STATE TAKEOVERS OF SCHOOL DISTRICTS: RACE AND THE EQUAL PROTECTION CLAUSE

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INTRODUCTION

State takeover of school districts is a form of education reform designed to promote educational and financial stability in school districts. In 1989, New Jersey became the first state in the country to take over a district.1 Kentucky followed the same year.2 By 1989, six states had enacted State takeover laws.3 By 2004, the number increased to twenty-nine states.4 Most takeovers occurred between 1995 and 1997.5 Before this peak, it is estimated that “60[%] of the takeovers were for purely financial and/or management reasons, while only 27[%] were comprehensive takeovers that included academic goals. In the three years after 1997, however, the percentage of comprehensive takeovers ha[d] risen to 67[%].”6

State statutes and administrative codes often set forth grounds for State takeovers of districts.7 Forms of takeovers include: gubernatorial appointment...
of an executive official or board to manage the district; state board of education
takeover; and mayoral appointment of an official and/or board to manage the
district. In some takeovers, the elected board is maintained as an advisory
board. According to policy analyst Todd Ziebarth, “[S]tate takeovers, for the
most part, have yet to produce dramatic and consistent increases in student
performance, as is necessary in many of the school districts that are taken over.”

A key complaint about State takeovers arises when an elected school board
is partially or completely replaced with appointees. Critics contend such
takeovers disenfranchise voters, particularly in districts where minorities
constitute the majority of the electorate. In 2004, over 50% of students in 74%
of the districts taken over were minorities. Additionally, 63% of the schools
taken over as of 2004 were “in central cities (large and midsize) or in the urban
fringe of a large city. All but three of these districts had high minority
populations, ranging from 51% to 96%.” Moreover, according to Katrina
Kelly, the director of urban school district advocacy at the National School
Boards Association, “‘Black and Hispanic school board members feel they are
being targeted.’” This ostensibly racially disproportionate takeover of minority
school districts prompts our analysis in this Article.

The first Part reviews the No Child Left Behind Act of 2001 (NCLB) provision for State takeovers of school districts and State takeover laws. The
second Part examines the racial physiognomy of various State takeovers around
the nation. The final Part explores state takeovers of minority school districts
under the Equal Protection Clause. The conclusion focuses on the various
implications of State takeovers.

accountability into their education policy).

8. EDUC. COMM’N OF THE STATES, ACCOUNTABILITY—REWARDS AND SANCTIONS: STATE
1359.htm [hereinafter ACCOUNTABILITY].

9. See id.

10. Id.; see also RICHARD C. SEDER, BALANCING ACCOUNTABILITY AND LOCAL CONTROL:
STATE INTERVENTION FOR FINANCIAL AND ACADEMIC STABILITY 5-9 (2000), available at

11. See Reynolds v. Sims, 377 U.S. 533, 554-55 (1964) (stating that each citizen is entitled
to vote on an equal footing in elections as every other citizen, and this right to vote is fundamental
and cannot be diluted, debased, or abridged); Beth Reinhard, Racial Issues Cloud State Takeovers,

12. PATRICIA CASAPE HAMMER, CORRECTIVE ACTION: A LOOK AT STATE TAKEOVERS OF
PBSStateTakeovers.pdf.

13. Id.


I. TAKEOVERS UNDER THE NCLB AND STATE LAWS

This Part provides an overview of the NCLB’s accountability system and State takeover provisions. Additionally, this Part discusses several State takeover laws.

A. Takeovers: NCLB Provisions

The NCLB was enacted to ensure educational accountability. States receiving Title I funds must implement an accountability system founded on State achievement standards and assessments. Under the NCLB’s accountability system, districts failing to make adequate yearly progress (AYP) on state assessments are subject to sanctions under the Act, including State takeover of the district. States and school districts must disaggregate data on the yearly progress of “racial and ethnic groups,” the “economically disadvantaged,” “students with disabilities,” and “students with limited English proficiency.” Each year, in grades 3 through 8 and at a minimum once during grades 10 through 12, States must assess students in science in mathematics, reading or language arts. States must also assess students in science at least once each during grades 3 through 5, 6 through 9, and 10 through 12.

NCLB requires that districts failing to make AYP for two consecutive years be “identified for improvement” and develop an improvement plan. Those districts not making AYP for four consecutive years are identified for corrective

17. Id. §§ 6311, 6316(c).
18. Id. § 6316(c).
19. See id. § 6316(c)(10)(C). The NCLB imposes various requirements and sanctions on schools and states accepting Title I funds. Id. § 6311; see also Joseph O. Oluwole & Preston C. Green, III, No Child Left Behind Act, Race, and Parents Involved, 5 Hastings Race & Poverty L.J. 271, 274-76 (2008).
21. Id. §§ 6311(b)(2)(C)(v)(II)(aa), 6316(a), (c).
22. Id. §§ 6311(b)(2)(C)(v)(II)(cc), 6316(a), (c).
23. Id. §§ 6311(b)(2)(C)(v)(II)(dd), 6316(a), (c).
24. Id. § 6311(b)(3)(C)(vii).
27. Id. § 6311(b)(2)(C)(v)(II)(aa).
28. Id. § 6311(b)(2)(C)(v)(II)(bb).
29. Id. § 6311(b)(2)(C)(v)(II)(cc).
30. Id. § 6316(c)(3).
31. Id. § 6316(c)(7).
action. The State must take at least one corrective action under the NCLB to address the failure of the district to make AYP. Three of the NCLB’s corrective actions could provide authority for State takeover of school districts: (1) replacement of district personnel “relevant to the failure to make [AYP]”; (2) appointment of a trustee or receiver through the state department of education to manage the district’s affairs; and (3) restructure or dissolution of the school district. The district could subsequently emerge from State takeover or other corrective action by making AYP for two consecutive years.

B. Takeovers: State Laws

This section examines some state laws providing for State takeovers and provides a brief overview of such laws. As indicated earlier, several states now have State takeover laws.

1. Alabama.—As part of an accountability system in Alabama, the State Board of Education must establish an assistance program for districts identified as “in need of assistance.” The assistance program entails a review of the district’s low student achievement and efforts to improve the achievement levels. If there is no progress in student achievement after three years relative to the prior year, the state superintendent must take over the district. Alabama also has a law providing for the takeover of fiscally-distressed districts through the appointment of a “chief financial officer to manage the fiscal operation of a local board of education.” Alabama provides for election and appointment of school board members.

2. Alaska.—Alaska allows the State to take over districts not meeting AYP on State assessments for at least four years in each of grades 3 through 5, 6

32. Id. § 6316(c)(10)-(11).
33. Id. § 6316(c)(10)(C).
34. Id. § 6316(c)(10)(C)(iii).
35. Id. § 6316(c)(10)(C)(v).
36. Id. § 6316(c)(10)(C)(vi). The restructure of a district might entail changing its structure from elective to appointive system of selection for board members.
37. Id. § 6316(c)(11); see also id. § 6316(c).
38. ALA. CODE § 16-6B-3(c) (2001). A district in need of assistance refers to “any local board of education which has a majority of its schools, or a majority of the students in a system, in which the students are scoring one or more grade levels below the prescribed norm.” Id.
39. Id. § 16-6B-3(c)(1).
40. Id. § 16-6B-3(c)(3).
42. For example, statutory law requires the election of the state’s county boards of education. ALA. CODE § 16-8-1 (2001). These county boards have discretion to create five or seven “single member election [local school] districts with one board member elected from each district.” Id. § 16-8-1(b); see also id. § 16-11-2; ALA. CODE § 45-8A-21 (2005); ALA. CODE § 45-13-100.20 (2007).
through 8, and 9 through 10. As with the NCLB, those districts face corrective actions, including: (1) replacement of district personnel relevant to the failure to make AYP and (2) appointment of a trustee or receiver to run the district. The state requires election of board members.

3. Arizona.—Arizona permits takeovers of districts that have “systemic educational mismanagement.” The district must have six or more schools in the district and at least 50% of the district’s schools must either underperform or fail to satisfy the state’s academic standards. The State may also take over districts that are insolvent or grossly mismanaged. The law is forceful that takeovers not impede the election of board members. The receiver running the district after the takeover has authority to supersede decisions made by the elected board or superintendent. The state provides for election of board members.

43. ALASKA ADMIN. CODE tit. 4, § 06.840 (2008); see also id. §§ 06.835(b), .840(k). These provisions apply to districts receiving federal funds under Part A of Title I of the NCLB. See 20 U.S.C. §§ 6301-6339 (2006).

44. Id. § 06.840(k)(3) (2008).

45. Id. § 06.840(k)(6).


47. ARIZ. REV. STAT. § 15-108 (Supp. 2008). Systemic educational mismanagement exists when it is determined “that the school district failed to ensure that a school or schools in the school district properly implemented their school improvement plan or plans.” Id. § 15-108(M)(2); see also H.B. 2711, 48th Leg., 2d Reg. Sess. (Ariz. 2008).

48. ARIZ. REV. STAT. ANN. § 15-108(A) (Supp. 2008). However, such a district must have at the very minimum, one school failing (not merely underperforming) to satisfy the state academic standards. Id. § 15-108(A)(2).

49. Id. § 15-103. A district is deemed insolvent when it “is unable to pay debts,” employee salaries or tuition due to other school districts’ or has defaulted on bond or interest payments for 60 calendar days, “contracted for any loan not authorized by law, . . . operated with a deficit equal to five per cent or more of the school district’s revenue control limit for any fiscal year within the past two fiscal years,” or failed to honor warrants for payment. Id. § 15-103(B); see also H.B. 2711, 48th Leg., 2d Reg. Sess. (Ariz. 2008). The state will find gross mismanagement when the “school district’s officers or employees committed or engaged in gross incompetence or systemic and egregious mismanagement of the school district’s finances or financial records.” ARIZ. REV. STAT. ANN. § 15-103(V)(1) (Supp. 2008).

50. ARIZ. REV. STAT. ANN. § 15-103(Q); see also H.B. 2711, 48th Leg., 2d Reg. Sess. (Ariz. 2008).

51. ARIZ. REV. STAT. ANN. § 15-103(F)(1) (Supp. 2008); see also H.B. 2711, 48th Leg., 2d
4. **Arkansas.**—Like the NCLB, Arkansas law dictates that districts not making AYP could face State takeovers. The state law also authorizes takeover of districts in financial distress. Arkansas requires election of school board members.

5. **California.**—California also has a NCLB-like provision. The same three corrective actions under the NCLB could provide the avenue for takeover of school districts in this state. California may also take over districts in fiscal distress. In the event of a takeover, the district’s board remains in an advisory role.

6. **Delaware.**—In Delaware districts are evaluated on the basis of their academic performances using a five-point scale: “Superior Performance, Commendable Performance, Academic Review, Academic Progress and Academic Watch.” Those districts rated as Academic Review, Academic Progress or Academic Watch, are sanctioned pursuant to the NCLB. Qualified voters elect board members in Delaware.

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56. Cal. Educ. Code § 52055.57(c) (West 2006 & Supp. 2009). This California education code section was enacted to implement the requirements of the NCLB. Id. § 52055.57(a)(1). California also has a law that allows takeover of a school district where its schools fail to meet the Academic Performance Index (API) growth targets. Id. § 52055.5(f). For more on the API, see section 52052, section 52052.1, section 52052.2, and section 52055.55 of the California Code.


59. Id. § 41326(c)(1); see also id. § 41326(c)-(g) (listing specific conditions required for districts to emerge from the takeover).


