J. 651, 659 (2018) [hereinafter Siegel-Hawley].

¹⁴⁰ See, e.g., Stephen J. Schellenberg, *Annotated Bibliography: The Impact of School-Based Poverty Concentration on Academic Achievement & Student Outcomes*, POVERTY & RACE RSCH. ACTION COUNCIL (2009), https://www.prrac.org/pdf/annotated_bibliography_on_school_poverty_concentration.pdf.

¹⁴¹ Siegel-Hawley, *supra* note 139, at 653.

¹⁴² See Luigi Castelli, Cristina Zogmaister, & Silvia Tomelleri, *The Transmission of Racial Attitudes Within the Family*, 45 DEVELOPMENTAL PSYCH. 586, 586 (2009) (finding that a mother’s implicit racial attitudes were a significant predictor of a child’s racial attitudes).

neighborhoods [while] easily justify[ing] such moves without regard to race.”¹⁴³

It is this race-effacing logic—the permission structure it enacts, the neutral-seeming rationality it embeds, the palliative child-centric justifications it supplies—that best explains why parents who resist alterations to school district boundary lines or assignment policies express such shock and outrage when they are accused of acting out their racial views. In a vacuum, parents choosing what is “best” for their children is no more a democratic problem than the state treating all children equally without regard for their race. But society does not exist in a vacuum. In each case, adopting a colorblind decisional norm perpetuates racial hierarchy because it occurs against a backdrop of racial oppression which the norm itself invites the decisionmaker to ignore. Baseline assumptions about school district sovereignty, that political boundary lines emerge naturally and reflect authentic communities, obscure the reality that school district boundaries result from pervasive racial ordering, imposed, enforced, and encouraged by the state.

Parent testimony in opposition of efforts to facilitate greater levels of school integration in Howard County, Maryland, illustrates the democracy-corroding mode of deliberation about public education that school district sovereignty produces. As many parents argued, altering school boundary lines to bring in more minority students would lead to an influx of “[c]hildren who are being reared by [p]arents or caregivers who care nothing about the education of their children,” “urbanized people of color,” “[b]ad undisciplined children,” and “[b]lack families . . . [that] don’t value education like other cultural groups.”¹⁴⁴ This change in demographics would be “counterproductive . . . to our goal of creating a more cohesive community”¹⁴⁵ As evidence justifying why the community could only be maintained by excluding these families, they cited the very real struggles children face in Baltimore Public City Schools: but these struggles result from the choice to systematically underfund a district which serves a student population with far greater levels of concentrated need, a policy these parents (as Maryland residents) have (at a minimum) tolerated.¹⁴⁶ In turn, these problems confirm their own (often, but not always, unstated) beliefs about Black parents’ and Black children’s attitudes towards education. They ignored how their own choices to locate in a nearby school district and embrace a system that funds schools through local property taxes produced

¹⁴³ Siegel-Hawley, *supra* note 139, at 659.

¹⁴⁴ See Edwin Rios, *Racists in One of America’s Richest Counties Are Freaking Out Over a “Forced Busing” Proposal*, MOTHER JONES (Oct. 7, 2019), <https://www.motherjones.com/politics/2019/10/racists-in-one-of-americas-richest-counties-are-freaking-out-over-a-forced-busing-proposal/>.

¹⁴⁵ *Id.*

¹⁴⁶ See, e.g., Liz Bowie & Talia Richman, *Civil Rights Groups Ask Court to Force Maryland to Spend Hundreds of Millions More on Baltimore Schools*, BALT. SUN (Mar. 8, 2019, 1:25 PM), <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-lawsuit-aclu-20190307-story.html>.

the very conditions in Baltimore that they feared. They could ascribe the consequences of this system and their own political choices instead to empirical fact: “It’s not racism. It’s reality.”¹⁴⁷

Few parents expressed a sense of responsibility for, or concern about, the children upon whose backs their privilege could be sustained—few expressed a sense of equality or commonality with those children or their parents as fellow citizens of their city, their state, and their nation, despite their common membership in multiple overlapping shared political communities.¹⁴⁸ Concern for these children was not part of their own decision about where to send their own children to school: that decision is self-consciously understood as private, deracialized, and circumscribed by the artificial boundaries of a self-selecting “community.”¹⁴⁹ Confronted for the first time with the suggestion that their educational decisions have something to do with race, they are indignant: “We resent being called racist because we want the best for our children. If the opponents want the best [sic] for their children (1) they would get involved with their school (2) they would teach their children (3) they would have made better choices.”¹⁵⁰ The fact that they could make crucial decisions about public education without consciously considering race, and then express genuine shock at the idea that their decision to entrench intergenerational privilege at the expense of Black children would imply something about their racial views, is an indictment of and crisis for American democracy.

