

# TAKEOVER AS THE THIRD WAY: RACE AS THE ANTECEDENT AND CONSEQUENCE OF STATE TAKEOVER OF PUBLIC SCHOOLS AND SCHOOL DISTRICTS

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## ABSTRACT

*State takeovers of public schools and districts have been on the rise for decades leaving a trail of wreckage disproportionately impacting Black and Brown communities across the United States. States have claimed state takeovers of public schools and districts are the optimal solution for state-declared failing schools. However, these contentious acquisitions pose problems of educational justice, racial equity, responsibility, integrity, and competency when considering the impact on youth in urban communities. Furthermore, research suggests state takeovers do not always result in academic achievement and have a devastating downstream impact on communities subjected to state takeovers. In this article, we explore Massachusetts' state takeover of Lawrence Public Schools and argue that race and racism are the cause and purported cure for struggling schools. We leverage multiple theoretical frameworks: Latino Critical Race Theory (LatCrit), antiblackness, and whiteness to accomplish this article's objectives, which are to 1) investigate policies that allow for the implementation and continued maintenance of state takeovers of schools and school districts, 2) research market-based agendas that are ingrained in the process, and 3) analyze the roles race and racism played in the development and maintenance of state takeover policy. We posit that state takeover strategies contribute to the preservation of whiteness and white supremacist ideologies, as well as the perpetuation of antiblack sentiments, inside both urban-serving school districts and education policy. These strategies result in the disempowerment of Black and Brown communities, depriving these communities of their political agency, rights to self-governance, education, and overall existence.*

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## INTRODUCTION

Many education policymakers have embraced education reform efforts. Education reform is one of the few policy agenda items that maintains bipartisan support.<sup>1</sup> Yet, education reform processes can and do result in racial oppression. For instance, eighty-five percent of state takeovers of public schools and districts occur in predominantly Black and Brown communities.<sup>2</sup> Often, policymakers suggest that taking over purportedly failing public schools and districts contributes to improving academic outcomes in the district. However, there is little empirical evidence suggesting statistically significant positive academic outcomes for students and communities<sup>3</sup> and even less regarding social-emotional well-being<sup>4</sup> following the state takeover of public schools and districts. Despite the clear racial impacts of state takeover policies, policymakers continue to advocate for the unilateral takeover of predominantly Black and Brown school districts.<sup>5</sup>

Urban education policies that advocate for state takeovers of public schools and districts raise concerns about educational justice<sup>6</sup> and racial

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<sup>1</sup> See Patrick McGuinn, *Swing Issues and Policy Regimes: Federal Education Policy and the Politics of Policy Change*, 18 J. OF POL'Y HIST. 205, 218–20 (2006) (arguing federal legislators displayed unprecedented levels of bipartisanship in passing the more recent versions of the Elementary and Secondary Education Act).

<sup>2</sup> Domingo Morel, *Race and State in the Urban Regime*, 54 URB. AFF. REV. 490, 497 (2018); see also Joseph O. Oluwole & Preston C. Green III, *State Takeover of School Districts: Race and the Equal Protection Clause*, 42 IND. L. REV. 343, 379 (2009).

<sup>3</sup> See, e.g., Kenneth K. Wong & Francis X. Shen, *Measuring the Effectiveness of City and State Takeover as a School Reform Strategy*, 78 PEABODY J. OF EDUC. 89, 107 (2003).

<sup>4</sup> Beth E. Schueler & Joshua F. Bleiberg, *Evaluating Education Governance: Does State Takeover of School Districts Affect Student Achievement?*, 41 J. OF POL'Y ANALYSIS & MGMT. 162 (2022).

<sup>5</sup> The state of Texas recently seized control of the Houston Independent School District, the seventh largest school district in the United States. The state began its takeover process due to one high school's, Wheatley High School's, inability to meet state standards for academic achievement. The state announced its takeover of the Houston Independent School District despite Wheatley High School meeting the state's benchmark for achievement and the state rating the district as a "B." See Dominic A. Walsh, *TEA Takes Over Houston Schools this Week. The District has to do These Three Things to Regain Local Control*, HOUS. PUB. MEDIA (May 31, 2023), <https://www.houstonpublicmedia.org/articles/education/2023/05/31/453113/tea-takes-over-houston-schools-this-week-the-district-has-to-do-these-three-things-to-regain-local-control/>, archived at <https://perma.cc/P7AL-YZMP>.

<sup>6</sup> We define educational justice as taking intentional efforts to ensure Black and Brown students, families, and communities are able to influence the politics of education in ways that result in progress toward equity. Sonya Douglass Horsford, Enrique A. Alemán Jr. & Philip A. Smith, *Our Separate Struggles are Really One: Building Political Race Coalitions for Educational Justice*, 18 LEADERSHIP & POL'Y IN SCHS. 226 (2019).

equity<sup>7</sup>, as they are acts of dispossession<sup>8</sup>, political disenfranchisement<sup>9</sup>, and removal of self-possession.<sup>10</sup> Since many state takeovers occur in urban communities that enroll disproportionate numbers of Black and Brown students, our work focuses on the effectiveness of state takeovers of public schools and districts as education reform, eschewing state-reported test scores and instead focusing on the impact of state takeovers on the surrounding community. Scholars are reaching a near consensus that state takeovers of public schools are generally ineffective at achieving long-term academic improvement(s) for school districts.<sup>11</sup> Yet, these takeovers continue to occur. The purpose of this study is to explore and examine policies and discourses that allow implementation and maintenance of state takeovers of school districts and investigate the influence of the newer third-way approach. Further, this study examines the role of racism and rights within these policies as it applies to the current state takeover of Lawrence Public Schools. By investigating the state's takeover of Lawrence Public Schools, we demonstrate how structural, systemic, and policy processes purporting to address educational racism, unfairness,

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<sup>7</sup> We leverage the work of Liliana M. Garces and Cynthia Gordon da Cruz in naming racial equity as education policies aimed at “a) attending to the dynamic relationship among power, race, and identities; b) actively naming and addressing hidden contributors to inequity; and c) generating power among marginalized communities of color toward transformative policies.” Liliana M. Garces & Cynthia Gordon da Cruz, *A Strategic Racial Equity Framework*, 92 *PEABODY J. OF EDUC.* 322, 324 (2017). To this end, any education-related policies that fail to accomplish these ends are suspect at best.

<sup>8</sup> We borrow from the work of Michelle Fine and Jessica Ruglis in defining dispossession as “ideologies [ ] and opportunities” that “redistribute [the] dreams and aspirational capacities” of communities of color. Michelle Fine & Jessica Ruglis, *Circuits and Consequences of Dispossession: The Racialized Realignment of the Public Sphere for U.S. Youth*, 17 *TRANSFORMING ANTHROPOLOGY* 20, 21 (2009). For more examples of education-related policies that contribute to dispossession and accumulation by dispossession. See Steven L. Nelson & Ray O. Williams, *From Slave Codes to Educational Racism: Urban Education Policy in the United States as the Dispossession, Containment, Dehumanization, and Disenfranchisement of Black Peoples*, 19 *J. OF L. IN SOC'Y* 82 (2019). To that end, dispossession results in the elimination of places and spaces that accommodate liberatory ideologies and contributes to accumulation via redistributing the wealth—financial, cultural, and otherwise—of communities of color to white communities.

<sup>9</sup> We consider a broad view of political enfranchisement, which considers Black and Brown communities' abilities to hold their elected officials accountable. In that way, we take up Lani Guinier's stance regarding proportional interest representation: that a heterogeneous electorate would result in legislators being more “public regarding.” The essence of our stance on political enfranchisement is a) political accountability b) that leads to “just decisions.” See Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 *MICH. L. REV.* 1077, 1145 (1991).

<sup>10</sup> We view self-possession as the inherent ability to act independently and without restriction to secure and sustain a liberatory existence. We borrow this idea from the work of Kenneth Marshall. See generally Kenneth Marshall, “*I Belong to No Man*”: *Self-Possession through Mobility in Silvia DuBois, a Biography of the Slav Who Whipt Her Mistres and Gand Her Freedom*, 104 *J. OF AFR. AM. HIST.* 553 (2019).

<sup>11</sup> Beth Schueler and Ron Zimmer (and colleagues) are the only scholars studying state takeovers of public schools who have found significant academic gains for state takeover districts. However, both scholars are moderating their positions. See generally Schueler & Bleiberg, *supra* note 4; Lam D. Pham, Gary T. Henry, Adam Kho & Ron Zimmer, *Sustainability and Maturation of School Turnaround: A Multiyear Evaluation of Tennessee's Achievement School District and Local Innovation Zones*, 6 *AERA Open* 1 (2020).

and injustice are frequently abused to further subjugate Black and Brown communities.

Following this introduction, we provide historical perspective on state takeovers. In doing so, we include information on different types of school takeovers. Thereafter, we discuss notable state takeovers of public schools and districts. For this analysis, we focus on state takeovers of public schools in New Orleans, Detroit, Memphis, and Little Rock. Next, we share facts about Massachusetts' current takeover of Lawrence Public Schools. We follow that information with a discussion of the three theoretical frameworks we employ in our analysis: antiblackness, critical whiteness, and LatCrit Race Theory. We move from a discussion of our frameworks to a discussion of the social science methods (Critical Discourse Analysis) in this work. Then, we share our findings. We summarize our findings before sharing our reflections on the findings in a section titled, "Racial Antecedents and Consequences of State Takeover." Finally, we conclude our work.

#### HISTORICAL PERSPECTIVE OF STATE TAKEOVERS

Education is not a fundamental right granted to citizens of the United States under the federal Constitution.<sup>12</sup> Thus, states maintain the responsibility for providing and the authority over public education.<sup>13</sup> The federal government has leveraged the federal courts<sup>14</sup> and monetary incentives<sup>15</sup> to require states to act in a purportedly more equitable manner. However, the United States' unique version of education federalism<sup>16</sup> has led to inconsistent and inequitable implementation of legislation designed to pursue educational equity.<sup>17</sup> States control education, but education is most often administered

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<sup>12</sup> Derek W. Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV. 1059 (2019); MARTHA MCCARTHY, NELDA CAMBRON-MCCABE & SUZANNE ECKES, *PUBLIC SCHOOL LAW: TEACHERS' AND STUDENTS' RIGHTS* (7th ed. 2014); Neubia L. Harris, *Adequate Education: The Disregarded Fundamental Right and Resurgence of Segregation of Public Schools*, 45 MITCHELL HAMLINE L. REV. 237 (2019).

<sup>13</sup> Kimberly Jenkins Robinson, *The High Cost of Education Federalism*, 48 WAKE FOREST L. REV. 287, 310 (2013) (noting "[t]he Court also reaffirmed the freedom of Texas residents to choose a system that favored local control over greater equality." Therefore, Jenkins Robinson asserts that state and local control of education policy has contributed to racial oppression, an argument we will later take up implicitly).

<sup>14</sup> For an example of how the United States government has leveraged the federal courts to pursue educational equity, see Kevin R. Johnson, *The Keyes to the Nation's Educational Future: The Latina/o Struggle for Educational Equity*, 90 DENV. U. L. REV. 1231, 1238–42 (2013).

<sup>15</sup> Patrick McGuinn, *Stimulating Reform: Race to the Top, Competitive Grants and the Obama Education Agenda*, 26 EDUC. POL'Y 136 (2012) (discussing how the competitive Race to the Top Grants contributed to substantial changes in state-level education policy).

<sup>16</sup> Robinson, *supra* note 13, at 287 (defining education federalism as "an emphasis on state and local control over education and a limited federal role" with a focus on "encourag[ing] experimentation, and promot[ing] . . . competition for excellence in education").

<sup>17</sup> *Id.* at 287–9 (explaining that educational federalism in the United States "generates some benefits, it also tolerates substantial inequitable disparities in educational opportunity both within and between states." Ultimately, Jenkins Robinson notes "[t]he opportunity divide in American education continues to relegate far too many poor and minority schoolchildren to substandard educational opportunities.") (emphasis removed).

locally through elected school boards.<sup>18</sup> For the most part, states have allowed local school districts to manage their own affairs, except that local school boards must abide by state-level policies and procedures. The phenomenon led the Supreme Court to note and rely upon the benefits of local control in *San Antonio v. Rodriguez*.<sup>19</sup> However, states have engaged in intensive interventions into local school board affairs over the last 35 years. In 1989, New Jersey began the trend of taking over public schools and districts.<sup>20</sup> Between 1989 and 1997, states typically refrained from engaging state takeover policies unless a district was experiencing financial distress.<sup>21</sup> In the years following 1997, the primary reason for state takeovers of public schools and districts was ostensible academic distress.<sup>22</sup>

### *State Takeovers' Roots in Education Reform and Equity Policies*

State takeover policies are a part of the lineage of education reform and school improvement policies that began in the mid-1950s. The earliest federal interventions into education policy occurred in the federal courts and addressed institutions of higher education; these interventions set the stage for interventions into primary and secondary education.<sup>23</sup> The earliest legislative intervention, the National Defense Education Act, was launched in 1958.<sup>24</sup> The Elementary and Secondary Education Act of 1965 remains the most prominent (and likely ambitious) federal legislative intervention into education policy. Yet, ESEA signaled the beginning of states losing (and sometimes ceding) power to the federal government. ESEA was a component of President Johnson's anti-poverty campaign.<sup>25</sup> The groundbreaking legislation had two

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<sup>18</sup> MCCARTHY ET AL., *supra* note 12.

<sup>19</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 49–50 (1973) (stating, “the persistence of attachment to government at the lowest level where education is concerned reflects the depth of commitment of its supporters. In part, local control means, as Professor Coleman suggests, the freedom to devote more money to the education of one’s children. Equally important, however, is the opportunity it offers for participation in the decisionmaking process that determines how those local tax dollars will be spent. Each locality is free to tailor local programs to local needs. Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence. An analogy to the Nation-State relationship in our federal system seems uniquely appropriate. Mr. Justice Brandeis identified as one of the peculiar strengths of our form of government each State’s freedom to ‘serve as a laboratory; and try novel social and economic experiments.’ No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education.”).

<sup>20</sup> Oluwole & Green III, *supra* note 2, at 343.

<sup>21</sup> *Id.* (noting that approximately a quarter of state takeovers of public schools and districts included any academic goals).

<sup>22</sup> *Id.*

<sup>23</sup> For higher education cases that set that stage for primary and secondary desegregation, see *Mo. ex rel. Gaines v. Can.*, 305 U.S. 337 (1938); *Sipuel v. Bd. of Regents of the Univ. of Okla.*, 332 U.S. 631 (1948); *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637 (1950).

<sup>24</sup> Richard Ford, *Federal Intervention in Teacher Education*, 23 AM. BEHAV. SCIENTIST 145, 153 (1979).

<sup>25</sup> Joseph P. Bishop & John H. Jackson, *Fifty Years Later: A Chance to Get ESEA Back on Track*, 23 EDUC. POL’Y ANALYSIS ARCHIVES 1 (2015); Kimberly Jenkins Robinson, *Restructuring*

important goals: to involve the federal government in education policy and address significant inequities in resource allocation, particularly as related to low-income students, through the use of Title I funding.<sup>26</sup>

Since ESEA's inception, there has been a succession of back-and-forth politics over power and accountability in local administration and schools between federal and state authorities. Following the Johnson administration, the Nixon administration developed a new plan known as New Federalism to reject the objectives outlined in Johnson's war on poverty.<sup>27</sup> State authority and autonomy over programs and budget allocation in schools were strengthened during Nixon's administration. As a result, local schools' reliance on state-provided funding has grown.<sup>28</sup> The Reagan administration maintained and accelerated federal divestment from public schools and school systems, which is hypothesized to have contributed to low student performance.<sup>29</sup> Reagan's administration led to society's distrust of the educational system through a manufactured crisis initiated by the release of *A Nation at Risk: The Imperative for Education Reform*,<sup>30</sup> which called for a restructuring of the entire system, including the embracing and incorporation of market-based education reform strategies.<sup>31</sup>

The federal government's infiltration of the country's multiple education systems reached its pinnacle in 2001.<sup>32</sup> Specifically, the federal government used monetary incentives to direct state education authorities to implement specific policies.<sup>33</sup> Although states received federal funding before No Child Left Behind (NCLB), states (and therefore local governments) retained control over education policymaking.<sup>34</sup> Following NCLB, the Bush administration substantially revamped funding protocols for public schools and districts, holding Title I monies over the heads of states.<sup>35</sup> To obtain Title I monies states were supposed to put policies in place that would ensure that 100% of

*the Elementary and Secondary Education Act's Approach to Equity*, 103 MINN. L. REV. 915, 926 (2018).

<sup>26</sup> See Michael Heise, *From No Child Left Behind to Every Student Succeeds: Back to the Future for Education Federalism*, 117 COLUM. L. REV. 1859 (2017); Helen F. Ladd, *No Child Left Behind: A Deeply Flawed Federal Policy*, 36 J. OF POL'Y ANALYSIS & MGMT. 461 (2017); Robinson, *supra* note 25, at 926–28.

<sup>27</sup> Jacob S. Bennett & Benji Cohen, *What Have You Done for Me Lately? Educational Research and Urban Schools*, 51 EDU. & URB. SOC'Y 175 (2019).