62. Id. § 155(d); see also 14-100-103 Del. Code Regs. § 7.0 (Weil 2009).

7. Florida.—In Florida, State takeovers might occur pursuant to the following provision: “notwithstanding any other statutory provisions to the contrary, the State Board of Education shall intervene in the operation of a district school system when one or more schools in the school district have failed to make adequate progress [toward state standards] for [two] school years in a [four]-year period.”64 Indeed, it is not even required that all schools in the district fail to make adequate progress in the two- or four-year period.65 Florida law also provides for the election of school board members.66

8. Georgia.—While Georgia law does not explicitly provide for takeovers, the State might still be able to take over districts pursuant to the following provision: “The State Board of Education shall approve a single accountability system for local schools and school systems that incorporates federal law, rules, and regulations relating to accountability.”67 These federal laws include the NCLB and, with it, the NCLB’s takeover sanction.68 With respect to the election of board members, the Georgia Constitution provides that “[e]ach school system shall be under the management and control of a board of education, the members of which shall be elected as provided by law.”69

9. Idaho.—Idaho also has a NCLB-like provision.70 The state’s administrative code dictates that the Idaho Department of Education take “mandatory corrective actions [for] local educational agencies as required under federal law”71 where those districts fail to meet the AYP requirements of the NCLB.72 Idaho’s statutory law provides for election of board members.73
10. **Illinois.**—Illinois has an NCLB-based law that provides authority for takeovers.\(^7^4\) The State also permits takeovers of districts failing to emerge from academic watch status after three years.\(^7^5\) Districts in fiscal distress can be taken over with the appointment of an oversight panel for the district.\(^7^6\) Ostensibly, the elected board is not replaced.\(^7^7\) The district must remain under State control for a minimum of three and maximum of ten years.\(^7^8\) This provision for fiscal takeovers only applies to districts with less than 500,000 inhabitants.\(^7^9\) Local boards may petition for the State to take them over.\(^8^0\) Financial control of the district can subsequently be moved from the oversight panel to a School Finance Authority to enable the district’s financial and educational recovery.\(^8^1\)

Illinois also has a takeover provision that applies to cities with over 500,000 inhabitants.\(^8^2\) The reality, however, is that this provision only applies to the Chicago Public Schools because it is the sole district that meets the population requirement.\(^8^3\) The provision is designed to improve the graduation rates, academic performance and student attendance rates in the district.\(^8^4\) Pursuant to this provision, the State dissolved the Chicago Board of Education and transferred power to the mayor to appoint a board of trustees.\(^8^5\) The mayor does not even have to seek the city council’s approval in making the appointment.\(^8^6\) Illinois provides for election of board members.\(^8^7\)

11. **Iowa.**—Iowa’s school district accreditation provision also authorizes takeovers.\(^8^8\) The accreditation committee’s recommendations must “specify
whether the school district or school shall remain accredited or under what conditions the district may remain accredited.\textsuperscript{89} One of those conditions confers the authority for State takeover of districts:

The conditions may include, but are not limited to, providing temporary oversight authority, operational authority, or both oversight and operational authority to the director and the state board for some or all aspects of the school district operation, in order to bring the school district into compliance with minimum [accreditation] standards.\textsuperscript{90}

If the district does not address its accreditation problems, the district can be placed in “receivership for the remainder of the school year.”\textsuperscript{91} The state provides for election of board members.\textsuperscript{92}

12. Kansas.—Kansas’ takeover provision, like Iowa’s, is located within the State’s accreditation laws. Districts with an unaccredited or a conditionally accredited school could face restructuring.\textsuperscript{93} The state provides for election of school board members.\textsuperscript{94}

13. Kentucky.—In Kentucky, before a takeover can occur, the state board of education must “believe[] that [there is] a critical lack of efficiency or effectiveness in the governance or administration of a local school district.”\textsuperscript{95} A hearing is then held to verify this belief.\textsuperscript{96} If verified, “the state board shall assume sufficient supervision of the district to ensure that appropriate corrective action occurs.”\textsuperscript{97} If a hearing confirms a pattern of critical lack of efficiency or effectiveness to be addressed, the state board must “declare the district a ‘state assisted district’ or a ‘state managed district’” and take over the district.\textsuperscript{98} The state provides for election of board members.\textsuperscript{99}
14. Louisiana.—Under Louisiana’s accountability system, the State could take over academically deficient districts failing to implement an improvement plan, new curriculum, replacement of school staff or other sanctions against the district.\textsuperscript{100} Louisiana requires election of board members.\textsuperscript{101}

15. Maryland.—Maryland has a NCLB-like provision.\textsuperscript{102} The state may take over districts after a judicial hearing in which a trustee or receiver is appointed to manage the district\textsuperscript{103} The state generally requires appointment of board members except in a few districts where election is required.\textsuperscript{104}

16. Massachusetts.—Massachusetts’s law permits the State to take over chronically underperforming districts by appointing a receiver for the district.\textsuperscript{105} Although the state provides for the election of school board members, districts have the choice of appointing regional school district members “by locally elected officials such as school board members.”\textsuperscript{106}

17. Michigan.—In Michigan the State may assume control of districts in fiscal crisis.\textsuperscript{107} Michigan law provides for election and appointment of regional

\textsuperscript{100}Id.
\textsuperscript{101}La. Admin. Code, tit. 28, §§ 1503, 1601, 1603, 4310, 4901, 4909, 4911 (2008); see also id. §§ 1609, 1901.
\textsuperscript{103}Id. 13A.01.04.08(B)(3)(f).
\textsuperscript{104}See Md. Code Ann., Educ. § 3-108(a) (West 2002 & Supp. 2008); see also id. § 3-108.1 (relating to Baltimore City Public Schools System); id. § 3-109 (relating to Baltimore County); id. § 3-110 (relating to Anne Arundel County). Election is required in the following counties: “(1) Allegany; (2) Calvert; (3) Carroll; (4) Cecil; (5) Charles; (6) Dorchester; (7) Frederick; (8) Garrett; (9) Howard; (10) Kent; (11) Prince George’s; (12) Montgomery; (13) Queen Anne’s; (14) St. Mary’s; (15) Somerset; (16) Talbot; (17) Washington; and (18) Worcester.” Id. § 3-114; see also id. §§ 3-201 to -1401 (outlining election requirements for various counties).
\textsuperscript{107}Mich. Comp. Laws Ann. §§ 141.1231 to .1291 (West 2005); see also Mich. Comp. Laws
school district committee members.¹⁰⁸

18. Minnesota.—Minnesota’s law implementing the NCLB potentially authorizes State takeover of districts.¹⁰⁹ Similar to the NCLB, Minnesota’s law does not contain any precise provision for State takeover; however, the following language might provide the necessary authority: “The [Minnesota] Department of Education shall continue to implement the federal [NCLB] . . . without interruption.”¹¹⁰ This language suggests that the State has the power to wholly implement the NCLB and therefore has the power to take over those districts failing to meet AYP.¹¹¹ The state law also provides for election and appointment of board members.¹¹²

19. Mississippi.—Mississippi’s accreditation law gives the State authority to take over districts.¹¹³ The process starts with the governor’s declaration of a state of emergency.¹¹⁴ Following such a declaration, the State Board of Education may appoint an interim conservator.¹¹⁵ Alternatively, the State Board could itself manage the district.¹¹⁶ State law provides for both election and

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¹¹¹ See Minn. Stat. Ann. § 37-17-6(11)(c)(ii); see § 37-17-6(11)-(15) (allowing for appointment of an interim conservator if a majority of the membership of a school board of any district resigns).
¹¹⁴ Id. § 37-17-6(11)

appointment of school boards.\textsuperscript{117}  

20. Missouri.—Missouri law provides for the corporate organization of a district to lapse if the district fails to have the minimum academic term required under state law or the district remains unaccredited for two consecutive years.\textsuperscript{118} Once the district lapses, the State may appoint an administrative board to manage the district.\textsuperscript{119} Missouri’s law also specifically provides authorization for the appointment of an administrative board to run “a metropolitan school district or an urban school district containing most or all of a city with a population greater than [350,000] inhabitants and in any other school district if the local board of education does not anticipate a return to accredited status.”\textsuperscript{120} The statute provides for election of board members.\textsuperscript{121}

21. Nevada.—Nevada has a NCLB-like provision for takeovers.\textsuperscript{122} The State also allows corrective action, including the takeovers provided in the NCLB, “against a school district that is designated as demonstrating need for improvement, including, without limitation, a school district that is not a Title I school district.”\textsuperscript{123} Nevada provides for election of board members.\textsuperscript{124}

22. New Jersey.—New Jersey evaluates districts using “the New Jersey Quality Single Accountability Continuum.”\textsuperscript{125} In addition to considering thoroughness and efficiency, the evaluation continuum also considers “district capacity” in “five key components of school district effectiveness.”\textsuperscript{126} The five components are: (1) governance; (2) personnel; (3) financial management; (4) operations; and (5) instruction and programming.\textsuperscript{127} The state commissioner of

\textsuperscript{117} See Miss. Code Ann. § 37-5-1 (West 1999 & Supp. 2008); Miss. Code Ann. §§ 37-5-3 to -9 (West 1999); Miss. Code Ann. § 37-5-18 (West 1999 & Supp. 2008); Miss. Code Ann. §§ 35-5-19, 37-6-7 (West 1999); Miss. Code Ann. § 37-18-7(5) (West Supp. 2008). Pursuant to the governor’s declaration of a state of emergency and through the same avenues for takeover as described above, the State could take over a district with “a school [that] continues to be designated a School At-Risk after three (3) years of implementing a school improvement plan, or in the event that more than fifty percent (50%) of the schools within the district are designated as Schools At-Risk in any one (1) year.” Id. § 37-18-7(6).


\textsuperscript{119} Id. § 162.081(4).

\textsuperscript{120} Id. § 162.081(3).


\textsuperscript{126} Id.

\textsuperscript{127} Id. The law requires that effectiveness and capacity be assessed by:
education must conduct a study of district performance and capacity for those
districts meeting “less than 50[%)] of the quality performance indicators in four
or fewer of the five key components of school district effectiveness.” Based
on this evaluation, such districts must create an improvement plan to address
their insufficiencies on the quality performance indicators. The State may
assume partial control of those districts that fail to satisfy at least 50% of the
performance indicators in four or fewer key components. Districts meeting
“less than 50[%)] of the quality performance indicators in each of the five key
components of school district effectiveness” could face total State takeover.

New Mexico.—New Mexico authorizes takeovers of “district[s] that
have] failed to meet requirements of law or [state public education] department
rules or standards.” District noncompliance with state financial requirements
could also catalyze a State takeover. New Mexico provides for the election

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Id. The commissioner must create a way for parents and community members to provide input in
assessing the district. Id. § 18A:7A-14(a).

128. Id. § 18A:7A-14(c)(1); see also § 18A:7A-14(e)(1) (requiring the same evaluation for
district meeting “less than 50[%)] of the quality performance indicators in each of the five key
components of school district effectiveness”) (emphasis added).

129. Id. § 18A:7A-14(c)(1), -14(e)(1).

130. Id. § 18A:7A-14(c)(3); see also id. § 18A:7A-14(c)(1).

131. Id. § 18A:7A-14(e)(1) (emphasis added).

132. Id. (“Nothing in this paragraph shall be construed to prohibit the State board [of
education] from directing the district to enter full State intervention prior to the expiration of the
two-year period.”).

133. See N.J. STAT. ANN. §§ 18A:8-18, .9-10, .12-1, .12-7, .12-11, .12-15, .13-8 (West 1999);
N.J. STAT. ANN. § 19:60-7 (West 1999 & Supp. 2008); N.J. STAT. ANN. § 52:27BB-63 (West


requires that “[m]oney budgeted by a school district shall be spent first to attain and maintain
the requirements for a school district as prescribed by law and by standards and rules as prescribed by
the [state] department [of education].” Id. § 22-2-14(A); see N.M. CODE R. §§ 6.30.6.1 to .13
(Weil 2009). Districts failing to meet these requirements must be so notified. N.M. SAT. ANN. §
units or administrative functions [within such districts] may be disapproved for such deficiencies.”
and appointment of board members.\textsuperscript{136} 

24. \textit{New York}.—New York State law authorizes the New York City School Chancellor\textsuperscript{137} to “[i]ntervene in any districts or school which is persistently failing to achieve educational results and standards approved by the city board [of education].”\textsuperscript{138} State law also empowers the Chancellor to intervene in districts that have “failed to improve [their] educational results and student achievement in accordance with such standards or state or city board requirements, or in any school or district in which there exists, in the chancellor’s judgment, a state of uncontrolled or unaddressed violence.”\textsuperscript{139} Failure of the district to implement an improvement plan could lead the Chancellor to “assume joint or direct control of the operation of the . . . district to implement the corrective action plan.”\textsuperscript{140} The state also has a NCLB-like provision that would allow State takeovers.\textsuperscript{141} The state provides for the election and appointment of board members.\textsuperscript{142} 

25. \textit{North Carolina}.—In North Carolina if over 50\% of schools in a district are low-performing,\textsuperscript{143} the State could appoint an interim superintendent in place

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\item \textsuperscript{136} See, e.g., N.M. Const. art. XII, § 15; N.M. Stat. Ann. § 1-22-3 (West 2003); N.M. Stat. Ann. § 1-22-4 (West 2003 & Supp. 2008); N.M. Stat. Ann. §§ 1-22-5 to -19, 22-4-13, 22-4-14, 22-5-1, 22-5-1.1. In the case of consolidated districts, the state provides for initial appointment of board members but the subsequent election of board members. \textit{Id.} § 22-4-10 to -12.
\item \textsuperscript{137} See \textit{N.Y. Educ. LAW} § 2590-h (McKinney 2007 & Supp. 2009) (describing the powers and duties of the New York City School Chancellor). Until June 30, 2009, the City School Chancellor is appointed by the mayor of New York City. \textit{Id.} (“Such chancellor shall serve at the pleasure of and be employed by the mayor of the city of New York by contract. The length of such contract shall not exceed by more than two years the term of office of the mayor authorizing such contract.”). Effective June 30, 2009, the Chancellor shall be appointed “by the city board by contract for a term not to exceed by more than one year the term of office of the city board authorizing such contract, subject to removal for cause.” \textit{Id.}
\item \textsuperscript{138} \textit{Id.} § 2590-h(31).
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{140} \textit{Id.} Effective June 30, 2009, the chancellor takes over the power of the community district education councils, the community district education councils are referred to as community boards in the state law. See \textit{N.Y. Educ. LAW} § 2590-c (McKinney 2007); \textit{N.Y. Educ. LAW} § 2590-h(9), (11), (13) (McKinney 2007 & Supp. 2009); see also \textit{id.} §§ 2554(2), 2590-h(17).
\item \textsuperscript{141} \textit{N.Y. Comp. Codes R. & Regs.} tit. 8, §§ 100.2(p), 120.2 (2008).
\item \textsuperscript{142} See \textit{N.Y. Educ. LAW} §§ 2553, 2590-c (McKinney 2007) (providing for elections and appointments until June 30, 2009); see also \textit{id.} §§ 1607, 1702; \textit{N.Y. Educ. LAW} §§ 1709(17), 1804 (McKinney 2007 & Supp. 2009); \textit{N.Y. Educ. LAW} §§ 1901, 1914, 2018-a, 2113, 2502, 2510, 2552, 2564 (McKinney 2007).
\item \textsuperscript{143} \textit{N.C. Gen. Stat. Ann.} § 115C-105.37(a) (West 2000 & Supp. 2008) (“Low-performing schools are those in which there is a failure to meet the minimum growth standards, as defined by the State Board, and a majority of students are performing below grade level.”); see also \textit{N.C. Gen. Stat. Ann.} § 115C-105.37A (West Supp. 2008) (defining “continually low-performing” schools).
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of the incumbent superintendent. If the State finds that the board is not cooperating with the interim superintendent or has hampered student achievement, then the State Board of Education may suspend the powers of the local school board. Beyond such a suspension, if the State determines that it is necessary to change the district’s governance to improve student achievement, then the State Board of Education could present such a governance change to the State Legislature for consideration. The state provides for appointment and election of school board members.