2. Undermining the possibility of public deliberation about public education.

School district sovereignty is a problem for democracy in another sense in that it distorts and obscures collective decision-making about public education. To fulfill its democratic promise, public education must emerge from a decision-making process that fosters collective deliberation and mutual reliance, a coming-together where the community deliberates collectively to meet its own “need to convey knowledge, culture, and skills to its children as well as to transmit values and create relationships.”¹⁵¹ It is this joint act of governance that makes a group of parents into a school

¹⁴⁷ Rios, *supra* note 144.

¹⁴⁸ Cf. Siegel-Hawley, *supra* note 139, at 669 (quoting a “leading suburban stakeholder” of a predominantly white Memphis suburb who stated: “I certainly, selfishly, want [my community’s] schools, whoever’s running them, to have the very best opportunity for our children. I want Memphis children to have a good education, but I’m elected to make sure [my] 57,000 people have a high quality of life. So that’s my primary responsibility.”).

¹⁴⁹ *Id.* at 668 (describing similar statements by residents of a Memphis suburb which “typified a white suburban perspective that saw local control of schools as a deeply desirable, almost unquestionable, ideal. It was imbued with powerfully resonant themes of close-knit relationships and communities, with children near the adults making decisions for them. For white suburbanites, the local control ideal also represented a colorblind way to discuss issues that the demographics of the new districts suggested were racially and economically patterned.”).

¹⁵⁰ Letter from Timothy Rey, Howard Cnty. Resident, to Howard Cnty. Council (Sept. 19, 2019) (on file with Howard County Maryland Council).

¹⁵¹ Lawrence, *supra* note 21, at 1376.

community, because it “take[s] the private act of parental care and entrust[s] it to the collective.”¹⁵² Accordingly, a school that fulfills public education’s democratic function is public in the sense that it results from a community’s deliberative decision making, it fulfills the community’s shared responsibility to its children, and it expresses what the community values in educating its children. Perversely, school district sovereignty obviates the need for this kind of collective decision-making process.

Against a backdrop of school district sovereignty and the resultingly massive interdistrict inequalities it fosters, public schools, although formally governed publicly, are instead constituted through individualized decision making that resembles market ordering. Individualized consumer choices are not susceptible to deliberative, collective reasoning about the salience of race in public life, and school districts boundary lines that obscure racial considerations in decision making do not help. Instead of acknowledging and grappling with these racial considerations, parents adopt a framework wherein attachment to school districts is “cloaked in the colorblind language of local control,” which focuses on ostensibly neutral considerations like educational achievement, school quality, and parental choice, while “limit[ing] the development of a more collective perspective.”¹⁵³ In turn, the animating purpose of education shifts “from balancing the needs of all children in the district to focusing on individual children,” in tension with public education’s public function, which presupposes decision making through public governance that aims to “benefit[] the collective” and provide for a measure of baseline equality across society.¹⁵⁴ School district sovereignty concentrates legal and political attention on the individual school district rather than the overall public education system; districts (or even individual schools) are the unit at which parents advocate for improvements to their child’s public education. This in turn defines the parent’s scope of concern for the quality of education the state provides. While abstractly parents might care about educational quality throughout the nation or state that they live in, parents have an overriding concern about the quality of the public schools their own children attend.

In a society where interdistrict inequalities are extreme, the most salient decision parents make is fundamentally a “private” one; the most important decision is which community to join. This choice prefigures the vast majority of educational outcomes that parents ostensibly care about—the school district’s level of funding, student test scores, class size, etc. The determinism associated with this choice obviates the need for ongoing engagement and community-building. The dismal turnout rates in school district board elections¹⁵⁵ and lack of community participation in public

¹⁵² *Id.*

¹⁵³ Siegel-Hawley, *supra* note 139, at 656, 659.