<sup>28</sup> See Morel, *supra* note 2, at 495.

<sup>29</sup> Bennett & Cohen, *supra* note 27.

<sup>30</sup> THE NAT'L COMM'N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983).

<sup>31</sup> Marta P. Baltodano, *The Power Brokers of Neoliberalism: Philanthrocapitalists and Public Education*, 15 POL'Y FUT. IN EDUC. 141, 152 (2017).

<sup>32</sup> See Heise, *supra* note 26.

<sup>33</sup> Kristina P. Doan, *No Child Left Behind Waivers: A Lesson in Federal Flexibility or Regulatory Failure?*, 60 ADMIN. L. REV. 211, 215 (2008).

<sup>34</sup> Heise, *supra* note 26, at 1860–1.

<sup>35</sup> James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 942 (2004) (while the article generally explains how the federal government leveraged school funding to force states to adopt certain educational standards and goals, James Ryan explains "[t]he stricter accountability mechanisms, however, are reserved for schools receiving Title I funding." Title I schools are likely the most underfunded schools; thus, the federal government targeted the schools most in need of financial support with these requirements).

their kids in their schools and school districts achieved academic proficiency in both reading and arithmetic by the 2013-2014 school year.<sup>36</sup> Schools and districts failing to meet these requirements, commonly known as Adequate Yearly Progress (AYP), were labeled failing and faced severe penalties such as state takeover and potential closure.<sup>37</sup> These expectations were unrealistic, especially since they were accompanied by little to no financial or technical assistance from the federal government.<sup>38</sup> As a result, nearly half of the country's schools were deemed failing under NCLB regulations.<sup>39</sup> In an effort to correct ill-conceived education policy, the Obama administration's Secretary of Education, Arne Duncan, granted academic waivers to states that failed to meet NCLB's benchmarks in exchange for them adopting federally supported education reforms outside of congressional norms.<sup>40</sup>

The Obama administration introduced the Every Student Succeeds Act (ESSA) in 2015, almost 14 years after Congress had reauthorized ESEA as No Child Left Behind.<sup>41</sup> ESSA ceded some of the federal government's influence over education policy to states.<sup>42</sup> The law compels states to intervene in schools with performance scores in the bottom 5% of the state and high schools with graduation rates below 67%, altering, if not completely reversing, some of NCLB's mandates, which were more prescriptive about state interventions into struggling schools.<sup>43</sup> In many ways, ESSA vastly overcorrects NCLB, and "in some aspects, ESSA asks even less in terms of equity than NCLB."<sup>44</sup> Some NCLB expectations, such as guaranteeing that 95% of children tested to earn Title I monies, were, in fact, preserved under ESSA.<sup>45</sup> Still, the federal government's ability to compel educational equity is limited under ESSA. Each state is allowed more authority with less accountability, and states are not responsible for maintaining equity, which defeats the goals of ESEA.<sup>46</sup> Renowned education law professor Derek W. Black posits that the likelihood of well-designed accountability from states is bleak.<sup>47</sup> Furthermore, Kimberly Jenkins Robinson asserts that throughout history, states and municipal governments have routinely overlooked the needs of minority students and provided them with poorer educational opportunities.<sup>48</sup> Additionally, state

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<sup>36</sup> Laura Adler-Greene, *Every Student Succeeds Act: Are Schools Making Sure Every Student Succeeds?* 35 *TOURO L. REV.* 11 (2019); Ladd, *supra* note 26.

<sup>37</sup> Oluwole & Green III, *supra* note 2, at 343.

<sup>38</sup> See generally Jennifer Imazeki & Andrew Reschovsky, *Is No Child Left Behind an Un (or Under) Funded Federal Mandate? Evidence from Texas*, 57 *NAT'L TAX J.* 571 (2004) (finding that the cost of complying with requirements of No Child Left Behind far exceeded the additional funding associated with the legislation).

<sup>39</sup> Ladd, *supra* note 26, at 461.

<sup>40</sup> Heise, *supra* note 26.

<sup>41</sup> Robinson, *supra* note 25.

<sup>42</sup> See generally Derek W. Black, *Abandoning the Federal Role in Education: The Every Student Succeeds Act*, 105 *CAL. L. REV.* 1309 (2017).

<sup>43</sup> John Hunt & Sandra Watkins, *When Democratic Interests and the Public Good Clash: State Takeover of Public School Districts*, 14 *ORGANIZATIONAL TO ORG.* 1 (2015).

<sup>44</sup> Black, *supra* note 42, at 1325.

<sup>45</sup> Adler-Greene, *supra* note 36.

<sup>46</sup> Black, *supra* note 42.

<sup>47</sup> *Id.*

<sup>48</sup> Robinson, *supra* note 25.

powers have widened due to the Obama administration's implementation of the Race to the Top Act of 2009 (RttT), allowing them to be more aggressive in their takeover of allegedly underperforming schools and school districts.<sup>49</sup> NCLB and ESSA failed to improve schools in terms of academic improvements and in terms of meeting the needs of kids who face socioeconomic difficulties and are racialized minorities.<sup>50</sup>

Historically, state takeovers of schools have been motivated chiefly by economic concerns.<sup>51</sup> On the other hand, more current state takeovers have been progressively growing as a result of alleged academic failure.<sup>52</sup> The government's stated intentions regarding state takeovers of public schools and districts are to improve the educational and financial stability of public schools and districts subjected to state takeover.<sup>53</sup> To some extent, state takeovers are a concomitant component of increased accountability associated with the use of state funds. Governors and state leaders increased their engagement in local administration due to growing requests for state resources from local communities and successful court decisions in favor of expanding state financing for local schools, with state takeovers being the mechanism to introduce school choice.<sup>54</sup>

### *Types of State Takeover*

There are various forms of state takeovers of public schools and districts, and the implementation of state takeovers happens in different ways. There are three primary types of takeovers: gubernatorial, mayoral, and the third way of takeover.<sup>55</sup> The distinctive nature of each state's political and educational rules and procedures, as well as the unique nature of each school and school district, contribute to the range of methods of takeovers.<sup>56</sup> Some state takeovers preserve locally elected school boards as advisory councils, while others, which are more invasive, dismantle the school board and replace it with a state-appointed board.<sup>57</sup> Many experts believe that the political party of a state's government has a crucial influence in predicting if and how a takeover happens.<sup>58</sup> State officials have final authority over school takeovers in

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<sup>49</sup> Mary L. Mason & Sarah Reckhow, *Who Governs Now? Takeovers, Portfolios, and School District Governance*, The Educ. Pol'y Center at Mich. State Univ., Working Paper No. 52 (2016).

<sup>50</sup> Adler-Greene, *supra* note 36; Robinson, *supra* note 25.

<sup>51</sup> Oluwole & Green III, *supra* note 2.

<sup>52</sup> See Wong & Shen, *supra* note 3, at 89.

<sup>53</sup> Oluwole & Green III, *supra* note 2, at 343.

<sup>54</sup> See Morel, *supra* note 2, at 490.

<sup>55</sup> See Oluwole & Green III, *supra* note 2, at 343; Beth E. Schueler, *A Third Way: The Politics of School District Takeover and Turnaround in Lawrence, Massachusetts*, 55 EDUC. ADMIN. QUARTERLY 116 (2019); Richard O. Welsh & Sheneka M. Williams, *Incentivizing Improvement or Imposition? An Examination of the Response to the Gubernatorial School Takeover and Statewide Turnaround Districts*, 26 EDUC. POL'Y ANALYSIS ARCHIVES 1, 5–6 (2018).

<sup>56</sup> See Wong & Shen, *supra* note 3, at 89.

<sup>57</sup> See Oluwole & Green III, *supra* note 2, at 343.

<sup>58</sup> See Kenneth K. Wong & Francis X. Shen, *Politics of State-Led Reform in Education: Market Competition and Electoral Dynamics*, 16 EDUC. POL'Y 161 (2002); Morel, *supra* note 2, at 490.



all situations, whether the state absorbed control or delegated responsibility.<sup>59</sup> More recently, researchers are focusing attention on a more collaborative method of state takeover: the Third-Way.

### *The Third-Way*

The “third-way” approach to state takeovers of schools and school districts is becoming increasingly popular. The “third-way” approach to state takeovers seeks to eliminate the stigma of right-wing vs. left-wing strategies, implying that both strategies can be useful.<sup>60</sup> Its goal is to promote charter and traditional schools through union-district collaboration, merging school autonomy with centralized district management.<sup>61</sup> California and Massachusetts have adopted this different approach to takeovers in Compton, California, and Lawrence, Massachusetts. Under the “third-way” approach to state takeover, the state pretends to seek local input and perspective(s) on decisions; however, the state has no obligation to entertain local input or perspective, and typically erects structures to prevent being held accountable for not respecting the input of the local constituents.<sup>62</sup> This strategy has sparked conflict between community members and state and municipal actors.<sup>63</sup> Even though certain state officials in places like Lawrence say that this new technique is the future of state takeovers, several experts, notably Kenneth Wong and Francis Shen, believe that data suggests that these takeovers are inefficient.<sup>64</sup> The “third-way” has a small body of literature, and the literature that does exist primarily examines student achievement outcomes. Through their analysis, which included the varying types of takeovers, Beth Schueler and Joshua Bleiberg found no evidence that state takeovers improve academic achievement, and these takeovers have a moderately negative effect on English-Language Arts achievement particularly in the early years of implementation.<sup>65</sup> They note the outlying positive academic improvements in the beginning years of the takeover in Lawrence, Massachusetts.<sup>66</sup> The validity of the positive results is questionable considering, as Schueler and Bleiberg note, that the states are the rule makers regarding how achievement is measured.<sup>67</sup> Still, these results do not consider the impact on the students and community. It’s critical to implement further research on this strategy, how it’s linked to neoliberal education reform tactics, and how it affects urban schools and communities.

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<sup>59</sup> See Wong & Shen, *supra* note 3, at 89.

<sup>60</sup> See Schueler, *supra* note 55, at 116.

<sup>61</sup> *Id.* at 120 (asserting that the “third way” approach accommodates both traditionalist and reformist perspectives).

<sup>62</sup> *Id.* at 132 (declaring that “. . . the authorities provided by Massachusetts’ accountability system helped the state recruit politically skilled leaders and shielded turnaround leaders from some local conflicts.” In other words, the state used its powers to ensure that its selected leaders were not accountable to the local constituents).

<sup>63</sup> See Schueler & Bleiberg, *supra* note 4, at 162.

<sup>64</sup> See Wong & Shen, *supra* note 3, at 89.

<sup>65</sup> See Schueler & Bleiberg, *supra* note 4, at 162.

<sup>66</sup> *Id.* at 181.

<sup>67</sup> *Id.* at 163.

*Market-Oriented Takeover Reform*

State takeovers have developed over time as policy changes have occurred. Recent takeovers have been accompanied by market-based reforms such as charter school privatization.<sup>68</sup> Research suggests that state takeovers of public schools and educational systems result from our government's neo-liberal shift during the 1980s, including decentralization of local authority and centralization of state authority.<sup>69</sup> According to a recent study of state takeovers, "[a]t the federal level, education reform policies are so intertwined with market-based reforms that some policies explicitly require school choice as a part of education reform."<sup>70</sup> As locally elected school boards are abolished, conflicts between the state and teacher's unions grow, and neoliberal objectives are pushed through education policy, questions of equal protection and voting arise.<sup>71</sup> Some researchers assert that the demand for state takeovers of schools and school districts is motivated by market-based reforms.<sup>72</sup> In certain state takeover analyses, such as in Newark, New Jersey, both local businesses and outside foundations supported the takeover because the business owners perceive it as a way to contribute to urban school reform.<sup>73</sup> According to Sarah Reckhow, state takeovers are associated with an increase in the presence and influence of charitable organizations in schools and school districts.<sup>74</sup> The campaign for charter schools and school choice is also prevalent within state takeovers. Some places, such as New Orleans, Louisiana, have had their schools and school districts unilaterally seized and now have no traditional schools remaining.<sup>75</sup> These extreme encroachments on public education on behalf of privatized education (through the support of school choice) undermine the notion that public education should be equal and fully supported.<sup>76</sup> To that end, some states altered their constitutions specifically to allow for

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<sup>68</sup> See generally Richard O. Welsh, Sheneka Williams, Shafiqua Little, & Jerome Graham, *Right Cause, Wrong Method? Examining the Politics of State Takeover in Georgia*, 55 URB. AFFS. REV. 703, 709 (2019) (discussing Georgia's efforts to incorporate charter schools into its state takeover district).

<sup>69</sup> See Rebecca Rogers, *In the Aftermath of a State Takeover of a School District: A Case Study in Public Consultative Discourse Analysis*, 45 URB. EDUC. 910 (2012); Sarah Reckhow & Jeffrey Snyder, *The Expanding Role of Philanthropy in Education Politics*, 43 EDUC. RSCH. 186 (2014).

<sup>70</sup> See Steven L. Nelson, *Could the State Takeover of the Public Schools Create a State-Created Danger? Theorizing at the Intersection of State Takeover Districts, the School-to-Prison Pipeline, and Racial Oppression*, 27 NAT'L BLACK L. J. 1, 22 (2018).

<sup>71</sup> See Welsh & Williams, *supra* note 55, at 3; Morel, *supra* note 2, at 490.

<sup>72</sup> See Kristin L. Buras, *Race, Charter Schools, and Conscious Capitalism: On the Spatial Politics of Whiteness as Property (and Unconscionable Assault on Black New Orleans)*, 81 HARV. EDUC. REV. 296 (2011); Mathilde Lind Gustavussen, *Contending with School Reform: Neoliberal Restructuring, Racial Politics, and Resistance in Post-Katrina New Orleans*, 82 J. OF GLOB. & HIST. ANTHROPOLOGY (2018).

<sup>73</sup> See Peter Burns, *Regime Theory, State Government, and a Takeover of Urban Education*, 25 J. OF URB. AFFS. 285 (2003).

<sup>74</sup> See Reckhow & Snyder, *supra* note 69.

<sup>75</sup> See David Osborne, *Reinventing New Orleans' Public Education System*, 32 NEW ENG. J. OF PUB. POL'Y 1 (2020).

<sup>76</sup> See Rogers, *supra* note 69.

charter school reform in the event of a takeover.<sup>77</sup> State takeover plans that prioritize charter schools as the primary option for school improvement have significantly inequitable effects in light of current views and extant research about this type of school reform.<sup>78</sup>

*Racial Relationships and Their Consequences as Takeovers Proliferate in Urban Cities*

State takeovers of public schools and districts are among the most visible education policies over the last few decades.<sup>79</sup> Given the public nature of controversies around state takeovers of public schools and districts, there is very little doubt about the influence of race and power on state takeover policy.<sup>80</sup> With the majority of state takeovers of public schools and districts occurring in communities with disproportionately Black and Brown populations, there are increasing focuses on the intersection of race, politics, and state takeovers of public schools and districts.

State takeovers achieved significance in urban education policy during a period most associated with fights for increased demand for equitable educational resources for historically and contemporarily marginalized communities. Throughout the 1970s and 1980s, as Black communities in urban settings demanded equitable educational resources, both the Nixon and Reagan administrations attempted to enact legislation that blocked or slowed equitable educational fundings,<sup>81</sup> further entrenching these areas' dependency on state funding. States, in turn, subjected these communities to intense scrutiny because of the communities' reliance on state funding.<sup>82</sup> There are, however, more nefarious outcomes associated with state takeovers of public schools and districts. Takeovers, according to research, are an explicit technique of disempowerment directed at Black communities.<sup>83</sup> A previous study noted,

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<sup>77</sup> See Osborne, *supra* note 75, at 1; see generally Richard O. Welsh, Williams, Little & Graham, *supra* note 68, at 709 (noting the state of Georgia's efforts to amend its constitution to allow charter schools in preparation for its state takeover district).

<sup>78</sup> See Welsh & Williams, *supra* note 55, at 3 (suggesting that the implementation of state takeovers of public schools and districts is outpacing research on the strategy's effectiveness).

<sup>79</sup> See Burns, *supra* note 73, at 285.

<sup>80</sup> See Morel, *supra* note 2, at 490; Oluwole & Green III, *supra* note 2, at 343; Welsh & Williams, *supra* note 55, at 1.

<sup>81</sup> See John Dayton, *When All Else Has Failed: Resolving the School Funding Problem*, BYU EDUC. & L. J. 1, 9–10 (1995) (declaring that the Reagan administration was not focused on educational equity and, in fact, attempted to eliminate the United States Department of Education); Michael P. Timpane, *Federal Aid to Schools: Its Limited Future*, 38 LAW & CONTEMP. PROBS. 493, 499 (1974) (suggesting the Nixon administration sought to roll back the equity-pursuing support(s) of the Johnson administration, including those associated with education policy).

<sup>82</sup> See Ryan, *supra* note 35 (highlighting that "stricter accountability mechanisms, however, are reserved for schools receiving Title I funding." Because Title I is aimed at students experiencing poverty, Title I schools are likely the most underfunded schools; therefore, the federal government scrutinizes Title I schools more intensely than it does other schools).