26. Ohio.—Ohio has a NCLB-like provision requiring at least one corrective action in districts “identified for improvement for three consecutive school years.” The sole corrective action authorizing a takeover, however, is the appointment of a trustee to run the district. The state provides for appointment and election of school board members.

27. Oklahoma.—Oklahoma law requires the State Board of Education to create an accountability system under the NCLB. While the law does not specifically provide for State takeovers, the broad authority the statute confers on the State to implement the NCLB ostensibly necessarily includes such a power. The state provides for election and appointment of board members.


146. Id. § 115C-105.39(e). Presumably, this is the same procedure the state must follow in order to replace an elective governance structure with an appointive one.

147. See, e.g., id. §§ 115C-35 to -37.1.

148. OHIO REV. CODE ANN. § 3302.04(F) (West 2005); see also id. §§ 3302.01 to .02; OHIO REV. CODE ANN. §§ 3302.21 to .03 (West 2005 & Supp. 2008); OHIO REV. CODE ANN. § 3302.031 (West 2005); OHIO REV. CODE ANN. § 3302.032 (West Supp. 2008); OHIO REV. CODE ANN. §§ 3302.04 to .09 (West 2005); OHIO REV. CODE ANN. § 3302.10 (West 2005 & Supp. 2008).

149. OHIO REV. CODE ANN. § 3302.04(F)(3) (West 2005). Recall, the NCLB requires that districts failing to make AYP for two consecutive years be identified for improvement. 20 U.S.C. § 6316(c)(3) (2006). The other corrective actions under the Ohio law are: establishing (i) alternate governance for individual schools in the district, OHIO REV. CODE ANN. § 3302.04(F)(3)(d) (West 2005); (ii) implementation of a new curriculum, id. § 3302.04(F)(3)(c); (iii) withholding part of district’s Title I funds, id. § 3302.04(F)(3)(a); and (iv) ordering the district to replace key personnel, id. § 3302.04(F)(3)(b). Ordering the district to replace the personnel is less suggestive of a takeover. Cf. 20 U.S.C. § 6316(c)(10)(C)(iii).


151. See id. §§ 3311.71, 3313.01 to .13; OHIO REV. CODE ANN. §§ 3313.12 to .13 (West 2005 & Supp. 2008); OHIO REV. CODE ANN. § 3313.47 (West 2005); OHIO REV. CODE ANN. § 3513.254 (West 2007); see also OHIO CONST. art. VI, § 3.

152. OKLA. STAT. ANN. tit. 70, § 1210.541(B) (West 2005).


154. Oklahoma also potentially allows takeover through what the law describes as “full state
28. Pennsylvania.—Pennsylvania law authorizes the State to take over fiscally distressed districts.\(^{156}\) Prior to the takeover, the State must petition a court to appoint two people to serve on a “special board of control” along with the State Secretary of Education or her designee.\(^ {157}\) The State can also take over districts placed on an education empowerment list by the Secretary.\(^ {158}\) If, after a tenure of three years on the list, the district does not meet the goals set forth in the district improvement plan and the district remains academically deficient, the State appoints a board of control to manage the district.\(^ {159}\) The state provides for appointment and election of board members.\(^ {160}\)
29. Rhode Island.—For districts that are academically deficient following three years of state assistance, Rhode Island law provides the State with “progressive levels of control” over the “district budget, program, and/or personnel. This control by the department of elementary and secondary education may be exercised in collaboration with the school district and the municipality.”¹⁶¹ This apparent partial State takeover does not necessarily replace the elected board.¹⁶³ However, the language suggests that the State could exercise the control without collaboration with the district, in which case the local board might become essentially a lame-duck board.¹⁶⁴ Rhode Island provides for election of board members.¹⁶⁵

30. South Carolina.—For at-risk districts in South Carolina where student performance fails to improve or where the district fails to implement adequately the State Board of Education’s recommendations in the prescribed time, the State Superintendent, with the State Board’s approval, may “declare a state of emergency in the school district and assume management of the school district.”¹⁶⁶ The local school board is not replaced in such takeovers.¹⁶⁷ Instead, the law provides that the district school board changes the composition of the board.¹⁶⁸ Importantly, though, the district may only appoint new members included on a list of candidates provided by the State.¹⁶⁹ Moreover, the appointed members are nonvoting members.¹⁷⁰ South Carolina law provides for election and appointment of board members.¹⁷¹

31. South Dakota.—South Dakota’s takeover provision is similar to the NCLB’s.¹⁷² The state provides for election of board members.¹⁷³

¹⁶² Id. (emphasis added).
¹⁶³ See id. (note the permissive language).
¹⁶⁴ See id. Even after State takeover, the school board still seems to have control over some aspects of school funding. Rhode Island also allows a school board in financial difficulties, due to inadequate taxable property and an insufficient apportionment from the general treasury to support high quality schools, to request the State takeover the district’s schools. R.I. GEN. LAWS ANN. § 16-1-10(a) (West 2006); R.I. GEN. LAWS ANN. § 16-60-4 (West 2006 & Supp. 2008).
¹⁶⁸ Id.
¹⁶⁹ Id.
¹⁷⁰ Id.
¹⁷¹ Id.
¹⁷³ See S.D. ADMIN. R. 24:42:03:20 (2008); see also S.D. CODIFIED LAWS § 13-3-67 (2004); S.D. ADMIN. R. 24:42:03:01, .28 (2008); see generally id. R. 24:42:02:01, .21. The state’s statute gives the state board of education authority to create a system of accountability that includes
32. Tennessee.—In Tennessee, takeovers might occur under the appellation “LEA [local educational agency] Restructuring 1” or the appellation “LEA Restructuring 2.” If the LEA does not meet the performance standards of the state board by the end of the third year of improvement status, it may be placed in the fourth year of improvement status (LEA Restructuring 1). There are arguably two provisions in this LEA Restructuring 1 phase that might give the State the authority to take over a school district: (1) “[r]eplace[ment] [of] the LEA personnel who are relevant to the failure to make [AYP]”; or (2) “[r]eorganiz[ation] of the internal management structure.”

In LEA Restructuring 2, during the fifth year of a district in improvement status, two other provisions might give the State authority to take over a district. The law states that “[i]f the LEA does not meet the performance standards of the state board by the end of the fourth year in improvement status, it may be placed in the fifth year of improvement status (LEA Restructuring 2—Alternative Governance).” In this phase, the State Commissioner of Education could either “[a]ssume any or all powers of governance for the LEA” or “[r]ecommend to the state board that some or all of the local board of education members be replaced.” Tennessee provides for election of board members.
33. Texas.—In Texas, the State could, among other sanctions, take over districts that fail to meet the state standards for academic performance, accreditation, or financial accountability. The key provisions in the Texas law that might provide the means for a takeover give the State Commissioner of Education authority to do any of the following: (1) “appoint a conservator to oversee the operations of the district”; (2) “appoint a management team to direct the operations of the district in areas of unacceptable performance”; and (3) “if a district has a current accreditation status of accredited.warned or accredited-probation, is rated academically unacceptable, or fails to satisfy financial accountability standards as determined by commissioner rule, appoint a board of managers to exercise the powers and duties of the board of trustees.” The first two provisions are suggestive of partial takeovers and a district might not be able to complete a total takeover under those provisions. Indeed, the first suggests more of an oversight/supervisory role, whereas the second indicates a takeover limited to “areas of unacceptable performance.” The third
provision is the most pellucid on State takeover.\textsuperscript{196} The state provides for appointment and election of board members.\textsuperscript{197}

\textit{34. West Virginia}.—West Virginia's accountability system for districts\textsuperscript{198} requires that the board of education rate districts annually based on performance audits using four different levels: nonapproval, conditional approval, temporary approval, or full approval.\textsuperscript{199} The pertinent rating for State takeovers is the nonapproval rating.\textsuperscript{200} The law provides that

[n]onapproval status shall be given to a county board which fails to submit and gain approval for its electronic county strategic improvement plan or revised electronic county strategic improvement plan within a reasonable time period as defined by the state board or which fails to meet the objectives and time line of its revised electronic county strategic improvement plan or fails to achieve full approval by the date specified in the revised plan.\textsuperscript{201}

When the state board assigns a district nonapproval status, the board must "declare a state of emergency."\textsuperscript{202} The district then has six months to address the

\begin{itemize}
\item \textsuperscript{196} See \textit{id.} § 39.131(a)(9). This is evident in the fact that in another subsection, the law states, "[i]f for a period of one year or more a district has had a conservator or management team assigned, the commissioner may appoint a board of managers, a majority of whom must be residents of the district, to exercise the powers and duties of the board of trustees." \textit{id.} § 39.131(b).
emergency or face at least a partial takeover. The State is not required to give the district the full six-month period before it intervenes. The state provides for election of board members.

35. Wyoming.—Wyoming has a NCLB-like provision. The state provides for appointment and election of school board members.

With this panorama of State takeover provisions, we examine diverse takeovers to highlight implementation of takeovers across the nation.

II. The Racial Physiognomy of State Takeovers

Having surveyed the takeover provisions in thirty-five states, it is necessary to turn to application of those provisions. This section thus provides a review of a number of States’ use of State takeover. In completing this review, we keep an eye on the racial composition of various districts affected by a takeover. Since some contend that a disproportionate number of high-minority (defined here as a more than 50% non-white population) districts are affected, this section provides the relevant statistics and analysis to evaluate such claims.

A. Alabama

The Alabama State Board of Education took financial control of the Barbour County School District in 1999. This partial takeover ended in 2006. Over 90% of the students in this district are minorities. Similarly, the Alabama State Board
Board of Education partially took over the Macon County School District in 1996, when the board financially intervened in the district.\(^{212}\) In 2001, the State released the district from the partial takeover.\(^{213}\) More than 97% of the students in this district are minorities.\(^{214}\) From 1996 to 2000, in a partial takeover, the State took financial control of the Wilcox County School District.\(^{215}\) Nearly all of that district’s students are minorities.\(^{216}\) In 2000, the State also took over the Bessemer City School District, which was in financial distress.\(^{217}\) The State released the district from the State takeover in 2004.\(^{218}\) More than 97% of the district’s students are minorities.\(^{219}\) Likewise from 2002 to 2005 the State took over the Greene County School District due to its financial problems.\(^{220}\) The district’s student body is comprised of a 100% minority population.\(^{221}\)

While the State has taken over a number of high-minority districts, it has also taken over low-minority school districts. For example, the State financially intervened in the Jefferson County School District in 2000 due to the district’s mounting financial distress.\(^{222}\) The district emerged from State control in
2003. 223 A mere 39% of the students in the district are minorities. 224 Likewise, the State took over the Dale County School District for financial reasons from 2001 to 2005. 225 Just 20% of the Dale County School District students are minorities. 228 Fiscal mismanagement contributed to the takeovers in all of these districts. 227 On the other hand, the Marshall County School District, while threatened with State takeover in the midst of its financial crisis, was never actually taken over. 228 Less than 10% of that district’s students are minorities. 229

B. Arizona

Arizona took over the Colorado City Unified School District in 2005 because of declining enrollment and what the State Superintendent of Instruction characterized as “‘a pattern and practice of systemic and egregious mismanagement of district property, materials, supplies, funds, and facilities.’” 230 The students in the district are mostly from the Fundamentalist Church of Jesus
Christ of Latter-day Saints which urges its members to home-school their children, accounting for a steep decline in enrollment in the district. The district remains under State control but there is some indication that it might soon emerge from State control. One hundred percent of the district’s students are white. The State also took over the Saddle Mountain Unified School District #90 in 2007 due to financial problems in the district. The district has also not yet emerged from State control. About 41% of the district’s student body are minorities. Arizona also took over the Union Elementary School District in 2007 because of that district’s fiscal troubles. Like Saddle Mountain, Union Elementary School District was still under State control as of 2008. The district’s student body is approximately 88% minority. Financial crisis in the Peach Springs Unified School District #8 led to its takeover in

231. Zehr, supra note 230.
232. Gewertz, Pupil Loss Hits District, supra note 230; Gewertz, Student Exodus Hits Schools, supra note 230.
2007. The State retains control of the district. Fifty-three percent of the district’s students are minorities.