¹⁵⁴ *Id.* at 658.

¹⁵⁵ See, e.g., Julia Payson, *Test Scores and School Boards: Why Election Timing Matters*, BROOKINGS INST. (Mar. 22, 2017), <https://www.brookings.edu/articles/test-scores-and-school-boards-why-election-timing-matters/yem5vgdg> (noting the 12% turnout rate in school board elections).

school governance¹⁵⁶ strongly suggest that whatever interests and concerns many parents have regarding their own children's education, they are largely vindicated through that initial "private" choice. Fundamentally then, parents' major decision regarding their child's education are experienced as decisions about where parents should send *their* children, not what kind of schools a community should provide for *all children including their own*. Education becomes something personal and private, to be deliberated about only within the individual family unit, without any need or opportunity for public debate or justification.

Because the choice to locate in one school district or another necessarily predates membership in a school community, educational decisions are primarily experienced as one-off expressions of private associational right rather than acts of collective decision making. Such decisions are not subject to communal deliberation or the scrutiny of public values. Yet these private, individualized decisions in the aggregate are what determine how public education is provided in all school districts, not just the ones parents select for their own children. This means individual private choice effectively fixes distributional outcomes rather than deliberation and collective decision making, which is difficult to square with any democratic vision of public education. It also invites the omission of race as a motivating factor in conversations about public education. Reformers talk frequently and insistently about "urban" schools, but the process that produces the "problems" in urban schools that demand fixing is deracialized. Challenges that urban school districts uniquely face are real and demand attention. But the very term "urban school reform" connotes a lack of public concern for education: it points instead other people's problems, people who suffer certain conditions by virtue of the (racialized) space they inhabit, people whose problems must be solved for them because they have proven their incapacity to solve them on their own.

In conceptualizing problems produced by inter-group relations as manifesting only in the marginalized group, the privileged group both eschews responsibility and narrows its breadth of concern for educational outcomes to the boundaries of its own district. Rather than recognizing the "choice" to leave an "urban" school district for a "suburban" one as inexorably bound up in and conditioned by race, parents (and courts) "cease to experience white flight in racial terms, as behavior that violates the spirit and moral mandate of *Brown*, and rationalize it as the exercise of the constitutionally protected liberty of family autonomy and intimacy."¹⁵⁷ These choices are individualized, brought outside the scope of collective concern and inside the high walls of familial privacy, and deracialized, wrenched out of the context of historical and ongoing racial exclusion and

¹⁵⁶ See generally Natalie Gomez-Velez, *Public School Governance and Democracy: Does Public Participation Matter?*, 53 VILL. L. REV. 297 (2008).

¹⁵⁷ Lawrence, *supra* note 21, at 1390.

into one of rational choice compelled by a parent's primary duty to secure their own child's flourishing.

Charles Lawrence poignantly illustrates this dynamic in recounting the conversations he had with other young parents in navigating his child's education in D.C. Public Schools. Lawrence, a Black man committed to sending his children to an integrated public school, describes his hesitance to bring these underlying racial dynamics into the discourse when discussing educational options with his white neighbors:

I do not speak of these things because there is an unspoken agreement that we will not speak of racism and its consequences when our friends, neighbors, or colleagues must make choices about the lives of their children. If I speak of the racism that has created these conditions, I will likely be heard to call my colleague racist. I would be misunderstood, and I do not want to offend. I tell myself that I just do not have the time or energy for this complicated conversation, but I feel guilt for my silence. I am participating in the taboo against the conversations that must be had. . . . When my colleague asks about a good school for his son, he is not engaging me in a conversation about what school is best for his children and mine, much less for the poor black children who live in D.C. When parents search for a good school for their children, they do not see the project as collective, as about how we will engage the political process as a community to determine what is best for all our children and see to it that they get it.¹⁵⁸

Transforming public deliberation into private decision-making strips the community of a primary site for engaging in the kinds of honest, difficult conversations a functioning democratic polity must conduct. Citizens fail to develop the capacity to engage in that conversation in the first place because they have no reason to: it would uncomfortably and unnecessarily publicize a seemingly private choice. Parents do not have to justify their decision about where to send their children to school to themselves, to the community they choose to join, to the community they refuse to join, to the public at large, to anyone. Public education becomes the product of private individual choices, not collective political decision making, while background inequalities and the persistent salience of race remain unacknowledged and undisturbed.