<sup>83</sup> See Morel, *supra* note 2, at 490.

“[i]n many cases, state takeover of public schools result in the replacement of Black policy brokers with white policy brokers.”<sup>84</sup>

Urban cities are laboratories for urban experimentation,<sup>85</sup> and these experiments are catching fire. There is widespread concern that states are targeting predominantly Black and Brown communities in urban settings for state takeover.<sup>86</sup> One of the co-authors of this paper previously noted that “locally governed public schools and school districts that are disproportionately Black experience state takeovers at higher rates than do disproportionately white schools and school districts.”<sup>87</sup> Furthermore, Domingo Morel demonstrates how state takeovers in historically marginalized communities, notably in Black and Brown neighborhoods, lead to the dismantling of locally elected school boards, contributing to the increased erosion of Black and Latino political empowerment, advancement, and access to franchisement.<sup>88</sup> However, this is not typically the case in majority-white communities.<sup>89</sup>

Minority groups, who have historically been adversely affected by state takeovers, frequently oppose them.<sup>90</sup> This resistance is primarily a result of the state government, composed mainly of white people, infiltrating the governance and advancement of Black and Latino populations.<sup>91</sup> Black and Brown communities bear witness to the state-sanctioned, unmitigated violation of their civil rights when state takeovers dissolve school boards and deprive Black and Brown voters of their ability to participate in the political process.<sup>92</sup> These minority groups account for more than 75% of students in the majority of state-run schools.<sup>93</sup> Research suggests that numerous large communities have experienced state takeover due to budgetary and academic performance, but the emphasis has been primarily on the academic performance.<sup>94</sup> Despite suburban browning, metropolitan centers continue to have disproportionately Black and Brown populations, and public schools in metropolitan centers continue to enroll pupils who disproportionately come from lower socioeconomic

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<sup>84</sup> See Steven L. Nelson, *Racial Subjugation by Another Name? Using the Links in the School-to-Prison Pipeline to Reassess State Takeover District Performance*, 9 GEO. J. OF L. & MOD. CRITICAL RACE PERSP. 1, 2 (2017).

<sup>85</sup> See Buras, *supra* note 72, at 296.

<sup>86</sup> See Nelson, *supra* note 70, at 1; Hunt & Watkins, *supra* note 43.

<sup>87</sup> See Nelson, *supra* note 70, at 57.

<sup>88</sup> See Morel, *supra* note 2, at 490.

<sup>89</sup> *Id.* at 490.

<sup>90</sup> See Burns, *supra* note 73, at 289.

<sup>91</sup> *Id.* at 285.

<sup>92</sup> *Id.* at 285; Beth Reinhard, *Racial Issues Cloud State Takeovers*, EDU. WEEK (Jan. 14, 1998), <https://www.edweek.org/leadership/racial-issues-cloud-state-takeovers/1998/01>, archived at <https://perma.cc/4WBT-Z6MQ>.

<sup>93</sup> See Burns, *supra* note 73, at 285; see generally Kenneth K. Wong & Francis X. Shen, *Does School District Takeover Work? Assessing the Effectiveness of City and State Takeover as a School Reform Strategy*, 78 PEABODY J. OF EDUC. (2001).

<sup>94</sup> Buras, *supra* note 72, at 81; see Osborne, *supra* note 75; James Wright, Ronald W. Whitaker, Muhammad Khalifa, & Felecia Briscoe, *The Color of Neoliberal Reform: A Critical Race Policy Analysis of School District Takeovers in Michigan*, 55 URB. EDUC. 424 (2020).

positions.<sup>95</sup> In high-poverty communities, schools provide an opportunity for kids and parents to develop social capital.<sup>96</sup> According to Domingo Morel, “[i]n the urban regime, the public is represented by their government leaders which presumably are given the consent to govern and represent the citizenry through democratic process. The growing presence of state and local actors in local affairs complicates the understanding of the public officials in the urban regime.”<sup>97</sup> To that end, state takeovers of public schools and districts by definition led to the loss of local control of the politics of education for Black and Brown citizens in urban areas.

Additionally, critics of state takeovers claim that these intrusions into local governance disproportionately affect low-income and marginalized communities, disenfranchise residents, demolish self-government, and should be viewed as a sort of modern-day colonialism.<sup>98</sup> When Robert L. Green and Bradley Carl discuss state takeovers, they note that across the country, proposed or genuine takeovers have isolated areas, urban communities, and state overseeing bodies along geographic and racial lines, igniting necessary debates and claims about their legality and potential to serve as the fundamentally required impetus for comprehensive urban school change.<sup>99</sup> In each of these scenarios, the state looks to be a savior of failing schools, but this is dubious given there is scant evidence that this type of education reform leads to indisputable gains in academic performance or educational equity.<sup>100</sup>

#### NOTABLE STATE TAKEOVERS OF URBAN CITIES

States have placed a premium on academic performance due to the implementation of federal legislation, such as NCLB and ESSA. Additionally, as a result of the Obama administration’s adoption of the Race to the Top Act of 2009 (RttT), state authority has been expanded, allowing states to be more aggressive in their takeover of ostensibly failing public schools and school districts.<sup>101</sup> This may be observed in the state takeovers of the school districts in New Orleans, Detroit, Memphis, and Little Rock. Louisiana, Michigan, Tennessee, and Arkansas serve as case studies for evaluating the racial implications of state takeovers. While each state takeover is distinct, there are commonalities. Research suggests that purported academic ineptitude was the

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<sup>95</sup> Anjale D. Welton, Sarah Diem, & Jennifer Jellison Holmes, *Color Conscious, Cultural Blindness: Suburban School Districts and Demographic Change*, 47 *EDUC. & URB. SOCIETY* 695, 696 (2015) (suggesting that more than half of minority students in metropolitan areas attend suburban schools).

<sup>96</sup> See Karen R. Wilson & Walter R. Allen, *Explaining the Educational Attainment of Young Black Adults: Critical Familial and Extra-Familial Influences*, 56 *THE J. OF NEGRO EDUC.* 64 (1987); Kenneth K. Wong & Francis X. Shen, *Big City Mayors and School Governance Reform: The Case of School District Takeover*, 78 *PEABODY J. OF EDUC.* 5, 15 (2003).

<sup>97</sup> Morel, *supra* note 2, at 492.

<sup>98</sup> See Buras, *supra* note 72, at 300; see Morel, *supra* note 2.

<sup>99</sup> See Robert L. Green & Bradley R. Carl, *A Reform for Troubled Times: Takeovers of Urban Schools*, 569 *ANNALS AM. ACAD. POL. & SOC. SCI.* 56, 64–65 (2000).

<sup>100</sup> See Green & Carl, *supra* note 99, at 66–67; Nelson, *supra* note 70, at 13.

<sup>101</sup> Mason & Reckhow, *supra* note 49.

driving force of states' decisions to effectuate state takeover policy.<sup>102</sup> A common antecedent for state takeover in each case was having a population that is disproportionately Black and/or Brown:<sup>103</sup> New Orleans,<sup>104</sup> Detroit,<sup>105</sup> and Memphis<sup>106</sup> each have majority Black populations. White people comprise a plurality of the population of Little Rock, but they represent only 45% of the population, suggesting that Little Rock is a majority non-white city in 2022.<sup>107</sup> Additionally, while only three of these cities are geographically located in the South, a sizable proportion of Michigan's Black population can be traced to industrial migration from the South.<sup>108</sup> In each case, a state educational authority assumed control of a locally elected school board, removed seasoned educators and popularly elected school board members, and posed a threat to the urban areas served by the schools.

### *New Orleans*

Following Hurricane Katrina, George W. Bush facilitated the privatization of the New Orleans educational system by offering considerable tax breaks to firms that invested in the area.<sup>109</sup> Notably, the hostile takeover of the Orleans Parish School Board (OPSB) and the city's public schools began before the landfall of Hurricane Katrina.<sup>110</sup> However, the state of Louisiana amplified its efforts to take over New Orleans' public schools in Katrina's wake. Spurred by the Bush administration's efforts to increase the prevalence of charter schools, the state seized control of New Orleans' public schools and quickly transferred leadership of individual public schools to charter management organizations. The Recovery School District (RSD), the state's takeover district, dismissed 7,500 educators, the vast majority of whom were Black women, replacing the veteran teachers with novice teachers who were predominantly white and had gotten little to no training as classroom teachers.<sup>111</sup> While the RSD returned schools to the OPSB in 2018, the OPSB's authority is severely limited. For example, OPSB is not permitted to convert any existing

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<sup>102</sup> Buras, *supra* note 72; Osborne, *supra* note 75, at 1; Wright et al., *supra* note 94.

<sup>103</sup> Green & Carl, *supra* note 99.

<sup>104</sup> Black people comprise roughly 58% of New Orleans' population in 2022. See <https://www.census.gov/quickfacts/fact/table/neworleanscitylouisiana,US>, archived at <https://perma.cc/28XH-4Y GK>.

<sup>105</sup> Black people comprise roughly 78% of Detroit's population in 2022. See <https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,US/PST045223>, archived at <https://perma.cc/3L55-7UVH>.

<sup>106</sup> Black people comprise roughly 65% of Memphis' population in 2022. See <https://www.census.gov/quickfacts/fact/table/memphiscitytennessee,US/PST045223>, archived at <https://perma.cc/5RAQ-2Z3N>.

<sup>107</sup> Black people comprise roughly 42% of Little Rock's population in 2022. See <https://www.census.gov/population/www/cen2000/briefs.html>, archived at <https://perma.cc/3AHS-FMHJ>.

<sup>108</sup> See Wright et al., *supra* note 94, at 424.

<sup>109</sup> See Gustavussen, *supra* note 72, at 94.

<sup>110</sup> See Buras, *supra* note 72, at 296.

<sup>111</sup> See Kevin Lawrence Henry, Jr., *Zones of Nonbeing: Abjection, White Accumulation, and Neoliberal School Reform*, 123 *TCHRS. COLL. REC.* 129, 141 (2021).

RSD schools (charter schools) to traditional public schools.<sup>112</sup> Kristin Buras refers to the New Orleans charter school framework as the “remaking of the newly governed south,” suggesting white elites (and their Black allies) are more concerned with profiting from Black schools and neighborhoods through public funding than addressing the needs of racially oppressed communities.<sup>113</sup> As Naomi Klein would suggest, Hurricane Katrina provided an opening for white elites and their Black allies to employ disaster capitalism.<sup>114</sup>

### *Detroit*

Detroit’s public schools have a long history of fiscal difficulties, such as inequities in school funding based on property taxes, and academic shortcomings, including an alarming dropout rate.<sup>115</sup> According to James Wright, Ronald W. Whitaker, Muhammad Khalifa, and Felecia Briscoe, “essentially decades of underinvestment/divestment combined with the marginalization of Black Detroit served as primary contributors to the existing financial crisis, including the financial health of the Detroit Public Schools.”<sup>116</sup> Michigan delegated district takeover authority to the Education Achievement Authority (EAA) through Public Act 4 (PA4).<sup>117</sup> The EAA, privately funded and governed by a state-appointed board, abolished the majority-Black local school board.<sup>118</sup> Thus, Detroit, consistently ranked among cities with the highest proportion of Black people, was without a popularly elected school board. More importantly, the city was without a school board that was accountable to its Black citizens. Dennis Archer, the mayor of Detroit, was permitted to appoint all but one of the new seven board members.<sup>119</sup> Rebecca Martusewicz refers to the Detroit takeover as the “Nightmare in Detroit,” stating that the seizure is “an intentional strategy to corporatize education, to make it a for-profit enterprise, using taxpayer money but no longer accountable to the public.”<sup>120</sup> Ultimately, the state takeover of public schools in Detroit led to additional questions about educational equity among students in the district. Likewise, Michigan accomplished the state takeover of public schools in Detroit through racially oppressing Black people. Ironically, stripping Black people of their voting rights led to further racial oppression in Detroit.

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<sup>112</sup> See Gustavussen, *supra* note 72, at 94.

<sup>113</sup> See Buras, *supra* note 72, at 296.

<sup>114</sup> NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* (1st ed. 2007).

<sup>115</sup> See Wright et al., *supra* note 94, at 424.

<sup>116</sup> *Id.* at 424–29.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* (the authors explain the impact of the EAA removing political power from Detroit’s Black community in the following way: “low academic performance in Detroit charters, along with the removal of parents’ democratic rights to be represented by an elected school board, is essentially a double-punishment for Black families in Detroit. The democratic rights have been removed in favor of reforms but those very reforms worsen the conditions. Black families in Detroit lost twice!”).

<sup>119</sup> See Green & Carl, *supra* note 99, at 569; see Nelson, *supra* note 70, at 27.

<sup>120</sup> Rebecca A. Martusewicz, *Warrior in an Educational Nightmare*, 50 *EDUC. STUD.* 99, 109 (2014).

*Memphis*

Tennessee launched its state takeover policy in 2009 as part of the Race to the Top program.<sup>121</sup> The Achievement School District (ASD), Tennessee's state-appointed takeover authority, implemented various school reforms, including opening or approving charter schools and updated teacher assessment systems.<sup>122</sup> Once subjected to state takeover, schools in Tennessee were either administered directly by the ASD, partnered with a charter management business, or converted into Innovation Zone schools, often known as districts inside districts.<sup>123</sup> Schools placed in the ASD remained there for five years, during which time charter management corporations were allowed to administer the schools independently. After five years, if the schools demonstrated improved academic performance, they were returned to their original district.<sup>124</sup> The State Commissioner of Education had the jurisdiction under existing law to place any priority school<sup>125</sup> into the ASD, remove local control, replace teachers and principals, control the budget, and exercise authority over day-to-day operations such as curriculum and instruction.<sup>126</sup> In Tennessee, the Achievement School District, especially in Memphis, highlighted concerns about neoliberal market-based reforms that prioritize “decentralization, competitiveness, and an antipathy to old bureaucratic institutions.”<sup>127</sup> Moreover, research indicates that these cases are motivated by an underlying market-based reform.<sup>128</sup>

*Summary of Previous Takeovers*

The proponents of charter schools often back and advocate for state takeovers. Thus, it is unsurprising that every student in New Orleans attends a charter school.<sup>129</sup> Ultimately, these states amended their constitutions to expedite the passage of the legislation authorizing state takeovers and supporting the federally prioritized practice of charter school expansion.<sup>130</sup> Of

<sup>121</sup> See Richard O. Welsh, *Recovery, Achievement, and Opportunity: A Comparative Analysis of State Takeover Districts in Louisiana, Tennessee, and Georgia*, 54 URB. EDUC. 311, 317 (2019).

<sup>122</sup> See Joshua L. Glazer & Cori Egan, *The Ties that Bind: Building Civic Capacity for the Tennessee Achievement School District*, 55 AM. EDUC. RSCH. J. 928, 943 (2018).

<sup>123</sup> See Welsh, *supra* note 121, at 54; Ron Zimmer, Gary T. Henry, & Adam Kho, *The Effects of a School Turnaround in Tennessee's Achievement School District and Innovation Zones*, 39 EDUC. EVALUATION & POL'Y ANALYSIS 670 (2017).

<sup>124</sup> See Zimmer et al., *supra* note 123.

<sup>125</sup> For a description of how Tennessee identifies priority schools, or schools that are candidates for state takeover, see Tenn. Code § 49-1-602 (2021).

<sup>126</sup> See Glazer & Egan, *supra* note 122, at 928.

<sup>127</sup> *Id.* at 928, 946.

<sup>128</sup> See KRISTIN L. BURAS, JIM RANDELS, KALAMU YA SALAAM, & STUDENTS AT THE CENTER, *PEDAGOGY, POLICY, AND THE PRIVATIZED CITY: STORIES OF DISPOSSESSION AND DEFIANCE FROM NEW ORLEANS* (2010); See Gustavussen, *supra* note 72, at 94.

<sup>129</sup> See Osborne, *supra* note 75, at 1.

<sup>130</sup> *Id.*; See also Welsh et al., *supra* note 68, at 703, 709 (discussing Georgia's passage of a constitutional amendment allowing for charter schools in preparation for the creation of its state takeover district).



tentimes, legislators promulgate state takeover legislation without a clear plan for addressing the issues facing public schools and districts or an exit plan. Empirical research on state takeovers does not demonstrate the effectiveness of state takeover policies as a cure for low-performing schools.<sup>131</sup> However, decades of research illustrates how state takeovers of public schools tear cities and communities apart in the process and how these cities are laboratories for typically unsuccessful urban experimentation.<sup>132</sup>

*More Recent Takeovers: Little Rock*<sup>133</sup>

Little Rock, Arkansas, is well-known for its role in attempting to maintain segregation in contravention of the Supreme Court's orders in *Brown v. Board of Education*.<sup>134</sup> Despite the Court's edict in *Brown*, state authorities employed multiple illegal and devious tactics to disrupt, delay, and avoid integration.<sup>135</sup> Current education policy interventions, especially the more recent takeover of the Little Rock School District (LRSD) are uncannily similar to Arkansas' activities in the 1950s: mainly efforts to uphold white supremacy. Policymakers in Arkansas have sought to disenfranchise Black people through state takeovers, charter school expansion, and class-based oppression.