C. Arkansas

On Monday July 14, 2008, Arkansas took over the Greenland School District No. 95 of Washington County due to the district’s financial problems. The State intends to continue the takeover for at least a year, after which the State will determine whether to annex the district or give control back to the local school board. Approximately 11% of the district’s students are minorities.

In 2007, the State also took over the Bald Knob School District No. 1 in White County and removed the school board because of the district’s financial crisis. This district’s student body is about 6% minority. Arkansas also took over the Helena-West Helena School District for fiscal mismanagement; the State


246. Id.


removed the school board. Over 90% of the district’s student body are minority.

In 2006, Arkansas took over the Eudora School District and removed its board for failing to submit an acceptable plan for emerging from fiscal distress after the State afforded the district time to do so. Nearly all the district’s students are minorities. A state senator suggested that race might be a factor in the State’s takeover decisions. That senator later apologized. There is no direct evidence that racism motivated the takeovers in the State. The State board took over the Midland School District in 2006 for fiscal problems, and the State replaced the local school board. Less than 3% of the district’s student body is minority. In May 2007, the State Board of Education informed the Helena-West Helena and Midland school districts that control would be “incrementally restored” to the local school boards beginning in 2007. On July 14, 2008, the state board voted to approve the State Superintendent’s recommendation that the State remove the Greenland School District. It


255. See News Post, State’s Takeover of Helena-West Helena, supra note 250.

256. See id.

257. See id. In fact, with respect to the Helena-West Helena takeover, the senator stated that “he did not mean to suggest racism was the reason for the state’s takeover of Helena-West Helena.” Id.


appears that the board members were subsequently removed.\textsuperscript{262}

The State board also effectuated the takeover of the Decatur School District for financial mismanagement.\textsuperscript{263} About 33\% of the district’s student body are minority.\textsuperscript{264}

\textbf{D. California}

In 2003, California took over the West Fresno Elementary School District because of fiscal instability.\textsuperscript{265} It is important to note that in California, when takeovers occur, local school boards usually lose voting power.\textsuperscript{266} This loss of power led to citizen outcry and allegations of racial animus in the West Fresno District.\textsuperscript{267} However, residents’ cries about denial of their right to vote and racism in the decision to take over the West Fresno District were to no avail, and no one presented any evidence of any such racial animus.\textsuperscript{268} A state-appointed administrator was given total control of the district in 2005.\textsuperscript{269} As of September 2008, the administrator retains control over academics and finances and the power to override the decisions of the local school board.\textsuperscript{270} As reported by the

\begin{itemize}
\item[266.] Meredith May, \textit{Panel OKs Oakland Loan $100 Million to Bail Out Schools}, \textit{S.F. Chron.}, Apr. 10, 2003, at A27.
\item[267.] \textit{See} Lesli A. Maxwell, \textit{Appeals Fail to Halt Takeover Bill Senate Committee Hears Residents’ Allegations of Racism Against Pete Mehas}, \textit{Fresno Bee} (Cal.), Feb. 20, 2003, at A1, \textit{available at} 2003 WLNR 2840353 (noting several comments by citizens regarding racial animus).
\item[268.] \textit{See} id. (noting that despite the outcry, the financial numbers led the Senate Committee to vote for the takeover).
\item[269.] \textit{See} Ellis, supra note 265.
\item[270.] \textit{Id.} The board now has some management and operational control, such as power over district facilities and staff. \textit{Id.} However, the administrator retains the power to override board decisions. \textit{Id.}
Progress in West Fresno, supra note 265.

272. Ellis, supra note 265 (noting that the local board has management and operational control but that finances are still in the control of the State administrator).

273. Id.


275. See Katy Murphy, Board Names Interim Superintendent: Appointment of Top Official Is First under Local Control Since 2003, OAKLAND TRIB., Apr. 10, 2008, n.p., available at 2008 WLNR 6710507 [hereinafter Murphy, Board Names Interim Superintendent]; Katy Murphy, Oakland Schools Get Interim Superintendent, OAKLAND TRIB., Apr. 9, 2008, n.p., available at 2008 WLNR 6688380; Katy Murphy, School Board Regains Some Autonomy: Two Departments, Ability to Hire Superintendent Return to Local Control, OAKLAND TRIB., Apr. 9, 2008, n.p., available at 2008 WLNR 6640179 (all noting that the takeover occurred in 2003).

276. Murphy, Board Names Interim Superintendent, supra note 275.

277. Id.


minorities.282

In 2004, the State took over the Vallejo City Unified School District after the school board voted to turn over the district to the State due to its fiscal crisis.283 The district regained partial control in 2007, with the State retaining authority to override those decisions that could harm the district financially.284 The district has about an 87% minority student body.285

Academic and financial problems in the Compton Unified School District led to the district’s takeover in 1993.286 The district returned to local control in 2003.287 Almost all the district’s students are minorities.288

Because of fiscal mismanagement, California took over the Emery Unified School District in 2001.289 The State restored control to the local school board in 2004.290 Approximately 98% of the district’s students are minorities.291

the law by this year or be subject to harsher sanctions under the law.”); Associated Press, State Takeover Possible Because of Coachella Schools Test Scores, AP ALERT (Cal.), Dec. 19, 2007.


While the State has taken over many minority districts, there appears to be no evidence that the takeovers were a result of racial animus. Indeed, many of these districts were laden with corruption, and the State was left with no choice but to take them over. Further, in a number of districts, frustrated residents themselves petitioned to recall the elected board.

E. Illinois

In 1994, Illinois took over the East St. Louis School District due to the district’s financial troubles. The State appointed a panel to oversee the finances of the district but retained the board; the state-appointed panel, however, maintained the power to veto the decisions of the board. In 2004, before restoring full control to the district, the State, in an agreement with the

http://www.febp.newamerica.net/k12/ca/612630 (last visited Aug. 6, 2009).

292. See supra notes 265-91 and accompanying text.

293. See, e.g., Katz, 2 Years Later, supra note 290 (noting that bankruptcy led to the Emery Unified School District takeover); Alex Katz, Oakland Schools Face Investigation, OAKLAND TRIB., Feb. 11, 2004, n.p., available at 2004 WLNR 1709673 (noting fraud investigations into the Oakland school district); Erin Kennedy, W. Fresno Schools Get New Official Kern County Educator Selected to Replace Retiring Administrator, FRESNO BEE (Cal.), May 13, 2005, at B1, available at 2005 WLNR 24051577 (noting that after the takeover several board members faced embezzlement and theft charges); Meredith May, School District’s Back in the Black Emeryville Emerges from Bankruptcy in 2-Year Turnaround, S.F. CHRON., Nov. 14, 2003, at A19 (noting that the initial takeover was initiated in response to “a spendthrift superintendent”); Progress in West Fresno, supra note 265 (noting that the initial takeover was sparked in part by criminal charges which were brought against school board officials); Walters, Misconduct, supra note 289 (noting “near-bankrupt finances” and a “useless” accounting system as reasons for the State takeover of the Emery Unified School District).

294. See Kennedy, supra note 293 (noting recall fights in West Fresno); Meredith May, Recall Threat for Emeryville School Board $1.8 Million Debt Made Parents Angry, S.F. CHRON., Jan. 10, 2001, at A13; Progress in West Fresno, supra note 265 (noting recall fights in West Fresno); Rochelle Williams, California Board Recall, BOND BUYER, Jan. 12, 2001, at 33, available at 2001 WLNR 837311 (noting a call for board recall in Emeryville).


296. Sultan, supra note 295. For a sample report from the oversight panel, see FINANCIAL OVERSIGHT PANEL FOR EAST ST. LOUIS SCHOOL DISTRICT NO. 189, ANNUAL REPORT TO THE STATE SUPERINTENDENT (2000), available at http://www.isbe.state.il.us/board/meetings/feb01meeting/ESLannual.pdf.

297. Sultan, supra note 295; see generally E. St. Louis Fed’n of Teachers v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel, 687 N.E.2d 1050 (Ill. 1997); E. St. Louis Fed’n of Teachers v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel, 725 N.E.2d 797 (Ill. App. Ct. 2000) (both showing the extended powers the oversight board has over the local board’s decisions).
local board, dissolved the panel and replaced it with a transition committee.\textsuperscript{298} Nearly all of the district’s students are minorities.\textsuperscript{299} The Venice Community Unit School District \#3 voted to petition the State to take over the district.\textsuperscript{300} Subsequently, in 2003 the State did take over the district because of its financial problems.\textsuperscript{301} The district remains under the financial takeover.\textsuperscript{302} The district’s student body is 95% minority.\textsuperscript{303}

Round Lake Area Schools District 116 also experienced a financial takeover in 2000 when an oversight panel was appointed for the district.\textsuperscript{304} Continuing financial and educational problems in the district resulted in the State’s appointment of a School Finance Authority to replace the panel in 2002.\textsuperscript{305} The district remains under the control of the School Finance Authority.\textsuperscript{306} Over 70% of the district’s students are minorities.\textsuperscript{307} Dire insolvency in the Hazel Crest School District 152.5 led to its financial takeover in 2002.\textsuperscript{308} In December 2002,
a School Finance Authority replaced the oversight panel that the State appointed after the takeover.\footnote{309} In fact, the local school board members voted to dissolve the district prior to the School Finance Authority takeover, but the State chose not to dissolve it.\footnote{310} The district remains under the control of the School Finance Authority.\footnote{311} More than 96% of the district’s student body are minority.\footnote{312} Financial crisis also spurred the financial takeover of the Cairo Unit School District 1 in 2003 through the appointment of an oversight panel.\footnote{313} This takeover, which occurred after a petition by the local board for the district, continues.\footnote{314} Approximately 91% of the district’s students are minorities.\footnote{315}

The State took over the Chicago Public School District in 1979 to address the grim financial condition of the district.\footnote{316} In 1995, to address continuing financial and academic problems, the State transferred control to the mayor of Chicago\footnote{317} where it remains today.\footnote{318} The mayor appoints the members of the

\footnote{317}{Yvette Shields, \textit{Chicago School Reformer Stepping Down After Six Years at Helm}, \textit{Bond Buyer}, June 8, 2001, at 3, \textit{available at} 2001 WLNR 835351.}
Failing System, DENVER POST, Apr. 18, 1999, at H01; see also 105 ILL. COMP. STAT. ANN. 5/34-3 (West 2006) (establishing the new Chicago Board of Education).

318. See Shields, supra note 316.


321. See supra notes 295-320 and accompanying text.

322. See, e.g., Ill. State Bd. of Educ., Motion to Grant Petition, supra note 300; Press Release, Ill. State Bd. of Educ., Cairo School District, supra note 314.

323. See supra notes 294-319 and accompanying text.


325. See District News Roundup, supra note 324.


327. Walker, supra note 324.

328. District News Roundup, supra note 324.


330. Ismail & Johnson, supra note 329.


332. White, supra note 329; Lonnie Harp, Audit Spurs Board to Eye Takeover of Ky. District,
in 1997.\textsuperscript{333} About 93\% of the students in the district are white.\textsuperscript{334} The districts taken over in Kentucky have been heavily non-minority districts.\textsuperscript{335} Ostensibly, there is no racial animus here, as districts taken over had major financial or other problems.\textsuperscript{336}

\textbf{G. Maryland}

Maryland took over Prince George’s County Public Schools in 2002 because of a history of poor management and infighting on the school board.\textsuperscript{337} The State appointed a new board to replace the elected board.\textsuperscript{338} In 2006, the State restored control to an elected school board.\textsuperscript{339} However, the district remains under threat of takeover for failure to make AYP.\textsuperscript{340} The district’s student body is close to 94\% minority.\textsuperscript{341} In 1997, the State partially took over the Baltimore City Public Schools in a State partnership agreement with the City, due to financial, academic, and other troubles in the district.\textsuperscript{342} Pursuant to this partnership, the mayor and the governor jointly appoint the district’s board members.\textsuperscript{343} Approximately 92\% of the district’s students are minorities.\textsuperscript{344} While both districts are disproportionately minority, there was no apparent racial animus in the takeovers as burgeoning financial and academic problems dictated
the State decisions to intervene in the districts.345

H. Massachusetts

A multitude of problems—including academic, financial, and managerial—in the Chelsea Public Schools led to its takeover in 1989.346 The State authorized Boston University, in an agreement with the Chelsea School Committee, to take over management and implement reforms in the district.347 The State allowed the City of Chelsea to transfer powers traditionally given to an elected school committee to the university.348 Known as the Boston University/Chelsea Partnership, the takeover was originally intended to last for ten years.349 However, the university and the school committee mutually agreed to extend the agreement until 2003 and then later extended it until June 30, 2008.350 Since the district was predominately a minority district, several minorities protested the takeover.351 They expressed concerns that the State did not respect the voices of minorities that were against the takeover, and the minorities even tried to use the judicial system to stop the agreement.352 Such efforts were to no avail.353 During the partnership, the University agreed to keep the Chelsea School Committee in place.354 The University created a Boston University Management Team to manage the district, and this team was accountable to the school committee.355 About 89% of the district’s students are minorities.356