¹⁵⁸ *Id.* at 1356–57.

CONCLUSION: RECONSTRUCTING DEMOCRATIC COMMUNITIES BY
DECONSTRUCTING THE SOVEREIGN SCHOOL DISTRICT

The school district has been idealized as an institution that fosters and respects democratic prerogatives. Yet the Supreme Court’s decision to endow school districts with the prerogatives of sovereignty, and the widespread embrace of school district sovereignty by those committed to maintaining their own privileged status in America’s racial hierarchy, results in a public education system that in practice fails to realize public education’s democratic functions. In light of this disjunction—between the democracy-fostering aim of public education and its democracy-corroding reality—it is past time for Americans to reexamine their commitment to school district sovereignty. This reexamination should directly confront the very democracy-corroding features that the current attachment to school district sovereignty sustains. It should involve reasoning publicly and collectively about how we as citizens want to provide public education to *all* children, not just our own; it should not shy away from hard truths about the persistent importance of race and racial animus in shaping our own beliefs; it should treat public education as a site and moment for engaging in the building blocks of civic life, where a pluralistic community negotiates difference and attempts to identify a core set of shared values.

There is ample reason to be doubtful that America is ready for this conversation: America could appropriately be described as one long fight between those who seek to bring about such a reckoning and those who seek to avoid it. As an intermediary strategy, then, advocates seeking to help public education meet its democratic purpose should focus on fostering conditions that make this kind of public conversation more possible.

One way reformers could pursue this goal is by making it harder for communities to define themselves along racially and socioeconomically homogenous terms. Currently, groups of parents in many states are empowered by law to define themselves as a community and draw school district boundary lines that exclude parents who are not. Unsurprisingly, community self-definition often tracks racial and socioeconomic lines, as relatively privileged parents in urban and semi-urban enclaves seek to secede from more diverse consolidated school districts to create “splinter” school districts where they can concentrate their resources on a less-needy student body.¹⁵⁹ To counteract this, reformers should work to destabilize privileged communities’ expectations of what is to be gained by secession, diminishing their incentive to leave by heightening the risk that they will not be able to maintain the boundaries of their self-defined community. States could eliminate the possibility of voluntary secessions by repealing laws that

¹⁵⁹ See, e.g., Kendra Taylor, Erica Frankenberg, & Genevieve Siegel-Hawley, *Racial Segregation in the Southern Schools, School Districts, and Counties Where Districts Have Seceded*, 5 AREA OPEN 1 (2019); P.R. Lockhart, *Smaller Communities are “Seceding” From Larger School Districts. It’s Accelerating School Segregation.*, VOX (Sept. 6, 2019, 5:30 PM), <https://www.vox.com/2019/9/6/20853091/school-secession-racial-segregation-louisiana-alabama>.

provide for it. Short of this, states could take steps to ensure that school district secession reflects democratic values by, for example, empowering residents of the entire school district to vote on secession (rather than just the seceding “community”), requiring the seceding district to produce an equity and inclusion plan (including, if necessary, ongoing interdistrict funding transfers) to counteract any negative externalities secession produces, or subjecting secession efforts to supervision by a larger political entity vested with the ultimate authority to approve or reject secession petitions on the basis of statutorily prescribed factors. Another strategy would involve state-level action to merge fragmented school districts into larger, more diverse, consolidated school districts, which have been proven to diminish segregation and improve intradistrict educational equity.¹⁶⁰ More subtly, states and localities can combat the incentives driving school district fragmentation by attenuating the link between residential location and school assignment. They can take actions that diminish parents’ confidence that locating in one neighborhood will guarantee their children access to one particular kind of school in perpetuity—one proposal, periodic school district redistricting, would disturb perverse community-formation by unsettling parental expectations, but still provide for local control within externally defined boundaries in order to build “neighborhood polities of ‘friends and familiar enemies’” in school districts that “remain local even as their membership becomes fluid.”¹⁶¹