Following the implementation of Arkansas' Academic Distress program, six of the LRSD's forty-eight schools were labeled as schools in academic distress.<sup>136</sup> Once the district was labeled as one in academic distress, it had five years to meet the departure criteria or it faced consolidation, annexation, or reconstitution by the state board.<sup>137</sup> The state of Arkansas acquired control of the LRSD in 2015 and dismissed its seven-member locally elected school board, citing the requirements of Act 915.<sup>138</sup> The locally elected school

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<sup>131</sup> See Steven L. Nelson & Jennifer E. Grace, *The Right To Remain Silent In New Orleans: The Role Of Non-Politically Accountable Charter School Boards In The School-To-Prison Pipeline*, 40 NOVA L. REV. 447 (2016); see Pham et al., *supra* note 11, at 1.

<sup>132</sup> See Buras, *supra* note 72, at 296; Steven L. Nelson, Monica Lynn Ridgeway, Timberly L. Baker, Cassandra D. Green, & Tiffany Campbell, *Continued Disparate Discipline: Theorizing State Takeover Districts' Impact on the Continued Oppression of Black Girls*, 57 URB. EDUC. 1230 (2022); see Wong & Shen, *supra* note 3, at 89.

<sup>133</sup> We are dedicating more space to Arkansas' takeover of the Little Rock School District because the takeover is under-researched as compared to the takeovers in New Orleans, Detroit, and Memphis.

<sup>134</sup> Ben F. Johnson III, *After 1957: Resisting Integration in Little Rock*, 66 ARK. HIST. Q. 258 (2007).

<sup>135</sup> Raymond T. Diamond, *Confrontation as Rejoinder to Compromise: Reflections on the Little Rock Desegregation Crisis*, 11 NAT'L BLACK L. J. 151, 157 (1988) (explaining how the Arkansas politicians developed bogus excuses for delaying desegregation).

<sup>136</sup> See Ark. Bureau of Legis. Rsch., *Academic Distress* (Aug. 23, 2016), [https://www.arkleg.state.ar.us/Bureau/Document?type=pdf&source=education%2fK12/AdequacyReports/2016%2f2016-08-23&filename=04-Academic%20Distress%20Report,%20BLR%20\(25\)](https://www.arkleg.state.ar.us/Bureau/Document?type=pdf&source=education%2fK12/AdequacyReports/2016%2f2016-08-23&filename=04-Academic%20Distress%20Report,%20BLR%20(25)), archived at <https://perma.cc/CVJ6-DSEC>.

<sup>137</sup> *Id.*

<sup>138</sup> See Amy Geswein, Marlisa Goldsmith, Macy Jenkins, & Dan Grossman, *Arkansas Takes Over Little Rock School District*, USA TODAY (Jan. 29, 2015), <https://www.usatoday.com/story/news/nation/2015/01/29/arkansas-takes-over-little-rock-school-district/22542995/>, archived at <https://perma.cc/EK9F-SAZU> (“[i]n taking over the school district, the board of education dissolved the district's board”).

board had recently become majority Black for the first time.<sup>139</sup> Dexter Suggs, the superintendent at the time, was retained on an interim basis<sup>140</sup> but was quickly replaced by state-appointed Baker Kurrus.<sup>141</sup> Thereafter, Asa Hutchinson, Governor of Arkansas, selected former senator Johnny Key as director of the state Education Department, even though Key lacked the prerequisites, namely a degree in or related to education, for the position.<sup>142</sup> Nevertheless, Johnny Key was appointed to lead the Arkansas Department of Education and therefore, the Little Rock School District, which was proclaimed academically distressed.<sup>143</sup> Because six of 48 schools were deemed academically deficient, the state completed a hostile, unilateral takeover of the entire public school system in Little Rock, Arkansas. According to Lisa M. Corrigan, “[t]he control of the Little Rock School District is fundamentally about a white city government poaching resources of a predominantly black school and district after labeling it in distress without reasonable public input in transforming the small number of underperforming schools.”<sup>144</sup> Under the guidance of Johnny Key, the LRSD takeover had five years to achieve exit conditions or face forcible consolidation, annexation, or reconstitution. LRSD, under state control, did not accomplish the exit criterion and increased its number of academically distressed schools from six to eight.<sup>145</sup> Consolidation and annexation, it is said, are not viable possibilities due to pending desegregation challenges, and reconstitution has already occurred.<sup>146</sup> To that end, Senate Bill 668 was proposed in April 2019 in an attempt to keep control of the district for another four years, despite objections from incumbent Mayor Frank Scott Jr., parents,

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<sup>139</sup> See Ark. Educ. Ass’n, *Community Pushes Back Against Privatization*, <https://www.aeaonline.org/community-pushes-back-against-privatization/>, archived at <https://perma.cc/37J7-FMNJ> (noting that the state of Arkansas seized control of Little Rock’s public schools three months after the city elected its first predominantly Black school board).

<sup>140</sup> See Geswein, et al., *supra* note 138.

<sup>141</sup> See Sarah Whites-Koditschek, *Attorney Baker Kurrus Appointed Superintendent Of Little Rock School District*, ARKANSAS PUBLIC RADIO (May 5, 2015), <https://www.ualr-publicradio.org/local-regional-news/2015-05-05/attorney-baker-kurrus-appointed-superintendent-of-little-rock-school-district/>, archived at <https://perma.cc/FN6M-VQBJ> (noting that Baker Kurrus, an attorney, became superintendent of the Little Rock School District after a quick succession of interim leader).

<sup>142</sup> Max Brantley, *State Board of Education takes over Little Rock School District*, ARKANSAS TIMES (Jan. 28, 2015), <https://arktimes.com/arkansas-blog/2015/01/28/state-board-of-education-takes-over-little-rock-school-district/>, archived at <https://perma.cc/WB9T-3GXV>.

<sup>143</sup> See Johnny Key Selected as Next AR Commissioner of Education, KARK (Mar. 26, 2015), <https://www.kark.com/news/johnny-key-selected-as-next-ar-commissioner-of-education/>, archived at <https://perma.cc/U2GQ-QVKB>.

<sup>144</sup> Lisa M. Corrigan, *The (Re)segregation Crisis Continues: Little Rock Central High at Sixty*, 83 S. COMM’N J. 65, 67 (2018).

<sup>145</sup> See Daniel Breen, *As LRSD Approaches Five Years of State Control, Its Future is Still Uncertain*, KUAR (Nov. 13, 2019), <https://www.ualrpublicradio.org/local-regional-news/2019-11-13/as-lrsd-approaches-five-years-of-state-control-its-future-is-still-uncertain/>, archived at <https://perma.cc/E2V3-8B6U>.

<sup>146</sup> *Id.*

teachers, and community members.<sup>147</sup> Senate Bill 668 was defeated in the Senate and was purged, but it may resurface in the future.<sup>148</sup>

The state ensured wealthy stakeholders would maintain control of education policy in Little Rock without regard to the community's interest. Johnny Key, Republican Secretary of State; Diane Zook, Chair of the State Board of Education; and Asa Hutchinson were the most prominent policy entrepreneurs in the state takeover. These leaders advocated for market-based reforms, such as privatization and charter schools, and plans that would contribute to racial segregation.<sup>149</sup> They publicly praised outside philanthropists, such as the Walton Family Foundation, for their ostensible efforts and commitments to educational equity.<sup>150</sup> For instance, Key is well-known for his pro-charter school stance.<sup>151</sup> He replaced Kurrus with another superintendent of Little Rock School District after learning of Kurrus' harsh comments on the hazards of school choice.<sup>152</sup> During Key's tenure there was significant opposition to his decisions concerning the LRSD, especially his role in destroying the teachers' union.<sup>153</sup> The opposition to Key's decisions was grounded in prior legislative protections for educators. Act 915 of 1995 prohibits the Teacher Fair Dismissal Act from being waived;<sup>154</sup> nevertheless, Key abolished these protections and advocated that they be overturned, which happened with Act 930 of 2017.<sup>155</sup> Key, who served as the board president, was responsible for

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<sup>147</sup> See Max Brantley, *Another Hit on the Little Rock School District*, ARKANSAS TIMES (Apr. 2, 2019), <https://arktimes.com/arkansas-blog/2019/04/02/another-hit-on-the-little-rock-school-district>, archived at <https://perma.cc/UZ86-LHLE>.

<sup>148</sup> See Max Brantley, *Senate Defeats Bill to Extend State Control of Little Rock School District*, ARKANSAS TIMES (April 8, 2019), <https://arktimes.com/arkansas-blog/2019/04/08/senate-defeats-bill-to-extend-state-control-of-little-rock-school-district>, archived at <https://perma.cc/L4V6-UDNM>; see also Hunter Fields, *Bill to Extend Little Rock District Takeover Gets New Life in Senate Panel*, ARKANSAS DEMOCRATIC GAZETTE (Apr. 6, 2019), <https://www.arkansasonline.com/news/2019/apr/06/school-takeover-bill-gets-new-life-in-pl>, archived at <https://perma.cc/J72N-H5WD>.

<sup>149</sup> See Max Brantley, *The Walton Plan for the Little Rock School District*, ARKANSAS TIMES (Sept. 7, 2019), <https://arktimes.com/arkansas-blog/2019/09/07/the-walton-plan-for-the-little-rock-school-district>, archived at <https://perma.cc/HA4G-W3H7>.

<sup>150</sup> *Id.*

<sup>151</sup> See Max Brantley, *Newly Rigged Charter School Panel Sets Meets for Walton-Powered Agenda*, ARKANSAS TIMES (Aug. 8, 2017), <https://arktimes.com/arkansas-blog/2017/08/08/newly-rigged-charter-school-panel-sets-meets-for-walton-powered-agenda>, archived at <https://perma.cc/S7S5-4UQ4>.

<sup>152</sup> See Leslie Newell Peacock, *Baker Kurrus Wants to be Mayor of a Town with Stronger Neighborhoods. Closer Connections*, ARKANSAS TIMES (Aug. 30, 2018), <https://arktimes.com/news/cover-stories/2018/08/30/baker-kurrus-wants-to-be-mayor-of-a-town-with-stronger-neighborhoods-closer-connections>, archived at <https://perma.cc/D9E4-CYPU>.

<sup>153</sup> See Max Brantley, *State Board Retreats from Proposal to Divide Little Rock School District, then Votes to Boot the Teachers' Union*, ARKANSAS TIMES (Oct. 10, 2019), <https://arktimes.com/arkansas-blog/2019/10/10/state-board-appears-read-to-retreat-from-proposal-to-divide-little-rock-school-district>, archived at <https://perma.cc/35P2-D4T2>.

<sup>154</sup> See Ark. Bureau of Legis. Rsch., *supra* note 136.

<sup>155</sup> See Cynthia Howell, *Arkansas Education Commissioner Sees Merit in Waiving Teacher Dismissal Laws for Some Little Rock Schools*, ARKANSAS DEMOCRAT GAZETTE (Oct. 24, 2018), <https://www.arkansasonline.com/news/2018/oct/24/key-sees-merit-in-lrdsd-teacher-job-shie-1/>, archived at <https://perma.cc/XTG5-L2WF>.

approving contracts between the district and its employees.<sup>156</sup> To that end, the state of Arkansas had ensured that its narrative and policy priorities would prevail in Little Rock, for the state had diminished the opportunities for other narratives or policy priorities to exist or advance.

Without a well-defined departure strategy, the LRSD classification of academic distress was changed from “Level 5 intensive support.”<sup>157</sup> In October 2019, the state board, formed of state-appointed officials, suggested a tiered approach that would allow residents to elect a school board, but that board would be accountable solely for schools that were not considered failing.<sup>158</sup> Failing schools would remain under the state’s control, thereby splitting the district by race.<sup>159</sup> Key intended to (and did) return LRSD to local control, subject to certain conditions.<sup>160</sup> Under the terms of a Memorandum of Agreement drafted by Mayor Frank Scott Jr., the district would implement a community schools initiative; however, in collaboration with the state, the school board would be subject to strict restrictions, including the inability to control the budget, hire and fire the superintendent, or recognize collective bargaining agents such as the Little Rock Education Association.<sup>161</sup> This raises concerns about the restoration of local control. Essentially, the locally elected board would have relatively few powers that we associate with traditional school boards. In March 2022, a lawsuit was filed challenging the state’s continued control of the LRSD and its current plans to place limits on the newly elected school board in November 2020.<sup>162</sup> As has been the case with numerous other state takeovers, the Little Rock School District is now considered another opportunity for for-profit charter schools and venture philanthropists, such as the Walton Family Foundation.<sup>163</sup>

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<sup>156</sup> See Kat Stromquist, *Waiver Sought on Dismissal of Teachers in Little Rock*, ARKANSAS DEMOCRAT GAZETTE (Oct. 23, 2018), <https://www.arkansasonline.com/news/2018/oct/23/waiver-sought-on-dismissal-of-teachers-/>, archived at <https://perma.cc/YZ4V-8SQQ>.

<sup>157</sup> Lindsey Millar, *Little Rock School District Fully Released from State Control*, ARKANSAS TIMES (July 8, 2021), <https://arktimes.com/arkansas-blog/2021/07/08/little-rock-school-district-fully-released-from-state-control>, archived at <https://perma.cc/AA7K-UHTT>.

<sup>158</sup> Breen, *supra* note 145 (notably, the majority of purportedly unperforming schools served student populations who were disproportionately Black and Brown); see Evie Blad, *How Little Rock Fits Into the National Landscape for State Takeovers of School Districts*, EDUCATION WEEK (Oct. 13, 2019), <https://www.edweek.org/education/how-little-rock-fits-into-the-national-landscape-for-state-takeovers-of-school-districts/2019/10>, archived at <https://perma.cc/U5AP-EKNM>.

<sup>159</sup> Adam Harris, *An Attempt to Resegregate Little Rock, of All Places*, THE ATLANTIC (Oct. 22, 2019), <https://www.theatlantic.com/education/archive/2019/10/little-rock-still-fighting-school-integration/600436/>, archived at <https://perma.cc/9S85-4BSL>.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Max Brantley, *Another Lawsuit Challenges State Takeover of Little Rock School District*, ARKANSAS TIMES (Apr. 1, 2020), <https://arktimes.com/arkansas-blog/2020/03/31/another-lawsuit-challenges-state-takeover-of-little-rock-school-district>, archived at <https://perma.cc/Y4YP-QQP9>.

<sup>163</sup> Corrigan, *supra* note 144, at 65.

MASSACHUSETTS' LONGSTANDING TAKEOVER OF LAWRENCE PUBLIC  
SCHOOLS<sup>164</sup>

Lawrence, a gateway city, is approximately 25 miles north of Boston and was once a thriving industrial town offering good jobs and serving as a point of entry to the American Dream.<sup>165</sup> Lawrence has historically been referred to as the “Immigrant City” due to its high proportion of foreign-born people.<sup>166</sup> Lawrence had a flood of Puerto Rican and Dominican newcomers from the 1970s to 1990s,<sup>167</sup> who now make up the majority of Lawrence’s population. Approximately 86% of Lawrence’s population is Latino and half of those Latinos are Afro-Latino.<sup>168</sup> Llana Barber notes the racialized struggle that took place over space and resources as Lawrence became New England’s first majority Latino city.<sup>169</sup> The Lawrence school system serves around 13,000 children, with 90% of kids living in poverty and 70% using English as a second language.<sup>170</sup>

Following the Massachusetts Business Alliance’s 1991 study “Every Child a Winner” and the landmark case, *McDuffy v. Robertson*, the state legislature enacted the Massachusetts Education Reform Act of 1993 (MERA).<sup>171</sup> This statute enhanced state support for public education.<sup>172</sup> However, this funding was commensurate with increased accountability, as the state of Massachusetts gained the right to classify schools as “underperforming” or “chronically underperforming,” paving a path to charter school expansion.<sup>173</sup> Most importantly, the state of Massachusetts was now empowered to intervene in purportedly troubled schools and districts.<sup>174</sup> Notably, Massachusetts

<sup>164</sup> We are dedicating more space to Massachusetts’ takeover of the Lawrence Public Schools because the takeover is under-researched as compared to the takeovers in New Orleans, Detroit, and Memphis.

<sup>165</sup> City of Lawrence, *About the City*, <https://www.cityoflawrence.com/501/About-the-City>, archived at <https://perma.cc/K4NJ-H5BC>.

<sup>166</sup> *Id.*

<sup>167</sup> Llana Barber, *This Would Be a Ghost Time: Urban Crisis and the Latino Migration in Lawrence, 1945-2000*, 46 HIST. J. OF MASS. 46 (2018).

<sup>168</sup> Interview with Stacy Seward, Exec. Dir., The Dream Network, in Lawrence, Mass. (October 2022).

<sup>169</sup> Llana Barber, *Latino Migration and The New Global Cities: Transnationalism, Race, and Urban Crisis in Lawrence, Massachusetts, 1945-2000* (Aug. 2010) (Ph.D. dissertation, Boston College) (ProQuest).

<sup>170</sup> Linda Borg, *Mass. City Turned its School System Around*, THE PROVIDENCE JOURNAL (July 30, 2019), <https://www.providencejournal.com/story/news/education/2019/07/31/mass-city-similar-to-providence-widely-recognized-as-success-story-after-state-takeover/4575010007/>, archived at <https://perma.cc/E222-MQBT>.