345. See supra notes 337-44 and accompanying text.
349. See Rothman, supra note 346.
351. See Gehring, supra note 346; Rothman, supra note 346.
352. Gehring, supra note 346.
353. Id.
354. See Boston Univ. Sch. of Educ., supra note 346.
355. Gehring, supra note 346. For more on the Boston University/Chelsea Partnership, see generally Boston Univ. Sch. of Educ., supra note 346; Chelsea Public Schools, supra note 350.
Massachusetts partially intervened in the Lawrence Public Schools beginning in 1998 pursuant to a memorandum of agreement with the City of Lawrence.\footnote{357} That agreement authorized the State, in consultation with the mayor, to appoint a state representative for the district.\footnote{358} Various problems in the district, including mismanagement and fiscal instability, catalyzed the partial “friendly” takeover that gave the State new authority over the district.\footnote{359} The State opened an office in the district “to oversee daily operations and provide technical assistance to school administrators.”\footnote{360} The State also appointed a representative in 2000 “to guide the management and governance of [the district].”\footnote{361} This included the district “budget, personnel, contracts, collective bargaining, major policy issues and all improvement plans for the district.”\footnote{362} The local election of board members continued.\footnote{363} The district and the State decided to extend the memorandum of agreement which permitted the State intervention, until 2005.\footnote{364} The district has about a 92% minority student body.\footnote{365}

The State took over the Boston Public Schools in 1991 because of various troubles in the school district.\footnote{366} A mayorally appointed board replaced the elected board.\footnote{367} In 1996, by a referendum, the voters chose to maintain the mayoral-appointment system for the school board, and this arrangement

\begin{itemize}
  \item \footnote{358}{Johnston, \textit{supra} note 357; Press Release, Commissioner of Education Appoints Representative, \textit{supra} note 357.}
  \item \footnote{360}{Johnston, \textit{supra} note 357.}
  \item \footnote{361}{Press Release, Commissioner of Education Appoints Representative, \textit{supra} note 357.}
  \item \footnote{362}{\textit{Id}.}
  \item \footnote{363}{\textit{See Johnston, \textit{supra} note 357.}}
  \item \footnote{364}{\textit{See, e.g.}, \textit{MASSACHUSETTS DEP’T OF ELEMENTARY & SECONDARY EDUC.}, \textit{supra} note 359.}
  \item \footnote{366}{The legislature enabled this takeover by special legislation. Legis. Acts 1991, Chap. 133 (Mass. 1989); \textit{see also} Boston Public Schools, \textit{http://www.bostonpublischools.org/node/285} (last visited Apr. 19, 2009) (discussing the 1991 legislation and the steps leading up to such legislation).}
  \item \footnote{367}{\textit{A History of Intervention}, \textit{EDUC. Wk.}, Jan. 9, 2002, at 14.}
\end{itemize}
continues to date.368 Approximately 86% of the district’s students are minorities.369 Despite the demographics of the takeovers, there is no actual evidence of racial animus in the State’s takeovers.370 As noted earlier, the residents of Boston voted for a mayorally-appointed board for the Boston Public Schools,371 and in the case of the Chelsea Public Schools, it was a Boston University/Chelsea Partnership.372

I. Michigan

Michigan took over the Detroit Public Schools in 1999 because of management, corruption, financial, and academic problems in the district.373 The elected school board was replaced with an appointed board, selected by the mayor and the governor.374 Over 97% of the district’s students are minorities.375 Some people accused the State of racism in the takeover; however, no one presented actual evidence of such racial animus.376 In 2005, however, by referendum, the State reinstated the election of board members.377

368. Id.; see also Boston Public Schools, supra note 366.
370. See supra notes 346-69 and accompanying text.
372. See Gehring, supra note 346; Boston Univ. Sch. of Educ., supra note 346.
374. A History of Intervention, supra note 367.
376. See, e.g., Assoc. Press, Michigan Governor’s Plan, supra note 373. In fact, the court upheld the appointed board. See Chastity Pratt, Schools Case Rejected by High Court; Detoriters Challenged Takeover by the State, DETROIT FREE PRESS, Feb. 25, 2003, n.p..
J. Mississippi

Mississippi took over the North Panola School District in 1996 due to financial crisis in the district.\(^{378}\) In 1997, the State returned control to the district, with an elected board assuming office in 1998.\(^{379}\) Then, in 2008, the State proceeded to take over the district again because of continuing academic problems.\(^{380}\) More than 97% of the district’s students are minorities.\(^{381}\) Mississippi also took over the Hazlehurst City School District in 2008 due to chronic academic and financial problems in the district.\(^{382}\) Over 98% of the district’s students are minorities.\(^{383}\) Additionally, the State took over the Jefferson Davis County School District in 2007 due to financial and academic problems in the district.\(^{384}\) The district has about an 88% minority student

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body. Tunica County School District succumbed to State takeover because of its academic problems. The district regained control after a couple of years. However, the district could face another takeover if academic deficiencies persist. Ninety-eight percent of the district’s students are minorities. Academic problems in the Oktibbeha County School District led to Mississippi’s takeover of the district in 1997. Within a few years, the State declared the takeover a success, returning control to the district. Approximately 91% of the district’s student population is minority. In 2005, the State took over the North Bolivar School District because of its financial and academic problems. In 2006, the local board regained control of the district. Almost all the district’s students are minorities. The State took over the Holmes County School District in 2006 due to the district’s critical noncompliance with accreditation requirements, federal and state laws, and

387. Id. (noting that the State took the district over and then “ran it” for a “couple of years”).
388. See id. (noting the State Superintendent’s comments that “if [the district does not] improve the [S]tate will take [it] over”).
safety, academic, and discipline problems in the district. 396 A year later, the State returned control to the local board. 397 Virtually the entire student body is compromised of minorities. 398 Ostensibly, financial, academic, and safety problems in these districts, rather than any apparent racial animus, seem to have driven the takeover decisions. 399

K. New Jersey

Corruption, political interference, nepotism, mismanagement, and fiscal problems were some of the issues that instigated the New Jersey takeover of the Jersey City Public Schools in 1989. 400 After the takeover, the elected board took on “an advisory role.” 401 In 1999, the State began the process of steadily transferring control to the district. 402 In 2007, the State Commissioner of Education recommended that control over the budget be restored to the local board and that the board be permitted to have more responsibilities. 403 Academic instruction remains under State control. 404 The district has about a 91% minority student body. 405 New Jersey took over the Newark Public Schools in 1995 because of inveterate academic problems, mismanagement, and political patronage. 406 As part of the takeover, the school board was removed. 407 In 2007, as part of the process of returning the district to local control, the State Commissioner of Education recommended that the district regain “control over

396. See Conservator Named for Holmes County Schools, AP ALERT, Mar. 17, 2006; Weekly Column of Hank Bounds, Miss. State Superintendent of Education, Holmes County Takeover Necessary to Meet the Needs of Students (Mar. 20, 2006), available at http://www.mde.k12.ms.us/extrel/news/W_Mar_20_06.html (noting misconduct issues including a student setting a carpet on fire, a fight breaking out during assembly, and a state staffer being shot at with a pellet rifle all contributing to the eventual State takeover).

397. See Around the Region, COM. APPEAL (Tenn.), Jan, 21, 2007, at 5.


399. See supra notes 378-97 and accompanying text.


403. See Hu, supra note 401.

404. See id.


406. See Hu, supra note 401; A History of Intervention, supra note 367; White, supra note 402.

such day-to-day operations as maintaining its buildings and addressing student conduct, health and safety issues, areas in which it showed the most improvement." The current elected board serves in an advisory capacity. Like Jersey City Public Schools, academic instruction remains under State control. This district has about a 92% minority student body. The State took over the Paterson Public Schools in 1991 because of endemic academic problems and mismanagement in the district. State officials removed the local board and replaced it with a state-appointed board, an elected board is now in place but serves only in an advisory role. The district, however, remains under State control as the State evaluates the district. Nearly 95% of the district’s students are minorities.

The State took steps to take over the Camden Public Schools in 2002. Academic and other problems in Camden fueled the State effort to take over the district. A state judge ruled that the portion of the Camden Rehabilitation and

408. Hu, supra note 401.
410. See Hu, supra note 401.
Economic Recovery Act designed to give the State control of the local board was unconstitutional under the state constitutional prohibition of special legislation directed at particular districts or schools. 419. The invalidated portion of the law would have gradually replaced the nine-member elected school board with three elected members, three chosen by the mayor, and three chosen by the governor. It also would have given the governor, a Democrat, veto power over board decisions. 420. The district has a 99% minority student population. 421. Chronic academic and financial mismanagement problems in the districts, rather than racial animus, seem to have driven these takeovers. 422.

L. New York

Academic problems and fiscal mismanagement in the Roosevelt Union Free School District provided the impetus for New York’s takeover of the district in 1996. 423. The State removed the elected local board, but a few months later the State allowed election of a new board, with insignificant authority. 424. Nevertheless, the State retained control over the district. 425. Six years later, assiduous academic and fiscal problems led the State to remove the elected board again, and this time the State appointed a board to run the district. 426. The State agreed to allow election beginning in 2007, 427 but the State retains control over the district until 2011, 428 especially the power “to hire and fire the district’s superintendent, veto appointments of other top administrators and principals, and sign off on district budget matters.” 429. In this district, which has a virtually all-


419. See Gewertz, N.J. Judge Blocks Takeover, supra note 418.


422. See supra notes 400-421 and accompanying text.


425. See id.


428. See Gehring, supra note 427.

429. Id.
minority student body,\textsuperscript{430} residents criticized the takeover as “an ominous blow to local control, [which] has come to symbolize the historical neglect of predominantly black districts.”\textsuperscript{431} There is no question, however, that the district had “a host of problems, such as low test scores, high dropout rates, crumbling school facilities, and the fact that few students leave school with a state regents’ diploma, New York’s premier high school credential.”\textsuperscript{432} Also, all members of the current board (four state-appointed and one elected by residents) are minorities.\textsuperscript{433}

Corruption and rampant academic problems prompted the State takeover of the New York City Public Schools in 2002, vesting control in the mayor.\textsuperscript{434} The mayor appoints eight of the thirteen-member board chaired by the city chancellor.\textsuperscript{435} The city chancellor is appointed by the mayor, but beginning in June 2009, the city board will appoint the city chancellor.\textsuperscript{436} The city’s five borough presidents each select one of the other five members on the board.\textsuperscript{437} In the takeover the State abolished the city’s thirty-two elected community school boards.\textsuperscript{438} Close to 86\% of the district’s students are minorities.\textsuperscript{439}

\textit{M. Ohio}

Ohio took over the Cleveland Public Schools in 1995 because of several significant problems in the district.\textsuperscript{440} This was after a federal judge declared that the district was in a “state of crisis” and gave control of the district to the State.\textsuperscript{441} The judge “ruled that internal dissension, management problems, and a crippling budget deficit had undermined the district’s ability to carry out its educational

\begin{itemize}
  \item\textsuperscript{431} Gehring, \textit{supra} note 427. Indeed, the president of the local school board at the time of the takeover declared, “It [the takeover] was racially motivated . . . . They are saying the democratic process when it comes to black school districts takes a back seat to what the white man wants.” \textit{Id.}
  \item\textsuperscript{432} \textit{Id.}
  \item\textsuperscript{433} See Roosevelt Sch. Dist., The Bd. of Educ.—Members, http://www.rooseveltufsd.com/rufsd/boe_members.php (last visited Apr. 20, 2009).
  \item\textsuperscript{434} See Catherine Gewertz, \textit{N.Y.C. Mayor Gains Control over Schools, EDUC. Wk.}, June 19, 2002, at 1.
  \item\textsuperscript{435} \textit{Id.}
  \item\textsuperscript{436} N.Y. \textit{EDUC. LAW} § 2590-h (McKinney 2007 & Supp. 2009).
  \item\textsuperscript{437} See Gewertz, \textit{supra} note 434.
  \item\textsuperscript{438} \textit{Id.}
  \item\textsuperscript{440} See Ann Bradley, ‘Crisis’ Spurs State Takeover of Cleveland, \textit{EDUC. Wk.}, Mar. 15, 1995, at 1 (noting that a federal judge turned control of the school over to the State of Ohio).
  \item\textsuperscript{441} \textit{Id.}
\end{itemize}
program." In 1997, the State transferred control of the district to the mayor. The State gave the mayor the power to appoint the school board members. The mayor took control in 1998. The National Association for the Advancement of Colored People (NAACP) expressed concern that the takeover bill "was sponsored by two white, suburban lawmakers." The political liaison for the Cleveland Teachers’ Union called the takeover "white colonialism." There is no disputing that the district, which is over 80% minority, was in a major crisis at the time of the takeover. In 2002, Clevelanders voted to permanently keep mayoral appointment of the school board. For a few years Ohio took over the financial operations of the Youngstown City Schools after the district was in fiscal emergency status due to chronic financial problems in the district. The State of Ohio did not replace the local board. About 78% of the district’s students are minorities.