Another way of building momentum for addressing the perverse consequences of school district sovereignty is by regenerating schools and school districts as sites for participatory democracy and civic life. In a system comprised of massively unequal “sovereign” districts, the need for collective deliberation is attenuated because whether a parent lives within a privileged or marginalized school district determines so much about their child’s education. The most salient decision parents make about public education is where to send their children, with stark interdistrict inequalities dramatically narrowing the range of democratic decision making available to parents in poorer districts and obviating the need for democratic decision making in wealthier ones. This undermines the capacity of school districts to serve as sites for creating civic communities that engage together in acts of self-governance. Undoubtedly, mitigating inter-district inequalities will likely lead to greater democratic decision-making in school districts. But more must be done to build up school districts as a piece of the civic infrastructure that fosters genuine community. To combat this inequality-induced apathy, reformers should work to revitalize school districts as sites for civic life by building in structures for community participation, deliberation, and decision-making. For example, communities could build

¹⁶⁰ See Sarah Diem, Genevieve Siegel-Hawley, Erica Frankenberg, & Colleen Cleary, *Consolidation vs. Fragmentation: The Relationship Between School District Boundaries and Segregation in Three Southern Metropolitan Areas*, 119 PENN. ST. L. REV. 687, 688 (2015).

¹⁶¹ Saiger, *supra* note 84, at 534.

in periodic opportunities for structured deliberation about their public schools that expressly center controversial issues—something akin to the “school integration charrette” held in Durham, North Carolina during the 1970s, co-led by Black civil rights activist Ann Atwater and local Ku Klux Klan Grand Wizard C.P. Ellis.¹⁶² Other efforts might focus on innovating school accountability mechanisms that require community participation and input. The overarching goal would be creating mechanisms that invite community members into school district governance to act *as a collective*, fostering a broader sense of the importance of public education in their community that goes beyond their individualized concern for their own children.

Finally, reformers should seek to combat racial hierarchy directly by helping to build community power in marginalized school communities. By entrenching profound interdistrict inequalities, school district sovereignty excludes racial minorities from democratic life by depriving them of a safe, caring, challenging public school environment. This undermines education’s democratic function by inducing the transformation of public schools into institutions of control, instead of institutions that nurture and cultivate the next generation of citizens. These stark inequalities create a profound risk that reform efforts which aim to reduce marginalization by increasing racial and socioeconomic integration will reproduce oppressive hierarchies by requiring marginalized communities to assimilate to the norms and expectations of privileged communities. To reduce this risk, investments in community-building—and a respect for the voices of marginalized communities whose prerogatives are routinely abrogated in the existing system—should be foregrounded. For example, while school finance litigation has had only limited success in equalizing resources between privileged and marginalized school districts and has drawn warranted criticism for prioritizing monetary resources over structural determinants of segregation and inequality, community-led advocacy efforts for funding equality could lay the groundwork for more radical claims on the public education system. Equalization efforts should actively reaffirm the collective, interdependent, and universal importance of public education in *all* communities. Successful equalization efforts could help produce a virtuous cycle that bolsters democracy—mitigating interdistrict inequality would begin to disturb the logic that produces racial and socioeconomic sorting and an attachment to the sovereign school district.

What these reform efforts will lead to is not entirely clear. It is, in theory, possible that an attachment to school district sovereignty is reconcilable with a democratic public education system, that American society can be transformed such that deference to community prerogatives expressed through inviolable school district governments both embodies and promotes, rather than undermines, equality. Ultimately, the end-state may

¹⁶² See OSHA GRAY DAVIDSON, *THE BEST OF ENEMIES: RACE AND REDEMPTION IN THE NEW SOUTH* 247–50 (2007).

be less important than the efforts to achieve something different. By prioritizing reform efforts that take as their primary aspiration the reinvigoration of democratic equality in public education—and by doing so in a way that practices norms of mutual respect, collective deliberation, and communal concern—reformers will open up new space for change, one that moves this nation's schools closer to their idealized functions. By challenging the ossified attachment to sovereign school districts, America can move closer towards achieving public education's democratic dream.