<sup>171</sup> Mitchell D. Chester, *Building on 20 Years of Massachusetts Education Reform*, MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC. (Nov. 2014), <https://www.doe.mass.edu/commissioner/buildingonreform.pdf>, archived at <https://perma.cc/J2EM-9YKJ>.

<sup>172</sup> Kathryn A. McDermott, “Expanding the moral community” or “blaming the victim”? *The politics of state education accountability policy*, AM. EDUC. RSCH. J. 77, 95 (2007) (finding that “[i]n Massachusetts, advocates of MERA suggested that their intent was to strengthen schoolchildren’s hand in local politics and to keep municipal officials from shirking their responsibility to provide adequately for public education”).

<sup>173</sup> *Id.* at 102.

<sup>174</sup> Linda Driscoll, Joseph B. Berger, Ronald K. Hambleton, Lisa Keller, Robert W. Malloy, David Hart, Paul Oh, Victoria Gettis, Susan Bowles, Francis L. Gourgeon, Kathryn McDermott, & Andrew Churchill, *Education Reform: Ten Years After the Massachusetts Education Reform Act of 1993*, EDUC. CONNECTION (2003).

aimed for punitive accountability prior to the passage of the No Child Left Behind Act and thus far exceeded federal criteria for school accountability at the time. The state's new accountability structure placed Lawrence Public Schools (LPS) in jeopardy for the district had seen its share of ineffective leadership and mismanagement throughout the years, including accusations of fraud and embezzlement and the district going without a permanent superintendent for two years.<sup>175</sup> In 2010, in response to the Race to the Top Initiative, the state of Massachusetts enacted "An Act Relating to the Achievement Gap," colloquially referred to as the "Massachusetts Achievement Gap Act," redoubling its efforts at holding public schools and districts accountable for student achievement.<sup>176</sup> This Act authorizes the state to designate schools scoring in the bottom 20% statewide as "underperforming" or "chronically underperforming," empowers an external receiver with full authority to operate and manage schools and school districts and reports only to the commissioner and expands the state's charter school capacity.<sup>177</sup>

According to the 2010 Gap Act legislation, the state was responsible for convening a stakeholder meeting that included the commissioner, a designee from the school committee, the president of the local teacher's union, a school administrator, a teacher selected from the school's faculty, a parent, and various community representatives.<sup>178</sup> While the state did hold the required meeting, it was not held in Lawrence.<sup>179</sup> The meeting took place in Malden, Massachusetts, approximately 25 miles from Lawrence.<sup>180</sup> Two schools were designated as underperforming when the state passed the Massachusetts Achievement Gap Act.<sup>181</sup> Five schools were labeled as underperforming in 2011 as a result of the Gap Act, placing them and the district in the Level 4 category. Mitchell Chester, Commissioner of Education, and The Massachusetts Department of Elementary and Secondary Education (DESE) used this data, along with concerns about prior local officials' administration of LPS.<sup>182</sup> While the turnaround plan states the receivership was authorized

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<sup>175</sup> Karen Baroody, Lois Rho, & Ali Huberlie, *Back from the Brink: How a Bold Vision and a Focus on Resources Can Drive System Improvement System: School System 20/20 Case Study*, EDUC. RES. STRATEGIES (2015).

<sup>176</sup> Chester, *supra* note 171.

<sup>177</sup> Mass. Bd. of Elementary & Secondary Educ. Comm'rs Off., *Opinion Letter on Level 5 District Planning in Lawrence Public Schools* (Nov. 23, 2011), <https://www.doe.mass.edu/bese/docs/fy2012/2011-11/item2.html>, archived at <https://perma.cc/799D-7P37>.

<sup>178</sup> *Id.*

<sup>179</sup> See *Lawrence Public Schools Face Possible State Takeover*, WBUR NEWS (Nov. 29, 2011), <https://www.wbur.org/news/2011/11/29/lawrence-schools-takeover>, archived at <https://perma.cc/YWN3-A4YT>; John J-H Kim, Christine An, & Geoff Marietta, *Between Compliance and Support: The Role of the Commonwealth in District Takeovers* (June 9, 2015), <https://projects.iq.harvard.edu/files/pelp/files/pel073p2.pdf>, archived at <https://perma.cc/52ST-TPM8>.

<sup>180</sup> *Lawrence Public Schools Face Possible State Takeover*, *supra* note 179; Peter Schworm & John Guilfoil, *Lawrence Schools Taken Over by State*, THE BOSTON GLOBE (Nov. 29, 2011), <https://www.bostonglobe.com/metro/2011/11/29/state-board-votes-take-over-lawrence-public-schools/gjTdL.Sng9AhXwd4cnAVNrJ/story.html>, archived at <https://perma.cc/S9UE-7ANU>.

<sup>181</sup> *List: Massachusetts' 35 'Level 4' or Underperforming Schools*, WBUR NEWS (May 5, 2010), <https://www.wbur.org/news/2010/03/05/35-underperforming-schools>, archived at <https://perma.cc/6J97-MZLP>.

<sup>182</sup> Mass. Bd. of Elementary & Secondary Educ. Comm'rs Off., *supra* note 177.

for three years, the document did not detail a plan for exit.<sup>183</sup> Although there was no exit plan, the state moved ahead with the takeover. Mitchell Chester, named Jeff Riley as receiver of the LPS.<sup>184</sup> The state took over LPS with only a facade of public input, as the state had only maintained technical compliance with the Massachusetts Achievement Gap Act.

Riley chose to assume absolute authority over the district and the school board's governance functions, fired half of the district's administrators and approximately 10% of its instructors, and rejected the input of the local teacher's union by stripping them of collective bargaining agreements.<sup>185</sup> Riley's "Open Architecture" turnaround concept differentiated autonomy among the schools.<sup>186</sup> That is, additional autonomy was granted to schools that were not identified as underperforming while the receiver, Riley, retained ultimate control.<sup>187</sup> Riley was also able to turn over all distressed schools to management corporations, as the Gap Act increased the number of permitted charter school operators.<sup>188</sup> Level 5 schools would be subject to the state's most stringent supervision.<sup>189</sup> Riley also established Acceleration Academies and expanded the school day.<sup>190</sup> Riley's takeover strategy, dubbed the "Third Way," has been widely acclaimed as successful and to have produced significant benefits, particularly in mathematics, during the first few years of operation.<sup>191</sup> However, the LPS remained a level 5 district, or "chronically underperforming," according to the 2015 Massachusetts District Report Card Overview.<sup>192</sup> Ironically, Riley was permitted to continue receivership of the LPS when the three-year renewal procedure occurred because the district—despite his intervention—remained underperforming.<sup>193</sup> The state allowed Lawrence to

<sup>183</sup> Mass. Bd. of Elementary & Secondary Educ., *Lawrence Public Schools Renewed Turnaround Plan* (May 30, 2012), <https://www.doe.mass.edu/level5/districts/level5districts.html>, archived at <https://perma.cc/HL4A-UPR9>.

<sup>184</sup> Kim, An, & Marietta, *supra* note 179.

<sup>185</sup> Keith Eddings, *After Remaking Lawrence Schools, Riley Will Leave to Remake Himself*, THE EAGLE TRIBUNE (Nov. 18, 2017), [https://www.eagletribune.com/news/merrimack\\_valley/after-remaking-lawrence-schools-riley-will-leave-to-remake-himself/article\\_af648a63-59c2-5ebf-90a8-8558da7d7509.html](https://www.eagletribune.com/news/merrimack_valley/after-remaking-lawrence-schools-riley-will-leave-to-remake-himself/article_af648a63-59c2-5ebf-90a8-8558da7d7509.html), archived at <https://perma.cc/33X6-TPJ9>; Jill Harmacinski, *Cooper Quits School Board*, THE EAGLE TRIBUNE (Aug. 22, 2012), [https://www.eagletribune.com/news/cooper-quits-school-board/article\\_8abb212f-e2f3-55b2-8484-2ce191a37aca.html](https://www.eagletribune.com/news/cooper-quits-school-board/article_8abb212f-e2f3-55b2-8484-2ce191a37aca.html), archived at <https://perma.cc/MJ2X-8LFZ>.

<sup>186</sup> Baroody, Rho, & Huberlie, *supra* note 175.

<sup>187</sup> Mass. Board of Elementary and Secondary Educ. Comm'r's Office, *supra* note 177, at 6–7 (discussing an "Earned Autonomy" framework).

<sup>188</sup> Scot Lehigh, *Jeff Riley, The Man for the Moment as State Education Commissioner*, THE BOSTON GLOBE (Feb. 1, 2018), <https://www.bostonglobe.com/opinion/2018/02/01/jeff-riley-man-for-moment-state-education-commissioner/jOeXI1duUpOeJntA2ubZlJ/story.html>, archived at <https://perma.cc/M36R-GD7Y>.

<sup>189</sup> Mass. Board of Elementary and Secondary Educ. Comm'r's Office, *supra* note 177.

<sup>190</sup> *Id.*

<sup>191</sup> Schueler, *supra* note 55; Schueler & Bleiberg, *supra* note 4.

<sup>192</sup> Mass. Dep't of Elementary and Secondary Educ., *2015 Massachusetts District Report Card Overview: Lawrence Public School District* (2015), <https://profiles.doe.mass.edu/report-card/districtreportcardoverview2015.aspx?linkid=106&orgcode=01490000&fycode=2015&ortypecode=5&>, archived at <https://perma.cc/W43B-SYVL>.

<sup>193</sup> Michael Jonas, *State Takeover of School Districts No 'Silver Bullet': Study Finds No Evidence of Clear Benefit from Interventions*, COMMONWEALTH BEACON (Apr. 6, 2022), <https://commonwealthbeacon.org/education/state-takeover-of-school-districts-no-silver-bullet/>,

elect a local school committee in 2017 while the district was still in receivership and “chronically underperforming.”<sup>194</sup> However, the school committee was advisory in nature, lacking the authority to make decisions or even set meeting dates.<sup>195</sup> To this end, the state’s concessions, which allowed Lawrence’s disproportionately Black and Brown population to have a semblance of the right to vote, was insincere.

Jeff Riley resigned from his job in November 2017 and was appointed Commissioner of Education of Massachusetts in January 2018.<sup>196</sup> Subsequently, the state formed a state-appointed body known as the Lawrence Alliance for Education with receivership authority over LPS with John Connolly as its chair.<sup>197</sup> Without consulting the Lawrence School Committee,<sup>198</sup> the newly constituted receivership board chose Cynthia Paris as the superintendent of LPS.<sup>199</sup> Paris, in turn, requested LPS remain in receivership.<sup>200</sup> After eleven years under state administration, the LPS remains in receivership, and Commissioner Jeff Riley has once again renewed the district’s turnaround plan.<sup>201</sup> While math scores and graduation rates have improved in the LPS, they are still underperforming per the state guidelines.<sup>202</sup> There is a growing worry among the Lawrence Community regarding the social-emotional well-being of pupils in schools, as this has never been a priority for the state, in addition to the state’s complete disregard of the voices of the people it is supposed to serve.<sup>203</sup> To this end, we leverage Lawrence as a site for our socio-legal

archived at <https://perma.cc/K3WF-4TVM> (sharing that Lawrence Public Schools’ state test scores lag behind the state of Massachusetts, but yet, Lawrence Public Schools remain under an ineffective state receivership).

<sup>194</sup> 2015 Massachusetts District Report Card Overview: Lawrence Public School District, *supra* note 192.

<sup>195</sup> Dalia Diaz, “Illegal” Meeting of the Lawrence School Committee, RUMBO NEWS (Mar. 10, 2020), <https://rumbonews.com/site/illegal-meeting-of-the-lawrence-school-committee/>, archived at <https://perma.cc/8PVX-LRQB>.

<sup>196</sup> Keith Eddings, *Board That Will Run Lawrence Schools for the State Meets*, THE EAGLE TRIBUNE (Feb. 28, 2018), [https://www.eagletribune.com/news/board-that-will-run-lawrence-schools-for-the-state-meets/article\\_b58db6d0-1cac-11e8-862f-834a4e1b4ccc.html](https://www.eagletribune.com/news/board-that-will-run-lawrence-schools-for-the-state-meets/article_b58db6d0-1cac-11e8-862f-834a4e1b4ccc.html), archived at <https://perma.cc/3H9P-HKPX>; Max Larkin, *Jeff Riley Will be Massachusetts’ New Education Commissioner*, WBUR NEWS (Jan. 29, 2018), <https://www.wbur.org/news/2018/01/29/riley-education-commissioner>, archived at <https://perma.cc/7JHS-TE5X>.

<sup>197</sup> Eddings, *supra* note 196.

<sup>198</sup> *Id.*

<sup>199</sup> Keith Eddings, *Board Chooses Cynthia Paris as Lawrence School Superintendent*, THE EAGLE TRIBUNE (May 21, 2018), [https://www.eagletribune.com/news/merrimack\\_valley/board-chooses-cynthia-paris-as-lawrence-school-superintendent/article\\_9a2e33c3-176f-5153-b327-0fa9b66f300d.html](https://www.eagletribune.com/news/merrimack_valley/board-chooses-cynthia-paris-as-lawrence-school-superintendent/article_9a2e33c3-176f-5153-b327-0fa9b66f300d.html), archived at <https://perma.cc/V9YC-W7EF>.

<sup>200</sup> Interview with Stacy Seward, *supra* note 168.

<sup>201</sup> *Lawrence Public Schools Renewed Turnaround Plan*, *supra* note 183.

<sup>202</sup> Jonas, *supra* note 193.

<sup>203</sup> Felicia Gans, *After 10 Years, Lawrence Wants to Take Back Its Schools. But Commissioner Riley is Showing No Signs of Letting Go of State Receivership*, THE BOSTON GLOBE (Oct. 19, 2021), <https://www.bostonglobe.com/2021/10/19/metro/after-10-years-lawrence-wants-take-back-control-its-schools-commissioner-riley-is-showing-no-signs-letting-go-state-receivership/>, archived at <https://perma.cc/V2UE-77K9>; The Greater Lawrence Educ. Justice Alliance, *Letter: Receivership at Root of Lawrence School ‘Crisis’*, THE EAGLE TRIBUNE (Oct. 25, 2021), [https://www.eagletribune.com/opinion/letter-receivership-at-root-of-lawrence-school-crisis/article\\_4b278528-34e5-11ec-9b09-0f00595db273.html](https://www.eagletribune.com/opinion/letter-receivership-at-root-of-lawrence-school-crisis/article_4b278528-34e5-11ec-9b09-0f00595db273.html), archived at <https://perma.cc/2FXL-NDBT>.



work, exploring how discourse contributes to and maintains state takeovers of school districts that (dis)serve predominantly Black and Brown communities.

## THEORETICAL FRAMEWORKS

### *LatCrit*

Latino Critical Race Theory, or LatCrit, is an extension of Critical Race Theory (CRT); it analyzes the Latine community's unique experiences while shedding light on the linkages between racism and nativism.<sup>204</sup> Complementing rather than competing with Critical Race Theory, LatCrit is an unapologetic framework allowing educational researchers to include how Latine populations experience visible and invisible forms of oppression.<sup>205</sup> LatCrit provides scholars with a prism through which to articulate the types of oppression Latines encountered, especially as complicated by invisibility, race, class, gender, immigration, language, and sexual orientation.<sup>206</sup> LatCrit combines perspectives from multiple fields and highlights where racism intersects with other forms of subordination while advocating for social justice, acknowledging the contradictions of power that rest within institutions.<sup>207</sup> Scholars who incorporate LatCrit into their work rely on the core tenets of Critical Race Theory, chiefly considering 5 themes: a) the centrality of the intersectionality of race and racism, b) challenge to dominant ideology, c) commitment to social justice, and d) centrality to experiential knowledge.<sup>208</sup> Research suggests that the Black-White Binary has been the dominant conversation while other cultures and ethnicities can be left out of the conversation.<sup>209</sup> Yet, recent work has deepened the conversation, suggesting that theories like Afro-Latinidad offer a better analysis of the inherent intersectionality that people of color typically embody.<sup>210</sup> Moreover, we rely heavily on the work of Lindsey Pérez

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<sup>204</sup> Lindsay Pérez Huber, *Using Latina/o Critical Race Theory (LatCrit) and Racist Nativism to Explore Intersectionality in the Educational Experiences of Undocumented Chicana College Students*, EDUC. FOUND. (2010).

<sup>205</sup> Andrea D. Guajardo, Grisel M. Robles-Schrader, Lisa Aponte-Soto, & Leah C. Neubauer, *LatCrit Theory as a Framework for Social Justice Evaluation: Considerations for Evaluation and Evaluators*, 2020 NEW DIRECTIONS FOR EVALUATION 65–75 (2020); Pérez Huber, *supra* note 204; Daniel G. Solórzano & Dolores Delgado Bernal, *Examining Transformational Resistance Through a Critical Race and Latcrit Theory Framework: Chicana and Chicano Students in an Urban Context*, 36 URB. EDUC. 308 (2001).