442. Id.
444. White, supra note 443.
445. Id.
446. Reinhard, Bill Advances, supra note 443; see also Beth Reinhard, Lawsuits Oppose Mayor’s Role in Cleveland Schools, EDUC. Wk., Sept. 17, 1997, at 3 (noting race-based challenges to the bill).
447. Reinhard, Bill Advances, supra note 443. According to a former candidate for the school board, “When you’ve got black people in charge and a majority-black district, people think they don’t know what they’re doing . . . . It’s really insulting.” See Reinhard, Racial Issues, supra note 11.
449. See supra notes 440-48 and accompanying text.
452. See id; see generally Youngstown City Schools, http://www.ycsd.k12.oh.us/ (last visited Apr. 19, 2009).
Pennsylvania took over the Chester-Upland School District in 1994 after declaring the district financially distressed.\textsuperscript{454} In 2000, the State also declared the district educationally distressed due to its mounting academic problems and appointed a three-member panel to run the district.\textsuperscript{455} In 2007, based on financial improvements in the district, the State removed the district from fiscal distress status.\textsuperscript{456} However, given the district’s persisting academic problems, the State appointed an empowerment board to control the district’s academics.\textsuperscript{457} This district’s student body is approximately 98% minority.\textsuperscript{458}

The State took over the School District of Philadelphia in 2001 because of financial and academic problems in the district.\textsuperscript{459} The State then contracted with various groups, including Edison Schools Incorporated and Temple University, to run several of the district’s schools.\textsuperscript{460} The district, however, is run by a state-appointed panel known as the School Reform Commission.\textsuperscript{461} Three of the

\begin{thebibliography}{9}
\bibitem{455} See sources cited supra note 454.
\bibitem{457} Id.
commission members are appointed by the governor with the mayor appointing the other two.\textsuperscript{462} Over 86\% of the district’s students are minorities.\textsuperscript{463}

Sundry problems in the district, including misappropriation of funds, missing district properties, incompetence, declining enrollment, patronage, and ostensibly criminal activities prompted the State’s takeover of the Harrisburg School District in 2000.\textsuperscript{464} The board of control, appointed by the mayor, runs the district under the direction of the mayor.\textsuperscript{465} However, there is also a local elected board whose members meet once a year to approve tax plans.\textsuperscript{466} Just under 95\% of the district’s student population are minorities.\textsuperscript{467} Declining enrollment and fiscal crisis led to the State’s appointment of a board of control for the Duquesne City School District in 2000.\textsuperscript{468} The district’s only high school was closed in 2007 as persisting fiscal challenges made continued operation of the high school infeasible.\textsuperscript{469} Students now attend high school in the West Mifflin Area and East Allegheny school districts.\textsuperscript{470} More than 93\% of the district’s students are minorities.\textsuperscript{471}

\begin{footnotesize}
\begin{enumerate}
\item[{464}] See Jessica L. Sandham, Mayoral Takeover of Schools off to Tumultuous Start in Pa. Capital, EDUC. WK., Jan. 10, 2001, at 5.
\item[{465}] See id. ("[T]he mayor appointed a new five-member board of control, which quickly moved into administrative offices equipped with different locks and new computer-access codes."); see also Brian Baker, Stephen Reed: Mayor of Harrisburg, U.S. CITY MAYORS, July 13, 2006, available at http://www.citymayors.com/mayors/harrisburg_mayor.html; Harrisburg School District, Board Members, http://www.hbgsd.k12.pa.us/2043906322912/site/default.asp (listing the members of the board of control).
\item[{470}] Id.
\end{enumerate}
\end{footnotesize}
Due to financial problems, the State has control of the Clairton City School District a few times, with the first ending in 1988 and another for six years ending in 1999. The district is now under local control. Approximately 67% of the students in the district are minorities. The State also placed the Sto-Rox School District under a board of control in 1992 due to financial troubles in the district. Pennsylvania returned this district to local control in 1999. A history of academic problems led to State control of the district again in 2000. About 41% of Sto-Rox School District’s students are minorities. The districts taken over in Pennsylvania all had apparent academic and or financial problems and it would be difficult for anyone to make a valid case that racial animus motivated the decisions.

O. Rhode Island

Rhode Island took over the Central Falls School District in 1991 because of growing fiscal problems in the district. In fact, this district asked that the State take over, becoming the first district to do so in the nation. A tentative agreement giving the State control was signed in 1991, with the State assuming
full control a year later. The district remains under state control. Over 80% of the district’s students are minorities.

P. South Carolina

Academic problems in the Allendale County School District led to the 1999 South Carolina takeover of the district. At first a few people in the district opposed the takeover, with one person referring to the State Superintendent as “Hitler.” However, at a community meeting on the takeover, most of those present did not question the takeover. Additionally, a detailed report revealing that this district had so many Byzantine problems, including chronically low test scores and ineffective leadership, was difficult to dispute. In 2007, the State returned the district to local control. Over 96% of the district’s students are minorities.

Q. Texas

Texas intervened in the Somerset Independent School District in 1995 as a result of the State fearing that mismanagement on the part of the district’s superintendent would lead to turmoil and violence. In the same year, the State returned the district to local control. Some believe that protests and
challenges, fueled by the State taking away control from the elected board, sparked the brevity of the State takeover. However, the State explained the brevity as a response to quick improvements made in the few months of the takeover. The district has about an 84% minority student body.

The State also took over Wilmer-Hutchins Independent School District in 1996 because of cronyism, mismanagement, and academic and fiscal problems. The State appointed a management team for the district. The district regained control in 1998. However, problems persisted in the district, including sexual harassment allegations forcing a superintendent to resign, State investigations of inaccurate data on dropouts, low academic achievement, and abysmal financial crisis, leading the state comptroller to implore the district to ask for a State takeover. The Federal Bureau of Investigation (FBI), the district’s police department, Dallas County’s district attorney, and the Texas Rangers commenced investigations into the district’s spending and fiscal mismanagement and document tampering in a criminal investigation, even leading to grand jury indictments.

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494. See id. (noting among other issues, three lawsuits filed against the Texas Education Agency).

495. Id.


498. See Sansbury, supra note 497.


500. Not Measuring up, supra note 499.

501. Id.


504. See Not Measuring up, supra note 499.


506. See Watts, Texas: School Takeover, supra note 499.
Due to enduring problems in the district, the State again appointed a management team to oversee the district in 2004.\(^{507}\) However, the management team and the elected board, which was retained, were unable to work together.\(^{508}\) This, coupled with revelations of teacher-assisted student cheating on the state test, culminated in the State’s 2005 appointment of a board of managers to replace the elected school board.\(^{509}\) In the same year, in closing the district, the State-appointed board maintained that it would only reopen if voters approved huge property tax hikes and a bond proposal for rebuilding schools in the district.\(^{510}\) The voters overwhelmingly defeated these measures, prompting the State Commissioner of Education to call for the annexation of the district to the Dallas Independent School District\(^{511}\) which is about 95% minority.\(^{512}\) The annexation, characterized by The Dallas Morning News as “the district’s state-induced euthanasia”\(^{513}\) occurred in 2006.\(^{514}\) Approximately 96% of the Wilmer-Hutchins district’s student body was minority.\(^{515}\)

**R. West Virginia**

Low attendance, poor academic performance, and administrative mismanagement were among the factors that sparked West Virginia’s takeover of the Logan County Schools in 1992.\(^{516}\) The State retained the elected local board but with diminished responsibilities.\(^{517}\) For example, the board had power

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508. Id. For twenty years, the State had appointed management teams over the district several times but the elected board was essentially retained. Id.

509. See Watts, Texas Officials Close, supra note 502; Press Release, Board of Managers, supra note 507.


514. Id.

515. See Not Measuring up, supra note 499.


517. Hoff, supra note 516.
over maintenance and transportation, while the State was responsible for “personnel, curriculum budget, and school calendar.” Keeping the elected board in place helped minimize local opposition to the takeover. In 1995, the local board regained control over the school calendar and the budget. Finally, in 1996, the State restored full control of the district to the local board. Over 96% of the district’s students are white.

In 2000, West Virginia took over the Lincoln County School District after the State found fiscal, academic, and personnel problems in the district. The State retained the local board but the significant responsibilities for the district were vested in the State. Nearly 100% of the district’s students are white. The State took over the Mingo County Schools in 1998; a review found “a total of 172 deficiencies in Mingo County school operations,” including “budget deficits, low student achievement and a lack of leadership.” The State restored control to the elected board in December 2002. However, in 2005, the State took over the district once again, this time because of its failure to agree with the school consolidation program put forth by the State. Approximately 3% of the district is minority.

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518. Id.
519. Id.
520. See id.
521. Id.
522. Id.
525. Id.
528. Weaver, supra note 527.
529. See Press Release, Mingo County Regains Control, supra note 527.
led to West Virginia’s takeover of the Hampshire County Schools in 2006.\footnote{333} A year later, the State returned control of the district to the elected board.\footnote{334} Approximately 2\% of the district’s students are minorities.\footnote{335}

A request for a State takeover by district leadership as well as a 144-page report from state auditors prompted West Virginia to take over the McDowell County Schools in 2001.\footnote{356} Among other things, the report revealed unsafe conditions presenting danger to students and staff as well as a lack of quality education in the district.\footnote{357} According to the report, “‘extraordinary circumstances exist[ed] in the county that constitute[d] major impediments to the provision of education programs and services.’”\footnote{358} In fact, district leadership declared that they were no longer able to run the district.\footnote{359} The minority student body of the district is 12\%.\footnote{360}

III. State Takeovers of Minority Districts and the Equal Protection Clause

In Part II, we explained that the majority of district takeovers across the country are minority districts. In some cases, minority groups have alleged that the takeovers were racially motivated. In many cases, there was evidence of financial mismanagement and incompetence on the part of the minority districts. Furthermore, many of the takeovers were fraught with tension and ill-will. These negative feelings could easily lead to future litigation. Thus, this Part analyzes the viability of Equal Protection Clause challenges to minority districts under the Federal Constitution.

\footnote{334}{Id. (quoting the auditor’s report).}
\footnote{356}{See Lisa Fine, Troubled West Virginia District Invites State to Take Over, EDUC. Wk., Nov. 21, 2001, at 9.}
\footnote{357}{Id. (quoting the auditor’s report).}
\footnote{358}{See Fine, supra note 536.}
\footnote{360}{Id. (quoting the auditor’s report).}
A. The Equal Protection Clause Generally

The Equal Protection Clause of the Fourteenth Amendment states in pertinent part: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” A review of cases alleging violation of the Equal Protection Clause could be subject to one of three standards of review: strict scrutiny, intermediate scrutiny, and rational basis. The strict scrutiny standard of review is only applied when government action results in a classification that “interferes with a ‘fundamental right’ or discriminates against a ‘suspect class.’” To withstand muster under the strict scrutiny standard of review, the burden is on the government to show that the classification is narrowly tailored to achieve a compelling state interest. The United States Supreme Court has recognized race as a suspect class and the right to vote as a fundamental right. The rational basis standard of review is the most lenient standard of review. Under this standard of review, the Equal Protection Clause is violated only if the classification is not rationally related to a legitimate state interest. Rational basis review is applied when a classification is neither based

541. U.S. CONST. amend. XIV, § 1 cl. 4.

542. The intermediate scrutiny standard of review is less stringent than the strict scrutiny standard of review but more stringent than the rational basis review standard. Under this standard of review, the government has to show that its classification promotes a substantial State interest. This level of scrutiny is applied to quasi-suspect classifications based on gender and illegitimacy. See Clark v. Jeter, 486 U.S. 456, 461-63 (1988) (applying strict scrutiny in a case involving illegitimacy); Plyler v. Doe, 457 U.S. 202, 218 n.16, 224 (1982) (“[T]he discrimination [against children of illegal aliens in the state statute] can hardly be considered rational unless it furthers some substantial goal of the State.”); Craig v. Boren, 429 U.S. 190, 197 (1976) (“To withstand constitutional challenge, . . . classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.”). Since neither gender or illegitimacy are involved here, we do not focus on this tier of review.


544. Id. at 457.


546. In Korematsu v. United States, 323 U.S. 214 (1944), the Court declared that “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny.” Id. at 216 (emphasis added). The reference to “most rigid scrutiny” is a reference to “strict scrutiny.” See Natasha L. Carroll-Ferrary, Note, Incarcerated Men and Women, the Equal Protection Clause, and the Requirement of “Similarly Situated,” 51 N.Y.L.SCH. L. REV. 595, 601 (2006-2007).


548. FCC v. Beach Commc’ns, Inc., 508 U.S. 307, 313 (1993) (“In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes...
B. Equal Protection and State Takeovers

Critics of the appointive system of selecting school board members that often accompanies takeovers of districts claim the system violates the Equal Protection Clause and is subject to the strict scrutiny standard of review for racial classification and infringement of the fundamental right to vote. The United States Supreme Court has stated, however, that territorial uniformity is not a constitutional requirement under the Equal Protection Clause. Specifically, the Court declared that “[t]he Fourteenth Amendment does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision of the state.” Consequently, the Equal Protection Clause is not violated merely because residents of minority school districts cannot vote for school boards due to an otherwise legitimate State takeover of the district, while white majority school districts in the same state retain the right to vote for their school board members. As far back as 1961, Chief Justice Warren stated, “[W]e have held that the Equal Protection Clause relates to equality between persons as such, rather than between areas and that territorial uniformity is not a constitutional prerequisite.”

The United States District Court for the District of Maryland held similarly in Welch v. Board of Education. In that case residents of eight county school districts challenged a Maryland statute that provided for an appointed school board in Baltimore County, while elected school boards were allowed in eight of the twenty-three counties in Maryland. The federal district court found that the classification was not suspect and did not interfere with a fundamental right. Thereupon, the court ruled that strict scrutiny was inapplicable, and instead it applied the rational basis standard of review in upholding the classification. The Welch court relied on the United States Supreme Court’s holding in Sailors...
v. Board of Education (Sailors II)\textsuperscript{559} to determine whether there is a fundamental right to vote for school board members.\textsuperscript{560}

In Sailors v. Board of Education (Sailors I),\textsuperscript{561} the plaintiffs brought suit challenging the statutory system of selecting the members of the Kent County Board of Education as violating the Equal Protection Clause.\textsuperscript{562} The plaintiffs also alleged that the statute violated the one person, one vote principle\textsuperscript{563} by giving one vote to each school district despite the wide variations in the populations of the school districts.\textsuperscript{564} At the time, Michigan Code provided that each school district within the county had one vote in the selection of members of the county boards of education, irrespective of population.\textsuperscript{565} While the residents of each school district could vote for the district’s school board, they could not vote for the county school board.\textsuperscript{566} Instead, a delegate chosen from among the elected members of each district’s school board voted for the county school board members.\textsuperscript{567} The members of the county school board did not have to be members of any of the school districts’ school boards.\textsuperscript{568} The county boards had ample powers, including power to levy property taxes, gather data on delinquent taxes, prepare an annual budget, transfer territory from one school district to another, and direct the special education programs.\textsuperscript{569}

On appeal, the United States Supreme Court declared that “‘[p]olitical subdivisions of States—counties, cities or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental function.’”\textsuperscript{570} The Court went on to note that counties, local boards, and other political subdivisions of the state exist at the pleasure of the State.

“[T]hese governmental units ‘are created as convenient agencies for exercising such of the governmental powers of the state, as may be entrusted to them,’ and the ‘number, nature and duration of the powers conferred upon (them) . . . and the territory over which they shall be exercised rests in the absolute discretion of the state.’”\textsuperscript{571}

\begin{itemize}
\item 559. 387 U.S. 105 (1967).
\item 560. Welch, 477 F. Supp. at 964-65.
\item 562. Id. at 18.
\item 563. See generally Reynolds v. Sims, 377 U.S. 533 (1964) (establishing the one person, one vote principle as a matter of constitutional law).
\item 564. Sailors I, 254 F. Supp. at 18.
\item 566. Id.
\item 567. Id. at 18-19; Sailors v. Bd. of Educ. (Sailors II), 387 U.S. 105, 106-07 (1967).
\item 568. See id.
\item 569. Sailors I, 254 F. Supp. at 19.
\item 570. Sailors II, 387 U.S. at 107-08 (quoting Reynolds v. Sims, 377 U.S. 533, 575 (1964)).
\item 571. Id. at 108 (quoting Reynolds, 377 U.S. at 575).
\end{itemize}
Courts examining Equal Protection Clause challenges similar to those in *Welch* and *Sailors II* would conclude that appointive systems do not violate the Equal Protection Clause. In reaching this holding, courts would likely rely on the following holding from *Sailors II*: “We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election.”

In essence, the Court ruled that there was no fundamental right to vote for school board members. The Court held that the functions of the county boards were administrative in nature and declined to rule on whether it would find an Equal Protection Clause violation if a local legislative body (as opposed to an administrative body) is selected through an appointive instead of an elective system. It is likely, however, that the more similar the functions of a local school board are to those of the county board in *Sailors I*, the more likely courts are to find the board to be of a nonlegislative nature and, thus, apply the *Sailors II* holding.

Building on the above reasoning, the Supreme Court held that there is no fundamental right to vote for local school boards. The Court applied rational basis review, rather than strict scrutiny. Surprisingly, the Court applied this more lenient standard in spite of the fact that in precedent the Court had declared the right to vote a fundamental right preservative of all other rights. It must be noted that in precedent, the Court ruled that the Federal Constitution protects the right to vote in federal and state elections. However, a key distinction arises from the fact that the right to vote in local elections is the State’s prerogative.

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572. See, e.g., Moore v. Detroit Sch. Reform Bd., 2002 FED App. 0204P, 293 F.3d 352, 368-72 (6th Cir.); Mixon v. Ohio, 1999 FED App. 0347P, 193 F.3d 389, 402-06 (6th Cir.); see also Mark Walsh, *High Court Declines Challenge to Appointed Detroit Board*, EDUC. WK., Mar. 5, 2003, at 29 (noting that the U.S. Supreme Court refused to hear Moore on certiorari, suggesting a potential agreement with the *Welch* and *Sailors II* reasoning as applied to takeovers).


574. See id. at 110-11 (stating that “[s]ince the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of ‘one man, one vote’ has no relevancy”); see also Mixon, 193 F.3d at 403 (“Although Plaintiffs have a fundamental right to vote in elections before them, there is no fundamental right to elect an administrative body such as a school board, even if other cities in the state may do so.”).

575. *Sailors II*, 387 U.S. at 111.


577. See *Sailors II*, 387 U.S. at 111.

578. Id.


581. See id. Indeed in Reynolds, the Court specifically referred to the fundamental right to
as local governmental entities, “[p]olitical subdivisions of States—counties, cities or whatever—never were and never have been considered as sovereign entities.”

They are merely “created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them,” and the ‘number, nature and duration of the powers conferred upon (them) . . . and the territory over which they shall be exercised rests in the absolute discretion of the state.”

Nevertheless, where there is an election in place, during the existence of such an elective system, “a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” As explained further by the Court, “once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.” In other words, if the jurisdiction or electorate is the school district, every citizen in that district has a right to participate equally in the elections while an elective system exists in that district. Essentially, there is a fundamental right to equal access to participation in elections.

Under rational basis review the Supreme Court in Sailors II upheld the vote with respect to state and federal elections. Id. With respect to local elections, the Court added in Sailors II, that

[i]f we assume arguendo that where a State provides for an election of a local official or agency—whether administrative, legislative, or judicial—the requirements of Gray v. Sanders and Reynolds v. Sims must be met, no question of that character is presented. For while there was an election here for the local school board, no constitutional complaint is raised respecting that election. Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of “one man, one vote” has no relevancy.

Sailors II, 387 U.S. at 111.

582. Reynolds, 377 U.S. at 575.
583. Id. (quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907)) (emphasis added).
584. Dunn v. Blumstein, 405 U.S. 330, 336 (1972) (emphasis added); see also Avery v. Midland County, 390 U.S. 474, 480 (1968) (“[W]hen the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process.”).
587. See Dunn, 405 U.S. at 336; Harper, 383 U.S. at 665; see also Mixon v. Ohio, 1999 FED App. 0347P, 193 F.3d 389, 402 (6th Cir.) (“Although the right to vote, per se, is not a ‘constitutionally protected right,’ the Supreme Court has found, ‘implicit in our constitutional system, [a right] to participate in state elections on an equal basis with other qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State’s population.’”) (quoting San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 n.78 (1973)) (emphasis added).
State’s legitimate interest in managing its schools through appointive boards.\textsuperscript{588} The Court applied this reasoning in \textit{Welch} and many other cases since \textit{Sailors II}, which goes thus: “Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation.”\textsuperscript{589} In essence, the Court affords wide latitude to the State in the management of school districts, which exist at the pleasure of the State, in order to meet challenges and changing conditions in the district. Such challenges and changes include academic and financial mismanagement and other turmoil in the districts.

As the federal district court explained in \textit{Welch}, “The need for freedom of state legislatures to experiment with different techniques and schemes is one of the rational bases for [imposition of an appointive system]. . . . In \textit{Sailors II}, the need to experiment seemingly was the only basis relied upon to satisfy the test of rational nexus.”\textsuperscript{590} The district court acknowledged that there is no fundamental right to vote for school board members.\textsuperscript{591} Further, because there is no fundamental right to education under the U.S. Constitution, the education issues in these cases do not bolster the argument that there is a fundamental right to vote for school board members.\textsuperscript{592}

In addition, the Supreme Court held in \textit{Sailors II} that the one person, one vote principle is only relevant to elective systems, not appointive systems.\textsuperscript{593} In ruling on the constitutionality of a New York law that permitted City of New York board members to be appointed, while suburban school boards were elected, the United States District Court for the Southern District of New York relied on \textit{Sailors II} and \textit{Hadley v. Junior College District of Metropolitan Kansas City}\textsuperscript{594} in its declaration that the one person, one vote doctrine is of no relevance whatsoever to appointive boards.\textsuperscript{595} In essence, the State can choose to replace an elective system for school board members with an appointive system.\textsuperscript{596}

\textsuperscript{589} Id. (emphasis added); see also Irby v. Va. State Bd. of Elections, 889 F.2d 1352, 1355-56 (4th Cir.1989) (recognizing several legitimate reasons for appointed school boards rather than elected school boards).
\textsuperscript{591} Id. at 964-65.
\textsuperscript{592} Id.
\textsuperscript{593} \textit{Sailors II}, 387 U.S. at 111.
\textsuperscript{594} 397 U.S. 50 (1970).
\textsuperscript{596} Fumarolo, 566 N.E.2d at 1302-03; see also Pirincin v. Bd. of Elections, 368 F. Supp. 64, 69 (N.D. Ohio 1973).
Beyond this, the replacement of an elective system with an appointive system for school boards in a takeover does not violate the one person, one vote principle. This principle is only violated if, while an elective system is the method of selection, each citizen is not allowed to participate equally in the election. Indeed, the Supreme Court has also given states latitude to experiment with a hybrid system—combining appointive and elective systems for local school boards.

In *Hadley*, the Supreme Court seemed to abandon the rigid distinction between administrative and legislative function from *Sailors II*, though not overruling any of its holdings in *Sailors II*. In fact, the Court declared that government functions “‘cannot easily be classified in . . . neat categories.’” Affirming its holding in *Sailors II*, the Court made it clear that an appointive system in itself is not violative of the Equal Protection rights of residents of school districts. In fact, the Court went on to note in *Hadley* that in cases where an appointive system is used in selecting school boards or other local government officials, each official does not have to represent the same number of people as is typically required in elective systems under the one person, one vote principle.

In *Van Zanen v. Keydel*, the Court of Appeals of Michigan followed the Supreme Court’s holding in *Sailors II* in a challenge to the appointive system implemented in a political subdivision in Michigan. The court held that substituting an appointive system for an elective system is not a violation of the Equal Protection Clause. The court stated that “a state or local government may select some government officials by appointment. And where appointment is permissible, the one person-one vote doctrine does not apply.” Likewise, ruling on the constitutionality of a 1963 Chicago Public Schools takeover statute that gave the mayor the power to appoint the school board in place of the elected board, the Illinois Supreme Court ruled in *Latham v. Board of Education* that “‘no resident of a school district has an inherent right of franchise insofar as school elections are concerned. His right to vote therein is purely a permissive one bestowed by the legislative grace in furtherance of the policy of the...”

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598. Id.
599. *Sailors II*, 387 U.S. at 111 (noting that there is nothing unconstitutional with “experimenting”).
601. *Id.* at 56 (quoting Avery v. Midland County, 390 U.S. 474, 482 (1968)).
602. *Id.* at 58-59.
603. *Id.* at 58.
605. *Id.* at 536, 538-39.
606. *Id.* at 539.
607. *Id.*
608. 201 N.E. 2d 111 (Ill. 1964).
In fact, most state constitutions have no provision for local school districts or local control of education; constitutionally, the responsibility for education lies with the State. The very small minority of states that do constitutionally provide for local control of education do not provide for local school boards. Still, the tradition in America has been for States to delegate governance of schools to local school boards. As Aaron Saiger cautiously notes:

Notwithstanding the policy of local delegation, however, school district authority is contingent on a state grant of power. Therefore, a district’s authority to direct education in a locality can be made [by the state] contingent on its performance. Just as a state should withdraw a contract from an underperforming contractor, or freeze a grant not being used to provide the services the grant was to support, it ought to act similarly vis-à-vis a school district.

As our discussion above reveals, even when other school districts in the same state retain the right to vote for their school boards, no Equal Protection Clause violation is likely to be found when states take over school districts, albeit minority districts. This result is especially likely because the Supreme Court has upheld the substitution of an appointive system for an elective system as rationally related to the legitimate end of experimenting with governance techniques for greater effectiveness of government functions. However, if it is proven that racial animus was involved in the decision about which district to takeover, a case for an Equal Protection Clause violation is at least more viable.