<sup>206</sup> Guajardo et. al., *supra* note 205; Pérez Huber, *supra* note 204; Solórzano & Delgado Bernal, *supra* note 205; Daniel G. Solórzano & Tara J. Yosso, *Maintaining Social Justice Hopes Within Academic Realities: A Freirean Approach to Critical Race/Latcrit Pedagogy*, 78 DENV. UNIV. L. REV. 595 (2001); Daniel G. Solórzano & Tara J. Yosso, *Critical Race and Latcrit Theory and Method: Counter-Storytelling*, 14 INT'L J. OF QUALITATIVE STUDENTS IN EDUC. 471 (2001).

<sup>207</sup> *Maintaining Social Justice Hopes Within Academic Realities*, *supra* note 206.

<sup>208</sup> *Id.*

<sup>209</sup> Erica R. Davila & Ann Aviles de Bradley, *Examining Education for Latinas/os in Chicago: A CRT/LatCrit Approach*, 24 EDUC. FOUND. 39 (2010); *Critical Race and Latcrit Theory and Method: Counter-Storytelling*, *supra* note 206.

<sup>210</sup> See generally, Agustín Laó-Montes, *Afro-Latinidades and the Diasporic Imaginary*, 5 IBEROAMERICANA 117 (2005).

Huber, who adds racist nativism to her LatCrit analyses.<sup>211</sup> Pérez Huber identifies acts as harboring racist nativism when the following occur: a) the act exhibits “an intense opposition to the foreigner”, b) results in the defense of a nationalistic identity, and c) the foreigner is positioned as an inherent threat to the nationalistic identity.<sup>212</sup> Ultimately, Pérez Huber settles on a more poignant definition of racist nativism

the assigning of values to real or imagined differences in order to justify the superiority of the native, who is perceived to be white, over that of the non-native, who is perceived to be People and Immigrants of Color, and thereby defend the native’s right to dominance.<sup>213</sup>

We will rely on Pérez Huber’s interpretation of LatCrit, which includes a theorization and operationalization of racist nativism, as we move forward in this article.

As with many critical studies, LatCrit is an outgrowth of CRT, which emerged from legal studies, and although it has been a useful framework for over twenty years, it has more recently expanded into the field of education.<sup>214</sup> Solórzano and Yosso suggest LatCrit in Education recognizes that educational institutions work in contradictory ways, with their capacity to oppress and marginalize coexisting with their capacity to emancipate and empower.<sup>215</sup> Furthermore, Erica Davila and Ann Aviles de Bradley suggest that schools have changed little in their efforts to ensure that schooling is a means of serving the needs of those facing subordination, eschewing social justice-oriented goals to entrench oppression.<sup>216</sup> LatCrit provides educational researchers a viewpoint to understand the unique school experiences of Latine students as a step towards calling out and challenging inequities and dominant ideologies.<sup>217</sup> We leverage LatCrit as a theoretical lens in this work, allowing us to examine and illuminate the myriad ways racial subjugation shows up in Lawrence, particularly the racial subjugation affecting Afro-Latino populations directly subjected to the state takeover of Lawrence Public Schools.

### *Antiblackness*

Relatively new to the field of education, scholars who study antiblackness suggest that Black humanity is an impossibility due to the constant

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<sup>211</sup> See Pérez Huber, *supra* note 204.

<sup>212</sup> See *id.* at 80.

<sup>213</sup> Lindsay Pérez Huber, Corina Benavides Lopez, Maria C. Malagon, Veronica Velez & Daniel G. Solórzano, *Getting Beyond the ‘Symptom,’ Acknowledging the ‘Disease’: Theorizing Racist Nativism*, 11 CONTEMP. JUST. REV. 39, 43 (2008).

<sup>214</sup> See Pérez Huber, *supra* note 204; see also *Maintaining Social Justice Hopes Within Academic Realities*, *supra* note 206.

<sup>215</sup> See *Critical Race and Latcrit Theory and Method: Counter-Storytelling*, *supra* note 206.

<sup>216</sup> See Davila & Aviles de Bradley, *supra* note 209.

<sup>217</sup> *Id.*

othering or referencing Black as something as other than human.<sup>218</sup> Michael Dumas<sup>219</sup> and Connie Wun<sup>220</sup> are credited with introducing antiblackness and afropessimism to the field of education. These more critical approaches enable researchers to acknowledge, grapple with, and reveal inequities and racism in education policy and practice of education. Antiblackness as a framework does not seek to offer hope but provides a lens for scholars to view the social and cultural dispossession of Black people as it stems from the relationship between slaves and slave owners<sup>221</sup>, yet also insists that Black people be seen as human.<sup>222</sup> Furthermore, scholars studying antiblackness, such as Saidiya Hartman<sup>223</sup>, link persistent racism in society directly to the Black suffering commensurate with slavery, suggesting Black people are experiencing the “afterlife of slavery.”<sup>224</sup> This afterlife of slavery is easily translated to the continued marginalization and Black suffering (in multiple forms) in schools as schools are “sites of spatialized terror where the existence and consequence of the anti-Black spatial imaginary are pervasive.”<sup>225</sup> While some forms of slavery have ended (formally), the power relations represented in the concept and enactment of chattel slavery have not as they live on in the social imagination and continued suffering of Black bodies, contributing to the notion of Black people as socially dead.<sup>226</sup>

Demarcus A. Jenkins expounds on the concept of antiblackness and afropessimism, both inside and outside the K-12 sphere, suggesting that Black people are perceived as inhuman and access to and use of space, especially in education, has been used as and has provided consequences for Black people.<sup>227</sup> Whiteness dominates classrooms in the United States. This domination includes but is not limited to curricula<sup>228</sup>, notions of respect<sup>229</sup>, and dress

<sup>218</sup> See Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 THEORY INTO PRAC. 11 (2016).

<sup>219</sup> *Id.*

<sup>220</sup> See Connie Wun, *Against Captivity: Black Girls and School Discipline Policies in the Afterlife of Slavery*, 30 EDUC. POL'Y 171 (2016).

<sup>221</sup> See ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY* (2018).

<sup>222</sup> See Dumas, *supra* note 218.

<sup>223</sup> See Saidiya Hartman, *Lose Your Mother: A Journey Along the Atlantic Slave Route*, 44 J. OF AM. STUD. (2008).

<sup>224</sup> *Id.* at 6.

<sup>225</sup> DeMarcus A. Jenkins, *Unspoken Grammar of Place: Anti-Blackness as a Spatial Imaginary in Education*, 31 J. OF SCH. LEADERSHIP 107, 119 (2021).

<sup>226</sup> See Dumas, *supra* note 218; PATTERSON, *supra* note 221.

<sup>227</sup> See Jenkins, *supra* note 225.

<sup>228</sup> See Steven L. Nelson, *Curricular Preemption: The New Front of an Old Culture War*, LOC SOLS SUPPORT CTR (Mar. 13, 2023) (describing conservative states' recent attempts to ban curricular options aimed at inclusive instruction and cultural responsiveness), <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/640dfafb9499775238152c47/1678637822932/LSSC-WhitePaper-CurricularPreemption.pdf> archived at <https://perma.cc/8QF8-CY46>.

<sup>229</sup> See generally Russell J. Skiba, Robert S. Michael, Abra Carroll Nardo & Reece L. Peterson, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 THE URB. REV. 317 (2002) (finding Black students are more likely to be disciplined for subjective offenses (disrespect, being argumentative, etc.) while white students are more likely to receive discipline for objective offenses (smoking, possessing weapons, engaging in sexual activity, etc.)).

codes.<sup>230</sup> Black people, particularly students, are seen as problems, pariahs, in need of being fixed and unable to be educated.<sup>231</sup> Antiracism in education does not end in the classroom; it is evident in the development, implementation, and evaluation of education policy. Black people are subjected to gratuitous violence, particularly in education policy targeted at school reform, a primary focus of this article. Because education reform frequently uproots Black leadership to make room for white leadership, education reform results in Black people's containment and dispossession by restricting Black people's political access, opportunities, realities and removing Black people's abilities to hold their educational leaders to account through the political process.<sup>232</sup>

Educational leaders and educators are not saved from the demonstration of antiracism. Benjamin Blaisdell suggests school leaders and educators contribute to the creation and reinforcement of antiracism.<sup>233</sup> Antiracism manifests itself in the continuation of state takeovers of public schools and districts that serve disproportionately Black and Brown school districts, which often result in the incapacity of Black people to achieve self-determination and self-governance. These takeovers limit and sometimes abolish Black agency and right to self-determination. Even more disconcerting, and specifically related to Black suffering, is that disparate and harsh disciplinary consequences for Black students in urban settings experience in public schools and districts subjected to these takeovers.<sup>234</sup> Often, over-disciplining Black students is the result of state takeovers, but academic achievement is often lacking (despite claims).<sup>235</sup> Caldera concurs with Nelson's suggestions of harsh and disproportionate disciplinary actions and highlights further forms of abuse to include withholding resources, denying cultural relevance, corporate takeovers of public education, biased assessments, the overrepresentation of Black students in resources, and the underrepresentation of Black students in gifted programs.<sup>236</sup> Considering Hartman's<sup>237</sup> afterlife of slavery theory combined with Patterson's<sup>238</sup> and Dumas's<sup>239</sup> social death concept and the current educational conditions that stymie Black advancement, we assert that current implementations of state takeover policy and practices within state takeover districts are saturated in antiracism.

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<sup>230</sup> See generally Alyssa Pavlakis & Rachel Roegman, *How Dress Codes Criminalize Males and Sexualize Females of Color*, 100 PHI DELTA KAPPAN 54 (2018).

<sup>231</sup> See Altheria L. Caldera, *Eradicating Anti-Black Racism in U.S. Schools: A Call-to-Action for School Leaders*, 4 DIVERSITY, SOC. JUST., & THE EDUC. LEADER 11 (2020).

<sup>232</sup> See Nelson, *supra* note 70.

<sup>233</sup> Benjamin Blaisdell, *Cupcakes, White Rage, and the Epistemology of Antiracism*, 19 TABOO: THE J. OF CULTURE & EDUC. 70 (2020).

<sup>234</sup> Steven L. Nelson, Monica Lynn Ridgeway, Timberly L. Baker, Cassandra D. Green & Tiffany Campbell, *Continued Disparate Discipline: Theorizing State Takeover Districts' Impact on the Continued Oppression of Black Girls*, 57 URB. EDUC. 1230 (2022); Nelson, *supra* note 70; Nelson, *supra* note 84.

<sup>235</sup> Steven L. Nelson & Jennifer E. Grace, *The Right to Remain Silent in New Orleans: The Role of Non-Politically Accountable Charter School Boards in the School-to-Prison Pipeline*, 40 NOVA L. REV. 447 (2016).

<sup>236</sup> See generally Caldera, *supra* note 231.

<sup>237</sup> See generally Hartman, *supra* note 223.

<sup>238</sup> PATTERSON, *supra* note 221.

<sup>239</sup> See Dumas, *supra* note 218.

Caldera's work that wrestles with the Black/white binary and suggests that Black people's inhumanity affirms the humanity of white people.<sup>240</sup> Thus, antiblackness and whiteness are inextricably related: whiteness does not exist without the concept of antiblackness.<sup>241</sup> Therefore, we examine state takeover policy through both frameworks (antiblackness and whiteness) to fully conceptualize the antecedents and consequences of state takeovers of public schools and districts.

### *Whiteness*

To bolster the argument that whiteness is pervasive and blackness as a notion will endure beyond this current historical moment, indefinitely into the foreseeable future, researchers have suggested that whiteness is a permanent, ever-evolving structure in society that is centered on two primary themes.<sup>242</sup> Whiteness acts in the cultural and social context through overt and covert privilege<sup>243</sup> and white supremacy culture<sup>244</sup>; similarly, whiteness functions through invisibility and the normalization of whiteness.<sup>245</sup> According to David Gillborn, "one of the most powerful and dangerous aspects of whiteness is that many (possibly the majority) of white people have no awareness of whiteness as a construction, let alone their role in sustaining and playing out the inequities at the heart of whiteness."<sup>246</sup> Nolan Cabrera continues, "Whiteness is valued as a privileged, dominant, and frequently invisible social identity inside the White supremacy superstructure."<sup>247</sup> Cabrera further asserts that cultural and discursive practices, which he refers to as hegemonic whiteness, contribute to and result in the obfuscation of disequal<sup>248</sup> social interactions along racial lines.<sup>249</sup> The result of disequal social interactions is white privilege, racial inequity, and an anti-minority influence weaved throughout and within our society<sup>250</sup>, which produces the cultural phenomenon that is white

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<sup>240</sup> Caldera, *supra* note 231.

<sup>241</sup> GEORGE YANCY, *BLACK BODIES, WHITE GAZES* (2nd ed. 2017).

<sup>242</sup> See Sharon I. Radd & Tanetha Jamay Grosland, *Desirablizing Whiteness: A Discursive Practice in Social Justice Leadership that Entrenches White Supremacy*, 54 *URB. EDUC.* 656, 669 (2019) (explaining the connection between permanence and whiteness as "... in the context of permanent racism, Whiteness often provides disproportional access to these highly desirable qualities").

<sup>243</sup> See David Gillborn, *Rethinking White Supremacy: Who Counts in 'WhiteWorld'*, 6 *ETHNICITIES* 318, 319 (2006) (defining white privilege).

<sup>244</sup> *Id.* at 320 (defining white supremacy and explaining how white supremacy operates on a cultural level).

<sup>245</sup> See Sherry Marx, *Regarding Whiteness: Exploring and Intervening in the Effects of White Racism in Teacher Education*, 37 *EQUITY & EXCELLENCE IN EDUC.* 31 (2004); John T. Warren, *Doing Whiteness: On the Performative Dimensions of Race in the Classroom*, 50 *COMM'N EDUC.* 91 (2001).

<sup>246</sup> David Gillborn, *Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory, and Education Reform*, 20 *J. OF EDUC. POL'Y* 485, 490 (2005).

<sup>247</sup> Nolan L. Cabrera, *Where is the Racial Theory in Critical Race Theory?: A Constructive Criticism of the Crits*, 42 *THE REV. OF HIGHER EDUC.* 209, 223 (2018).

<sup>248</sup> We use the term disequal to note that the inequalities in racial interactions are socially constructed rather than naturally occurring, which we would consider unequal.

<sup>249</sup> See Cabrera, *supra* note 247, at 223.

<sup>250</sup> *Id.*

supremacy. These three levels of social disequity are reflexive, influencing and reinforcing each other; thus, the cultural sphere normalizes inequality and racism, allowing systemic white supremacy to remain unquestioned, unchallenged,<sup>251</sup> and most importantly, uninterrupted. Whiteness adapts to societal contexts, modifying laws and customs as necessary to maintain its dominance<sup>252</sup>, and reshaping itself to preserve whiteness as the undergirding ethos of society as well as its ability to maintain control. In essence, battling whiteness is a long game!

Whiteness is pervasive across all sectors of society and, more specifically for this research, in educational policy and practice. Whiteness maintains the capacity to establish society's ground rules—through settler colonialism—and to modify those ground rules as necessary to preserve a social order that values whiteness, white privilege, white supremacy, and, ultimately, white people.<sup>253</sup> These seismic alterations are purposeful (active) and unintended (passive) in their efforts to maintain white supremacy culture.<sup>254</sup> However, intentions are (mostly) irrelevant to analyses of racial oppression because the impacts are identical.<sup>255</sup> Dyer asserts “Whiteness... reproduces itself regardless of aim, power dynamics and goodwill...”<sup>256</sup> Preceding statements stand up to scrutiny, even if whiteness may not be obviously visible in educational policy.

Nonetheless, white supremacy continues to play a significant role in educational policy. As Cheryl Matias and colleagues point out, whiteness is not only existent but is also maintained to sustain white supremacy's institutionalization.<sup>257</sup> As a result, whiteness must be identified, confronted, and contested at every turn. There are numerous ways in which white power and oppression manifest themselves in educational policy, including, but not limited to, the establishment of a master narrative curriculum<sup>258</sup>, dress codes<sup>259</sup>,

<sup>251</sup> *Id.*

<sup>252</sup> Steven L. Nelson, *Different Script, Same Caste in the Use of Passive and Active Racism: A Critical Race Theory Analysis of the (Ab)use of 'House Rules' in Race-Related Education Cases*, 22 WASH. & LEE J. OF CIV. RIGHTS & SOC. JUST. 297 (2016) (generally linking the Supreme Court's desegregation decisions to the Court's decisions on race-conscious admissions); see also, Adrian Jamal McLain & Steven L. Nelson, *Reframing the Affirmative Action Debate to Move Beyond Arguments for Diversity and Interest Convergence*, 24 BARRY L. REV. 83 (2019) (denoting how race-conscious admission transitioned from a remedial measure to a measure focused primarily on diversity, which benefits white students). Finally, compare these papers to Daren Lenard Hutchinson, *Unexplainable on Grounds Other Than Race: The Inversion of Privilege and Subordination in Equal Protection Jurisprudence*, 2003 U. OF ILL. L. REV. 615, 637–43 (explaining how the Court reserves its most exacting scrutiny for laws that burden white people).