Furthermore, the Supreme Court has ruled that “[w]hen racial classifications are explicit [in a law], no inquiry into legislative purpose is necessary and
such laws must be strictly scrutinized.\textsuperscript{619} None of the State takeover laws examined in Part I could be deemed to have explicit racial classifications,\textsuperscript{620} except, arguably, those state laws that allow takeovers in cities with large populations.\textsuperscript{621} For example, an Illinois provision applies to cities with over 500,000 inhabitants,\textsuperscript{622} which means the law only affects Chicago, a high-minority school district.\textsuperscript{623} Given the traditionally large number of minorities in the district and the fact that Chicago was the only city with over 500,000 inhabitants at the time of the statute’s enactment,\textsuperscript{624} it is apodictic that, in passing the law, the state legislature knew it would only apply to this predominantly minority district. However, the legislation is careful to include no explicit racial classification, instead expressly applying the provision to cities with over 500,000 inhabitants.\textsuperscript{625} This shelters the provision from constitutional vulnerability as it is a facial classification based on population rather than race. In fact, in upholding the law, the Illinois Supreme Court reasoned that the provision does not violate the Equal Protection Clause because “‘[c]lassification on the basis of population is not objectionable where there is a reasonable basis therefor in view of the object and purposes to be accomplished by the

\begin{footnotesize}
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\item[619] Id. As the Sixth Circuit has further noted, In Village of Arlington Heights, the Supreme Court identified five factors that are relevant for determining whether facially neutral state action was motivated by a racially discriminatory purpose: (1) the impact of the official action on particular racial groups, (2) the historical background of the challenged decision, especially if it reveals numerous actions being taken for discriminatory purposes, (3) the sequence of events that preceded the state action, (4) procedural or substantive departures from the government's normal procedural process, and (5) the legislative or administrative history. Moore v. Detroit Sch. Reform Bd., 2002 FED App. 0204P, 293 F.3d 352, 369 (6th Cir.) (citing Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266-68 (1977)).
\item[620] This includes the NCLB takeover provisions which serve as the basis for the State takeover provisions in various states as shown supra Part I.
\item[621] Ohio’s law is only applicable to municipal school districts in Cleveland. See H.B. 269, 122d Gen. Assem., Reg. Sess. (Ohio 1997). The Sixth Circuit upheld this law in Mixon v. Ohio, 1999 FED App. 0347P, 193 F.3d 389 (6th Cir.), and by referendum in 2002, Cleveland residents decided to retain the mayoral-appointment of board members. See Gewertz, Clevelanders to Weigh in, supra note 450, at 8; Moore, supra note 450. Missouri also seems to provide for a classification based on population, providing for takeovers in districts with populations over 350,000 inhabitants. Mo. Ann. Stat. § 162.081(3) (West 2000 & Supp. 2008). However, the same provision extends the takeover to all districts. Id. Thus, the population classification in the statute seems unnecessary. Id.
\item[622] 105 ILL. COMP. STAT. ANN. 5/34-1 (West 2006).
\item[624] Id.
\item[625] 105 ILL. COMP. STAT. ANN. 5/34-1.01 (West 2006).
\end{enumerate}
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At bottom, facial classifications based on population are subject to rational basis review. Indeed, the United States Supreme Court has also ruled that “[a] facially neutral law, on the other hand, warrants strict scrutiny only if it can be proved that the law was motivated by a racial purpose or object, or if it is unexplainable on grounds other than race.” It seems evident that all the statutes we examined above, including Illinois’s, would pass muster under rational basis review. Furthermore, as articulated by the Supreme Court of Illinois, in “considering the validity of a legislative classification there is always a presumption [by the courts] that the General Assembly acted conscientiously, and this court will not interfere with its judgment except where the classification is clearly unreasonable and palpably arbitrary.”

In cases where there is a facially-neutral law, which in application has a disproportionate racial impact, the United States Supreme Court declared in Washington v. Davis that “[i]t seems evident that all the statutes we examined above, including Illinois’s, would pass muster under rational basis review. Furthermore, as articulated by the Supreme Court of Illinois, in “considering the validity of a legislative classification there is always a presumption [by the courts] that the General Assembly acted conscientiously, and this court will not interfere with its judgment except where the classification is clearly unreasonable and palpably arbitrary.”

rejected allegations of racial discrimination based solely on the statistically disproportionate racial impact of various provisions of the Social Security Act because “[t]he acceptance of appellants’ constitutional theory would render suspect each difference in treatment among the grant classes, however lacking in racial motivation and however otherwise rational the treatment might be.”

Once a prima facie case of discriminatory purpose is established, “‘the burden of proof shifts to the State to rebut the presumption of unconstitutional action by showing that permissible racially neutral selection criteria and procedures have produced the monochromatic result.’”

IV. IMPLICATIONS FOR STATE TAKEOVERS OF MINORITY DISTRICTS

States that adopt the NCLB’s multiple-option approach for corrective actions have a variety of approaches to experiment with before even considering takeovers. If those options are ineffective, a court might be hard-pressed to
deny deference to the State in its decision to take over the district.634 Likewise, if the State conducts studies showing that the other options have been ineffective in that district, it will strengthen its case. Indeed, the fact that the NCLB-approach is an option rather than a mandate is certainly not a disadvantage. States might also be well-advised to establish specific timelines for emergence from takeovers, in statute or in practice when implemented, as opposed to indefinite takeovers. It also might help to implement a partial takeover that does not involve change of the elective system for the school board to an appointive one, though as noted above, this change is not necessarily fatal to a takeover.635

Measured takeovers that retain the elected board but reduce its powers, similar to some of those described above, might help.636 However, community involvement, coupled with communication and education of the citizenry about the takeover and the State’s reasons and goals for the takeover, are critical. The more support the takeover gets from the community, the less likely it is to face a challenge in the first place. Even if the State retains an elected board but renders the board effectively powerless as a mere ceremonial board, or one with very limited powers, the community could still find it very objectionable due to its implications for local control and trust of the minority residents.

As often happens, the citizens see the takeover as a state government’s lack of trust in the minorities to run their school district.637 Consequently, the importance of communication (and development of trust that accompanies communication) as well as relationship-building in the community to any takeover cannot be overestimated. Communication and trust would certainly help with the implementation of partnerships such as that of the Baltimore City Public Schools in 1997 or the Boston University/Chelsea Partnership.638 Such partnerships, if truly collaborative, might be less challenged and may survive constitutional challenges tant mieux. These partnerships should certainly be

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[n]othing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.


634. This is even more pertinent in those states that have yet to adjudicate the constitutionality of takeovers. However, there is no reason to suggest that they would not march in lockstep with the various cases discussed in this Article.

635. See supra notes 572-76, 593-609 and accompanying text.

636. As a description of a former West Virginia State Superintendent’s opinion revealed, “Court battles might be avoided if takeovers preserved elected school boards . . . . Had we attempted to remove the local board, we’d probably still be in litigation today.”” Reinhard, Racial Issues, supra note 11.

637. See, e.g., Hendrie, supra note 497.

638. For additional information on these partnerships, see supra notes 342-56 and accompanying text.
encouraged over hostile takeovers.

Within a reasonable time after a full takeover, residents could also be given the opportunity by referendum to decide whether to retain an appointive system. Given that school districts are subdivisions of the State, existing at the discretion of the State, States could evidently take over a district. Nevertheless, without legislative authority, state agencies, such as the education department, embarking on their own to take over districts could face a challenge. This might even be so in cases where a state has accepted Title I funds, which requires implementation of the NCLB’s mandates, yet lacks any statutory authority for takeovers. The state legislature, however, could remedy the potential for ultra vires takeovers by simply enacting legislation authorizing the takeover; after all, as previously emphasized, districts are subdivisions of the state existing at its discretion. The State could, a fortiori, choose to enact laws that provide for an appointive system in a district rather than just authorizing a takeover. In any case, in addition to the grant of authority for a general takeover, the legislature should be as explicit as possible when granting state agencies the authority to replace an elected board with an appointed board as part of a takeover.

In those districts where partial takeovers occur, the State must of course ensure that it respects the electoral franchise, securing each citizen’s equal right to vote. Clearly, takeovers must not be driven by racial animus. It is important to document, again and again, the reasons for the takeover, so that in a challenge the State can present its legitimate reasons to the courts. While the racial demographic physiognomy of takeovers in a state would not alone strike a fatal blow to a contemplated or implemented takeover, the physiognomy should give the State cause to pause in order to evaluate and address the reasons for the racially disproportionate takeovers. Further, racial classifications should not be included in laws or policies, as those would likely be subjected to strict constitutional scrutiny. Beyond avoiding racial animus in decisions about takeovers, racial implementation of any and all aspects of the takeover must be absolutely obviated.

District residents could clearly resort to the political process (elected state legislative and executive officials) to prevent State takeovers. They could petition their elected officials to oppose a takeover, or vote out those who favor the takeover or those who refuse to act on their petitions to prevent the takeover. In cases where the executive officials who make such decisions are appointed officials, political pressure could be put on the elected officials who are ultimately responsible for selecting such appointed officials; the political pressure could be applied either to prevent the takeover or encourage its implementation in a way that the residents do not disfavor. Examples of political pressure include phone calls to elected officials, demonstrations, and voter

640. See supra note 618-19 and accompanying text.
641. See, e.g., Mixon v. Ohio, 1999 FED App. 0347P, 193 F.3d 389, 406 (6th Cir.) (suggesting that voicing opinion at national and state elections is a proper course of action).
registration drives targeting vulnerable officials. Residents could also organize to seek a state constitutional amendment preventing State takeovers, or exert pressure on their legislators to enact laws that would not allow takeovers or only allow them as a last resort. Various forms of such amendments or laws could be passed, including those which stop short of barring takeovers but preserve the right to vote and avoid a mere ceremonial board. Of course, residents could look to the judiciary. However, as discussed previously, courts have been reluctant to halt implementation of an appointive system but less disinclined to intervene in an elective system that infringes the right to equal participation in voting.642

Provision for appointment of a replacement board by another elected official, such as a mayor, could lessen objections to a State takeover of a school district. A mayor is a municipal official, unless the State indicates otherwise.643 As discussed above, some takeovers do provide for a mayorally-appointed board.644 Fewer objections from a full takeover might come from the fact that the mayor is elected by the residents and that the elected mayor appoints members of the school board.645 However, even this type of an arrangement has been challenged. In Mixon v. Ohio,646 the plaintiffs challenged the mayoral-appointment of board members in Cleveland.647 They claimed that the state law providing for the mayoral appointment denied them equal protection of the laws because some of the residents of the Cleveland Public School District were not eligible to vote in the mayoral election.648 The court characterized the plaintiffs’ challenge as follows:

[O]ther cases, such as this one, address voter disenfranchisement when a municipality has some control over non-residents who cannot vote in municipal elections, [i.e.,] cases of extraterritorial jurisdiction. Here, one [p]laintiff is not a resident of the City of Cleveland and does not

642. See supra notes 572-87 and accompanying text.
643. Mixon, 193 F.3d at 399.
644. See, e.g., supra notes 569-74, 572-76 and accompanying text.
645. See Mixon, 193 F.3d at 399.
646. 1999 FED App. 0347P, 193 F.3d 389 (6th Cir.).
647. Id. at 393-94. Recall that in 2002 Clevelanders chose to permanently retain the mayoral appointment of board members. For an overview of State involvement with the Cleveland Public Schools, see supra Part II.M.
648. As the Court summarized,

In their final equal protection challenge, [p]laintiffs allege that H.B. 269 “unconstitutionally compounds the voting disenfranchisement for some residents in the Cleveland Public School District living in the Village of Bratehahl, Linndale, Newburgh Heights and part of Garfield Heights, because these residents do not vote in the Cleveland mayoral elections.” According to Plaintiffs, non-Cleveland residents who reside in the same school district lose their elective opportunity to vote for the person who appoints individuals to their school board, thus depriving them of equal protection under the law.

Id. at 404.
vote in the City’s mayoral elections even though the mayor appoints a school board that encompasses [p]laintiff within its jurisdiction.649

In upholding the system of mayoral appointment, the United States Court of Appeals for the Sixth Circuit ruled that “non-residents do not necessarily have the right to vote in a city election simply because the city has some limited authority over the non-residents.”650 In other words, the mere fact that the City has authority over non-residents, in governing the school district in which those non-residents reside, does not entitle those non-residents to vote in a city election.651 In such cases, while reviewing equal protection challenges to mayoral appointment, “courts employ rational basis review, granting the States wide latitude to create political subdivisions and exercise state legislative power.”652 In Mixon, the State satisfied the low threshold of rational basis review because it sought to address the problems in the failing district.653

The circuit court poignantly expressed the gravamen of the ruling:

[E]xtraterritorial voters in the outer Cleveland suburbs are not “residents” of the City of Cleveland and surely do not deserve the right to vote in Cleveland mayoral elections. Although [p]laintiffs are residents of the municipal school district, no elections occur within that jurisdiction from which [p]laintiffs are excluded. If the municipal school boards were elected bodies and only the Cleveland residents could vote in the school board election, then the relevant geopolitical entity would be the municipal school district [and strict scrutiny would apply].654

CONCLUSION

The moral is that in cases of extraterritorial jurisdiction, state provisions for mayoral appointment are not necessarily violative under rational basis review. If any form of election is allowed for the school board, however, all residents of the district (even those not eligible to vote for the mayor) must be given equal access to the right to vote. Still, if seeking to minimize objections, it might be best to simply retain an elected board in cases of extraterritorial jurisdiction, with the mayor having more of a supervisory rather than an appointive power over the board. However, the key is to avoid infringement of equal access to the voting franchise of the residents of the relevant school district. Let us all keep in mind that while, ceteris paribus, reforms are good, sensitivity to the disparate application of reform is prudent in order to minimize what could amount to

649. Id. at 404-05 (internal citation omitted).
650. Id. at 405 (citing Holt v. City of Tuscaloosa, 439 U.S. 60, 69 (1978)).
651. See id. at 404-06.
652. Id. at 405 (citing Holt, 439 U.S. at 71).
653. Id. at 406 (the legislation at issue “relate[d] to the legitimate state interest of improving public schools”).
654. Id. at 405-06.
protracted litigation over good faith efforts and broken trust in local communities. Even in those cases where takeovers are legally justified, states should strive to retain the elective system. As Justice Black once wrote: “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”655