<sup>253</sup> See *Different Script, Same Caste in the Use of Passive and Active Racism*, *supra* note 252, at 297.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.* at 349–52.

<sup>256</sup> RICHARD DYER, *THE MATTER OF WHITENESS* 12 (Berger et al. eds., 5th ed. 2005).

<sup>257</sup> See Cheryl E. Matias, Danielle Walker & Mariana del Hierro, *Tales from the Ivory Tower: Women of Color's Resistance to Whiteness in Academia*, 18 TABOO: THE J. OF CULTURE & EDUC. 35 (2019).

<sup>258</sup> See Anthony L. Brown & Wayne Au, *Race, Memory, and Master Narratives: A Critical Essay on U.S. Curriculum History*, 44 CURRICULUM INQUIRY 358 (2014).

<sup>259</sup> Pavlakakis & Roegman, *supra* note 230.

and day-to-day classroom activities.<sup>260</sup> A clear manifestation of whiteness is the assumption that whiteness and white supremacy are capable of identifying the composition, structure, and outcomes of effective schools and the proper approach to administer education.<sup>261</sup>

Additionally, whiteness exists and survives across capitalism's many structures and neoliberal ambitions. Privatization of schools, market-based reforms, and the emergence of school choice provide space and opportunity for whiteness's ongoing reshaping and the perpetuation of white supremacy culture. However, as previously mentioned, whiteness does not exist in isolation from the concept of antiblackness<sup>262</sup>, and both ideas manifest themselves in schools as education reform strategies. This is not coincidental. Schools and schooling were never intended to serve children, families, and communities of color. For instance, Black people in the United States faced the possibility of death for learning to read and write.<sup>263</sup> White settlers organized boarding schools to ensure that indigenous peoples lost their culture.<sup>264</sup> Conservative states have moved to displace, ban, and replace curricular options that offer accurate accounts of the United States' history.<sup>265</sup> As a result, schools were designated as white property.<sup>266</sup>

#### METHODOLOGY

This study examined the policies that permit the implementation and maintenance of state takeovers of public schools and districts and the influence of the more recent third-way approach. Additionally, this paper investigated the role of racism via the co-opting of civil rights in these practices pertaining to the current state takeover of Lawrence Public Schools in Massachusetts. By examining the state's takeover of public schools in Lawrence, Massachusetts, we question how frequently structural, systemic, and policy mechanisms intended to alleviate educational racism, inequity, and injustice are abused to further enslave Black and Brown communities.

We conducted a Dialectical Relational Approach (DRA) to Critical Discourse Analysis (CDA) of existing law and policy and other public documents regarding the conception, implementation, and evaluation of the unilateral reconstitution—or state takeover—of Lawrence Public Schools. CDA is advantageous for this study because it enabled us to examine how discourses

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<sup>260</sup> See Ali Sammel, *Turning the Focus from 'Other' to Science Education: Exploring the Invisibility of Whiteness*, 4 CULTURAL STUD. OF SCI. EDUC. 649, 650 (2009).

<sup>261</sup> See generally Katharyne Mitchell & Chris Lizotte, *The Grassroots and the Gift: Moral Authority, American Philanthropy, and Activism in Education*, FOUCAULT STUD. 66 (2014).

<sup>262</sup> YANCY, *supra* note 241.

<sup>263</sup> See I. Bennett Capers, *Reading Back, Reading Black*, 35 HOFSTRA L. REV. 9, 19–20 (2006).

<sup>264</sup> Lindsay Kingston, *The Destruction of Identity: Cultural Genocide and Indigenous Peoples*, 14 J. OF HUM. RTS. 63, 67 (2015).

<sup>265</sup> See Nelson, *supra* note 228 (describing conservative states' recent attempts to ban curricular options aimed at inclusive instruction and cultural responsiveness).

<sup>266</sup> See Buras, *supra* note 72.

(re)produce social power and how the oppressed respond to such abuse.<sup>267</sup> Additionally, DRA enables the incorporation of the relative persistence of social structures in dialectical connection to processes of meaning formation.<sup>268</sup> Discourse(s) are presented through various mediums and encompass how humans convey meaning and comprehension of the world around them.<sup>269</sup>

We compiled a collection of documents that reflected a variety of discourses and discursive events. These documents comprised different state-enacted legislation and policies and public remarks regarding the state's control of LPS. Using a dialectical relational approach to CDA necessitated that we employ a four-step analysis of the state takeover of LPS. The four steps were sequential and are as follows: "1) focus upon a social wrong in its semiotic aspects, 2) identify obstacles to addressing the social wrong, 3) consider whether the social order 'needs' the social wrong, and 4) identify possible ways past the obstacles."<sup>270</sup>

## FINDINGS

### *Focusing on a Social Wrong: The State Takeover of the Lawrence Public School District as a Societal Wrong*

We assert that Massachusetts unilateral takeover of LPS is a societal wrong. Lawrence's demographics compelled us to investigate the intersections of race throughout the community as we analyzed the case through the individual lenses of LatCrit, antiblackness, and whiteness. The city's population is predominantly Latine, with a sizable portion of the population being Afro-Latine. These intersectionalities demand that we include all three lenses when analyzing the state takeover of LPS.

We accept the definition of antiblackness that Chezare Warren and Justin Coles put forth: that blackness and therefore Black people are considered "inhuman, disposable, and inherently problematic."<sup>271</sup> To that end, antiblackness positions blackness and Black people as always needing repair.<sup>272</sup> Antiblackness manifests itself in school district-level decisions, even when educational leadership don't explicitly say their actions are grounded in antiblackness.<sup>273</sup>

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<sup>267</sup> TEUN A. VAN DIJK, *TEXTS AND PRACTICES: DISCUSS, POWER, AND ACCESS* (2013); RUTH WODAK & MICHAEL MEYERS, *METHODS OF CRITICAL DISCOURSE STUDIES* (Mila Steele et al. eds., 3d ed. 2015).

<sup>268</sup> Marissa K. L. E., *Analyzing Neoliberal Discourse: An Integrated Dialectical-Relational Critical Discourse Analysis-Discourse Theory Framework Utilizing Conceptual Metaphor*, 40 *TEXT & TALK* 147 (2020).

<sup>269</sup> Dianna R. Mullet, *A General Critical Discourse Analysis Framework of Educational Research*, 29 *J. OF ADVANCED ACAD.* 116 (2018); JAMES PAUL GEE, *AN INTRODUCTION TO DISCOURSE ANALYSIS: THEORY AND METHOD* (2d ed. 2005).

<sup>270</sup> WODAK & MEYERS, *supra* note 267.

<sup>271</sup> Chezare A. Warren & Justin A. Coles, *Trading Spaces: Antiblackness and Reflections on Black Education Futures*, 53 *EQUITY & EXCELLENCE IN EDUC.* 382, 383 (2020).

<sup>272</sup> *See id.* at 385.

<sup>273</sup> *See* Andrene J. Castro, Genevieve Siegel-Hawley, Kimberly Bridges & Shenita E. Williams, *Narratives of Race in School Rezoning: How the Politics of Whiteness Shape Belonging, Leadership Decisions, and School Attendance Boundaries*, 8 *AREA OPEN* 1, 7 (2022).



Presumably, antiblack practices in education are moderated when Black peoples are represented on the school board. Thus, removing Black peoples' political power and representation aids in the upholding of antiblackness. Though the state purports to expand access to equal educational opportunities and results through its implementation of state takeover policy, the takeover is rooted in antiblackness. According to Domingo Morel<sup>274</sup> and Joseph Oluwole and Preston C. Green<sup>275</sup>, practically all districts subjected to unilateral reconstitution serve communities that are majority of Black or Brown. Additionally, Domingo Morel suggests that Latine residents see a relative increase in political power after a state takeover; however, Black residents see a decrease in political power after a state takeover.<sup>276</sup> Essentially, states are allowed to seize control of local politics of education, removing whatever political power Black communities possess prior to the takeover. Massachusetts continued a national trend in minimizing Black peoples' political power, including that of Afro-Latines, when choosing to implement state takeover policies.

Historically, whiteness has controlled the politics of education in Lawrence. In essence, white people have leveraged their *whiteness as property*<sup>277</sup> in maintaining domination of the affairs of the local school board. Cheryl I. Harris posits whiteness as property has four functional pillars: rights of disposition, rights to use and enjoyment, reputational and status property, and the absolute right to exclude.<sup>278</sup> We focus on rights to use and enjoyment reputational and status property, and the absolute right to exclude in this subsection. Massachusetts had several options for implementing the state takeover of LPS. Mitchell Chester, Commissioner of Education, stated in a 2011 letter to the DESE:

While we could approach receivership with a more limited goal of stabilizing the district and securing the most expeditious transition back to the community, I believe our focus must be on the long-term quality and effectiveness of the educational program for the students.<sup>279</sup>

The state could have collaborated with the locally elected, predominantly Black and Brown, school board to create a plan that incorporated community input. Instead, the state chose to conduct a hostile takeover of LPS, eschewing opportunities to incorporate community input, effectively ignoring rather than amplifying community voice, and establishing two white males as the sole authority over a racially oppressed and blatantly underrepresented population.<sup>280</sup> The state's decision to avoid including the voice of the

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<sup>274</sup> See Morel, *supra* note 2.

<sup>275</sup> See Oluwole & Green III, *supra* note 2.

<sup>276</sup> See Morel, *supra* note 2 (arguing that state intervention in Newark, New Jersey was the result of increased political power in the Black community).

<sup>277</sup> Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

<sup>278</sup> *Id.*

<sup>279</sup> Mass. Bd. of Elementary & Secondary Educ. Comm'rs Off., *supra* note 177.

<sup>280</sup> Steven L. Nelson & Stacy Seward, *The State Takeover of Public Schools as State Preemption: Evidence from Lawrence, Massachusetts*, 3 LOCAL POWER & POLITICS REV. 20,

disproportionately Black and Brown community satisfies Cheryl I. Harris' theorization of *rights to use and enjoyment* and *the absolute rights to exclude*. The right to use and enjoyment addresses situations where white people (although other groups can also exhibit and support whiteness) take action to "fulfill the will" or "exercise power."<sup>281</sup> Commissioner Chester is clear in his letter: the state is actively quieting the voice of the predominantly Black and Brown community in Lawrence, effectively offering a political stiffarm. The state is exercising power in an effort to uphold the will of the people: to maintain the status quo, which is whiteness. Similarly, the state's actions—as taken from Commissioner Mitchell's letter—serves to absolutely exclude some members of the community as potential leaders *and* to practically exclude all voices. Thus, the state is able to uphold whiteness through exercising the absolute right to exclude. Ultimately, the commissioner is not bashful in noting the state's intention to sidestep community voice. To that end, whiteness has and continues to dominate the politics of education in Lawrence.

The state's implementation of takeover policy in Lawrence upholds whiteness as property in other ways. Specifically, the state's implementation of takeover policy satisfies Cheryl I. Harris' pillar of *reputational and status property*. Riley's dominance and the state's failure to explore an exit strategy for Lawrence uphold whiteness (and therefore antiblackness), as these actions rob the majority Afro-Latino students, families, and communities of their ability to self-govern and to experience self-possession. Even when Jeff Riley resigned and a board that did not answer to the voters of Lawrence but answered to Jeff Riley, a white man, the state-appointed answered to one man who could fire them, whiteness as property had again reared its ugly head.<sup>282</sup> The Lawrence Alliance for Education, which was another effort at ostensible community input for Lawrence residents, increased the state's ability to prescribe what they determined was best for the pupils. In essence, white people were able to a) commandeer leadership positions in this disproportionately Black and Brown school district, b) have unchecked control over the politics of education and education policy, and c) install other white people (and their allies) in power when they tired of their ill-gotten benefits. The cycle is seemingly perpetual in Lawrence as there is no end of the state receivership. For instance, Michael Moriarty, a current state education board member, expressed a need for state receivership to maintain its current status in Lawrence, stating, "We know they can't change themselves, 'cause they never do."<sup>283</sup> Not only is this statement insulting and antiblack, but the statement is also unreasonable, ahistorical, and decontextualized as the Lawrence community has

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21–2 (2023) (highlighting local residents' exclusion from leadership opportunities in the state takeover district), <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/642c2627f992c120927f5347/1680614958555/LPPRVolumeIII.pdf>, archived at <https://perma.cc/SH2E-VCGK>.

<sup>281</sup> Harris, *supra* note 277, at 1734.

<sup>282</sup> Mass. Bd. of Elementary & Secondary Educ., Update on the Lawrence Alliance for Education and the Holyoke Public Schools (Mar. 16, 2018), <https://www.doe.mass.edu/bese/docs/fy2018/2018-03/item1.html> archived at <https://perma.cc/V2UE-77K9>.

<sup>283</sup> Gans, *supra* note 203.

not been allowed to provide input into the politics of education or education policy for over a decade. Even though the community elected the Lawrence School Committee, the committee is symbolic and has no independent power to influence education policy in Lawrence. The committee is not permitted to make decisions or plan or hold meetings; thus, they act solely as a listening ear for community members.<sup>284</sup> Concerning Moriarty's comment above, one could argue that the same could be said of the majority of state takeovers of schools and school districts, as little data indicates that states achieve significant improvements in outcomes when they seize control of public schools and districts.

The state's implementation of takeover policy in Lawrence is rife with instances of racist nativism. Lindsay Pérez Huber defines racist nativism as the act of conjuring differences among marginalized people with the intent of supporting white supremacy, thus providing a justification for white people's dominance.<sup>285</sup> Lawrence has been and continues to be an immigrant city; however, Europe was the previous origin of immigrants. When the immigrant population was white, the state of Massachusetts did not conduct a state takeover of public schools in Lawrence (although the schools were underperforming). When the city elected its first Afro-Latine mayor, who functioned as the leader of the school committee, the state seized control of Lawrence's public schools.<sup>286</sup> Ultimately, the state opted to disempower and disenfranchise the local citizens, choosing to dissolve the locally elected school board<sup>287</sup> and hold the required community meeting more than 25 miles outside of the city limits.<sup>288</sup> The state added insult to injury, as DESE Commissioner Michael Moriarty went on to express the underlying anti-Latine bias in his statement that the population and community was broken and could not fix itself. Moriarty's commentary is instructional here: he makes clear what the state obfuscated for years. The state's takeover of LPS was a step beyond saviorism. The state leveraged its power to do as it pleased to the local, predominantly Black and Brown community, while trying to position itself as politically oppressive. However, that the community was not included in the decision to take over the local schools nor invited to provide input on what should happen after the takeover suggests that Massachusetts has created a *progressive dystopia*<sup>289</sup> in Lawrence. According to Savannah Shange, a progressive dystopia is a utopia that serves only one population.<sup>290</sup> In Lawrence, the progressive dystopia only serves white people. To that end, white people's dominance is embedded in

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<sup>284</sup> Diaz, *supra* note 195.

<sup>285</sup> Lindsay Pérez Huber, *Challenging Racist Nativist Framing: Acknowledging the Community Cultural Wealth of Undocumented Chicana College Students to Reframe the Immigration Debate*, 79 HARV. EDUC. REV. 704, 708–09 (2009).

<sup>286</sup> Nelson & Seward, *supra* note 280 (highlighting local residents' exclusion from leadership opportunities in the state takeover district).

<sup>287</sup> Schworm & Guilfoil, *supra* note 180.

<sup>288</sup> See *Lawrence Public Schools Face Possible State Takeover*, *supra* note 179.

<sup>289</sup> SAVANNAH SHANGE, *PROGRESSIVE DYSTOPIA: ABOLITION, ANTIBLACKNESS, AND SCHOOLING IN SAN FRANCISCO* (2019).

<sup>290</sup> *Id.* at 24.

the cultural ethos of the state of Massachusetts. That white dominance is the undercurrent of racial nativism in Lawrence.

*Identifying Obstacles to Addressing the Social Wrong: Neoliberal Reform as Whiteness*

Neoliberal education reform in LPS disproportionately benefits white students, families, and communities. By seizing control of LPS, charter schools have been granted the autonomy to expand within the city limits.<sup>291</sup> Neoliberal education reform policies and practices embrace whiteness (and antiblackness) through yet another mechanism. They create obstacles for addressing the antiblackness and whiteness of state takeover policies, in general, and specifically in Lawrence. The state has ignored the voices of Black and Brown community members who are critical of the state takeover. Other community stakeholders may be with sufficient information to challenge the state takeover as the required stakeholder meeting per the state's takeover policy was strategically placed in a city approximately 25 miles away from Lawrence. Lawrence is routinely considered one of, if not the, poorest community in the state. The state could have provided better and more access to the stakeholder meeting if the meeting was held within the city limits. The maintenance of white supremacy is what permitted those in attendance to attend, and the maintenance of white supremacy is what kept many community members out.

Considering neoliberalism as an obstacle for addressing antiblackness and whiteness in education, we note that several members of the current state-appointed receiver, the Lawrence Alliance for Education, have conflicting relationships with outside vendors working within the schools. The board's chair, John Connolly founded the non-profit 1647 that works with LPS.<sup>292</sup> Noemi Custodia-Lora serves on the board and is vice president of Northern Essex Community College; her institution receives funds from students attending dual enrollment courses.<sup>293</sup> Jessica Andors is the executive director of Lawrence Community Works, which currently holds a contract with the schools.<sup>294</sup> The conflicts of interest between the key players in who has a say in what takes place in the LPS. In the spirit of venture philanthropy, these educational leaders have clear conflicts of interest *and* could (and do) benefit personally and professionally from the maintenance of whiteness in LPS. These types of conflicts, which position education—a public good—as something from which the wealthy can profit, are the very forms of neoliberalism that prevent the earnest attempt to resolve antiblackness and whiteness in LPS.

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<sup>291</sup> See Denisa R. Superville, *State Takeover Gives Mass. District a Fresh Start*, EDUC. WEEK (Feb. 21, 2019) <https://www.edweek.org/teaching-learning/state-takeover-gives-mass-district-a-fresh-start/2015/05>, archived at <https://perma.cc/HU44-3DAY>.

<sup>292</sup> See Michael Jonas, *Connolly to Chair New Lawrence School Board*, COMMONWEALTH BEACON (Feb. 6, 2018), <https://commonwealthmagazine.org/education/connolly-named-chair-new-lawrence-school-oversight-board/>, archived at <https://perma.cc/9GJD-ZW32>.

<sup>293</sup> See Eddings, *supra* note 196.

<sup>294</sup> *Id.*

An additional obstacle is that the state is providing Lawrence with what appears to be voice and choice, but these offerings are a mirage. For example, the elected School Committee is the purported representative (voice) of the community. However, the School Committee has very little power to address prevailing issues in LPS although they serve as a space and place for community members to vent. Following their formation, the Lawrence Alliance for Education appointed a Latina, Cynthia Paris, as superintendent.<sup>295</sup> Superintendent Paris' appointment was a mere symbol rather than a bold move towards Latine advancement, as Paris had no power or publicly stated desire to bring the long-awaited end of the receivership. These circumstances align with LatCrit scholars' notions of societies' institutions having the ability to empower yet choosing to oppress.<sup>296</sup>

*Considering Whether the Societal Order Needs the Social Wrong:  
Whiteness' Need for Antiblackness*

Antiblackness and whiteness, as previously said, are inseparable ideas. The fundamental motivation for antiblackness is the desire to maintain whiteness.<sup>297</sup> Saidiya Hartman<sup>298</sup>, Ian Haney Lopez<sup>299</sup>, and Carol Anderson<sup>300</sup> highlight and expound upon the ways in which whiteness manifests itself and how whiteness establishes and relies upon antiblackness. Each author's theoretical framing supports the narrative that Massachusetts' takeover of LPS sustains whiteness as a property interest. Consider, for example, that the LPS has maintained an "underperforming" status since the state seized control of the school district. Here, the state reinforces the idea that whiteness is supreme and that Black peoples, in this case Afro-Latines, will endure long suffering, even beyond the initial racial trauma placed upon them. This aligns with Hartman's concept of the afterlife of slavery<sup>301</sup> and the concept that contemporary racialized traumas are scenes of continued subjection and racial subjugation.<sup>302</sup> Likewise, that the state did not conduct the takeover until the city elected its first Afro-Latine mayor suggests that the law itself empowered whiteness to differentiate between how Black and Brown citizens experienced life in Lawrence. That Lawrence was celebrated as the "Immigrant City" when white immigrants dominated the population and is now seen as a city in need of reform following a racial shift in population, aligns with Haney Lopez's concept

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<sup>295</sup> See Eddings, *supra* note 199.

<sup>296</sup> See *Critical Race and Latcrit Theory and Method: Counter-Storytelling*, *supra* note 206.

<sup>297</sup> See Warren & Coles, *supra* note 271, at 385 (2020) (declaring that "[t]he economic institution of slavery was enacted, in part, to maintain whiteness as superior, and thus, such violence against black people became a necessity").

<sup>298</sup> See SAIDIYA HARTMAN, *SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA* (1st ed. 1997).

<sup>299</sup> See IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996).

<sup>300</sup> See CAROL ANDERSON, *WHITE RAGE: THE UNSPOKEN TRUTH OF OUR RACIAL DIVIDE* (2016).

<sup>301</sup> See Hartman, *supra* note 223.

<sup>302</sup> See HARTMAN, *supra* note 298.

of white by law (that law has helped shape the racial landscape of the United States and continues to place a value on being white or being associated with whiteness). Likewise, the state chose a hostile takeover of LPS, disempowering the locally elected school board. In other instances, the state has taken a much more collaborative approach to takeover. Of course, Lawrence has a historical past that suggests Black and Brown citizens experienced rapid population growth in the area, resulting in white people being pushed out of power with little time to plan an organized resistance. The hostile nature of the takeover in Lawrence is partially owed to white people's attempt at retribution against Black and Brown citizens. This aligns with Anderson's concept of white rage, or the theory that white people's contemporary backlash against people of color is tied to anger about being pushed out of power. To this end, we hypothesize that the state of Massachusetts needed to take over the schools in Lawrence, disenfranchising the community, to ensure the maintenance of white supremacy.

Additional evidence that the state needs this social wrong is found in continued efforts to maintain the state takeover of LPS. The state of Massachusetts continues to lord over LPS without a clear exit strategy in place and avoids ceding power to the primarily Black and Brown population.<sup>303</sup> Thus, even after disrupting Black and Brown peoples' right to self-governance and self-possession for over a decade and not doing much better than the prior school board, the state continues to deploy antiblackness and white supremacy in Lawrence via the retention of political power (at least as relative to the politics of education) while denying the electoral franchise to Black and Brown people. As previously stated, the objective(s) of whiteness necessitates the perpetuation of antiblackness. In other words, the current social order (whiteness) is dependent on the social wrong (antiblackness) to survive. This is especially true when whiteness wants to protect the status quo (connecting whiteness to disproportionate wealth) by pushing school marketization and preserving the political standing of present leaders. State takeovers deprive Black communities of more than just their physical space and access to equal education. It is the erasure of all forms of Black advancement, self-possession, and self-determination. Whiteness evolves, and to preserve white control in education and municipal government, Black progress must be stifled or eliminated. Whiteness' social order must sustain the status quo, and it will shapeshift in any way required to do so.<sup>304</sup> Cyclically, state takeover policies contribute to and further the neoliberal objective behind school marketization and venture philanthropy, which serves to retain white leaders' political power.<sup>305</sup>

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<sup>303</sup> See Mass. Bd. of Elementary and Secondary Educ. Comm'rs Off., *supra* note 177.

<sup>304</sup> See Gillborn, *supra* note 246; Cheryl E. Matias, Allison Henry & Craig Darland, *The Twin Tales of Whiteness: Exploring the Emotional Roller Coaster of Teaching and Learning about Whiteness*, 16 TABOO: THE J. OF CULTURE & EDUC. 7 (2017); Matias, Walker & del Hierro, *supra* note 257; Cheryl E. Matias, *Do You See the Words Coming Out of that Text? Seeing Whiteness in Digital Text*, 21 INT'L J. OF MULTICULTURAL EDUC. 14 (2020); Warren, *supra* note 245.

<sup>305</sup> See Baltodano, *supra* note 31; Matthew Carr & Marc Holley, *Maximizing Return: An Evaluation of the Walton Family Foundation's Approach to Investing in New Charter Schools*,

Thus, the very nature of antiblackness is to perpetuate the precise barriers that hinder its removal.

### *Identifying Ways Past the Social Wrong*

There are currently limited avenues for interrupting anti-blackness and the promotion of whiteness in education; however, here are some suggestions for thwarting the state's takeover of public schools. There are primarily three methods in which Black and Brown communities can mitigate the extent to which disproportionately white political structures deny their rights to self-governance, self-possession, and self-determination. To begin, Black and Brown communities should strive to take over and reform their own schools. There is evidence from the Memphis and Nashville school districts that such takeovers are effective and efficient at a) preventing the state from taking over public schools and b) raising test scores in schools that have been taken over and reformed locally.<sup>306</sup> Second, similar to this proposal (and maybe as part of it), schools could alter their names and codes to obstruct state boards of education from tracking which schools are judged to be regularly failing. Finally, Black and Brown families can join the homeschooling movement, which has experienced growth among Black and Brown families.<sup>307</sup> Here, our recommendation is that Black and Brown families opt-out of a system built to destroy their children. There are few, if any, avenues to overcome antiblackness; these tactics could assist Black and Brown kids, families, and communities in responding to and coping with antiblackness in education under the right conditions.

### SUMMARY OF FOUR-STEP ANALYSIS

State takeovers of public schools and districts are a significant issue in education reform, and states are poised to continue this form of education reform. State takeovers of public schools and districts has been and continues to be linked to racialized policy goals, most notably those that seek to disenfranchise, contain, dispossess, dehumanize, and otherwise restrict access and opportunities for Black and Brown students, families, and communities living in urban areas. Bafflingly, state takeovers continue to grow in popularity even though these reconstitutions are ineffective at improving academic outcomes in the schools and districts subjected to takeover. As with any policy grounded

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6 FOUND. REV. 6 (2014); Adrienne D. Dixon, Kristin L. Buras & Elizabeth K. Jeffers, *The Color of Reform: Race Education Reform, and Charter Schools in Post-Katrina New Orleans*, 21 QUALITATIVE INQUIRY 288 (2015); Murray Levine & Adeline G. Levine, *Follow the Money: There's No Business Like the Ed. Business*, 84 AM. J. OF ORTHOPSYCHIATRY 377 (2014); Reckhow & Snyder, *supra* note 69; Sarah Reckhow, *More than Patrons: How Foundations Fuel Policy Change and Backlash*, 49 POL. SCI. & POL. 449 (2016).

<sup>306</sup> See Aaren N. Cassidy & Steven L. Nelson, *Understanding Arkansas' State Takeover of the Little Rock School District as Antiblackness: A Dialectical Relational Approach*, 22 J. OF L. IN SOC'Y 167 (2022).

<sup>307</sup> See Brian Ray, *African American Homeschool Parents' Motivations for Homeschooling and Their Black Children's Academic Achievement*, 9 J. OF SCH. CHOICE 71, 72 (2015).

in whiteness and white supremacy, state takeover reform has shapeshifted and morphed to meet the needs of those in power. Calling a takeover by another name, such as the Third Way, has yet to prove significant gains in achievement or social-emotional well-being and has certainly not improved in lifting the voices of those silenced. Additionally, these takeovers perpetuate opportunity inequalities and inequities. Furthermore, racialized academic outcomes persist in predominantly Black and Brown public schools and districts after takeover, continuing to impede Black and Brown people's advancement and empowerment within the community. Using a four-step dialectical-relational approach to CDA through the lenses of antiblackness, whiteness, and LatCrit elucidated the role of antiblackness and whiteness in state takeover policies, oppressive barriers erected by state legislatures and policymakers in Lawrence. Thus, this article broadens the conversation concerning school reform ideas and ways to resist the disempowerment of Black and Brown communities during the development, implementation, and evaluation of school reform strategies, such as state takeovers of public schools and districts—discussions anchored in practice and praxis.

#### RACIAL ANTECEDENTS AND CONSEQUENCES OF STATE TAKEOVER

##### *Racial Antecedents of State Takeover: Racial Oppression as the Cause of Takeovers*

When states decide to take over public schools and districts, the decision is usually based on alleged academic or (formerly) financial distress. States do not, however, focus their investigations on *why* districts are in the position to need such dire intervention. Moreover, there is little evidence that states have spent substantial time considering why school districts that serve disproportionately Black and Brown student populations comprise nearly all state takeovers of public schools and districts. The answers to these questions are very elusive; they exist in the fabric of our society's reaction to the Supreme Court's decision in *Brown v. Board of Education*. Since the Court's decision in *Brown*, white families have fled to suburban towns and cities because moving to those towns has allowed white families to avoid desegregation following the Court's subsequent decision in *Milliken v. Bradley*.<sup>308</sup>

James Ryan refers to this form of interposition as the *suburban veto*.<sup>309</sup> During the "white flight," white families left urban centers in search of white enclaves, or disproportionately or exclusively white neighborhoods in an increasingly diverse society.<sup>310</sup> These white families brought their tax dollars

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<sup>308</sup> See James E. Ryan, "Brown," *School Choice, and the Suburban Veto*, 90 VA. L. REV. 1635, 1645 (2004).

<sup>309</sup> *Id.*

<sup>310</sup> Erica Frankenberg, Preston C. Green III & Steven L. Nelson, *Fighting Demographic Destiny: A Legal Analysis of Attempts of the Strategies White Enclaves Might Use to Maintain School Segregation*, 24 GEO. MASON UNIV. CIV. RIGHTS L. J. 39, 39–40 (2013) (discussing white enclaves and their propensity to disrupt progress towards racial equity).



with them when they left for the suburbs. Most importantly, property values likely dropped in the urban core, where the population became increasingly Black and Brown.<sup>311</sup> The property values likely rose in suburban areas, where the population became increasingly white.<sup>312</sup> Since higher property values necessarily result in more tax dollars, suburban districts garnered more money per household than their urban counterparts. With less money and aging infrastructure, urban districts faced and continue to face difficulties keeping academic pace with the remainder of the state. Given the racism inherent in valuing white families' property values at greater values than their Black and Brown neighbors, it is clear that racism is at the root of, or at least is a considerable component of, disparate school funding. To be clear, the state courts of Massachusetts have recognized disparities in school funding.<sup>313</sup> In 1993, the Massachusetts Supreme Judicial Court ruled the school funding scheme then used in the state unconstitutional<sup>314</sup>, resulting in the state reforming both its school funding scheme and general education law. Thus, the state's decision to leverage its powers to seize control of Lawrence Public Schools, which were indeed troubled, after decades of underfunding (as compared to its neighboring districts and other districts in the state) is suspicious and bewildering.

*Racial Consequences of State Takeover: State Takeovers as the Cure for Racial Oppression?*

Given that the state of Massachusetts operated an unconstitutional school funding scheme for decades, which resulted in significant financial issues for Lawrence Public Schools, it is surprising that the state opted to seize control of the school. The state of Massachusetts' takeover of public schools in Lawrence is inappropriate for multiple reasons, but the most staggering reason is the state's takeover of schools in Lawrence conveys that the state is assigning blame for Lawrence's struggling public school system solely to the people of Lawrence. Essentially, the state's actions suggest the people of Lawrence are solely responsible for the state of affairs in their schools despite decades of underfunding from the state of Massachusetts. To that end, the state is likely not the best suited party to govern the schools they placed in peril through the state's own poor and inequitable financial decisions. The state of Massachusetts had decades to ensure an equitable educational experience for citizens of Lawrence. Surely, the state of Massachusetts would have implemented an equitable funding system prior to a ruling by the state's highest court if we could trust the state to operate in an equitable manner.

Ironically, the state of Massachusetts placed Lawrence's disproportionately Black and Brown population in peril with its inequitable school funding

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<sup>311</sup> See Phyllis C. Taite, *Welfare v. Wealthfare: The Illusion of Equality in Tax Policy*, 20 PITT. TAX REV. 363, 379 (2023) (discussing the devaluation of Black home values as relative to white home values).

<sup>312</sup> *Id.*

<sup>313</sup> See *McDuffy v. Sec'y of the Exec. Off. of Educ.*, 415 Mass. 545 (1993).

<sup>314</sup> *Id.*

scheme and thereafter decided to deploy racial oppression to right the state's prior injustices. The state of Massachusetts disenfranchised the citizens of Lawrence, blaming the citizens for the state's ineptitude while ensuring the citizens of Lawrence were defenseless against any further efforts at racial oppression via educational injustice. After the state implemented its receivership of Lawrence Public Schools, the citizens of Lawrence would no longer have power to elect their school board or address issues in public schools through democratic means. The timing of the receivership brings into question the state's motives. The receivership occurred after the election of the city's first Afro-Latino mayor. Likewise, it occurred at a time when it was clear white powerbrokers could no longer dictate Lawrence's politics. Lawrence was to remain an immigrant city, but the immigrants arrived to the city speaking Spanish. At the core, the state placed Lawrence in jeopardy, then the state ensured Lawrence was punished for it. This is a vicious cycle, and whiteness always wins!

#### CONCLUSION

This examination in the policies and discourses concerning the state takeover of the Lawrence Public Schools used LatCrit, antiblackness, and whiteness as frameworks to study how frequently policies and systems that pretend to eliminate disparities and promote educational advancement and equity are covert opportunities to oppress Black and Brown communities further. Derrick Bell instructs us on the permanence of racism and how it is embedded in all institutions, including schools.<sup>315</sup> Likewise, Alan David Freeman highlights the very ways that civil rights-based legislation and policy are hijacked to further oppress Black and Brown people while benefiting white people.<sup>316</sup> Therefore, our research offers a better understanding of how policies and practices within and pertaining to schools lead to further racial oppression, even when those policies and practices are purportedly grounded in a social justice mission. We acknowledge how antiblackness and whiteness are commingled and how LatCrit, in this case, serves to call out injustices.

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<sup>315</sup> Derrick Bell, *The Racism Is Permanent Thesis: Courageous Revelation or Unconscious Denial of Racial Genocide*, 22 CAP. UNIV. L. REV. 571 (1993).

<sup>316</sup> Alan D. Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978).