

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

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1. MARIA CHAPPELLE-NADAL, *SCHOOL REFORM STRATEGIES 7* (2007), available at <http://pubdef.net/downloads/Nadal-Report-on-State-Takeovers.pdf>; see also NATIONAL CENTER FOR EDUCATIONAL ACCOUNTABILITY, *JERSEY CITY 4* (2006), available at <http://www.broadprize.org/asset/2006JerseyCityPublicSchoolsOverview.pdf>.

2. Bruce C. Bowers, *State-Enforced Accountability of Local School Districts*, ERIC CLEARINGHOUSE ON EDUCATIONAL MANAGEMENT (1989), available at ERIC, <http://www.thememoryhole.org/edu/eric/ed309556.html>.

3. See *id.* (identifying Kentucky, New Jersey, New Mexico, South Carolina, Texas, and West Virginia as states with takeover legislation); see also *N.J. First to Attempt Complete Takeover*, EDUC. WK., June 1, 1988 (identifying all the abovementioned states except West Virginia).

4. TAKEOVERS: STATE TAKEOVERS AND RECONSTITUTIONS 1, EDUC. COMM’N OF THE STATES (2004), available at <http://www.ecs.org/clearinghouse/51/67/5167.htm> [hereinafter TAKEOVERS].

5. Kenneth K. Wong & Francis X. Shen, *City and State Takeover as a School Reform Strategy*, ERIC CLEARINGHOUSE ON URBAN EDUCATION 2 (2002), available at ERIC, <http://purl.access.gpo.gov/GPO/LPS43146>.

6. *Id.* Wong & Shen use the term “comprehensive takeover” to refer to takeovers that “include financial, managerial, and academic components.” *Id.*

7. TAKEOVERS, *supra* note 4, at 3; David R. Berman, *Takeovers of Local Governments: An Overview and Evaluation of State Policies*, PUBLIUS, Summer 1995, at 55, 64-70 (1995); Aaron Saiger, Note, *Disestablishing Local School Districts as a Remedy for Educational Inadequacy*, 99 COLUM. L. REV. 1830, 1847-49 (1999) (discussing how states use statutes to integrate

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.⁸ In some takeovers, the elected board is maintained as an advisory board.⁹ 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.”¹⁰

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.¹¹ In 2004, over 50% of students in 74% of the districts taken over were minorities.¹² 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%.”¹³ 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.”¹⁴ 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)¹⁵ 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 TAKEOVERS AND RECONSTITUTIONS 2 (2002), available at <http://www.ecs.org/clearinghouse/13/59/1359.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 <http://www.reason.org/ps268.pdf>.

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*, EDUC. WK., Jan. 14, 1998, at 1 [hereinafter Reinhard, *Racial Issues*].

12. PATRICIA CAHAPE HAMMER, CORRECTIVE ACTION: A LOOK AT STATE TAKEOVERS OF URBAN AND RURAL DISTRICTS 3 (2005), available at <http://www.edvantia.org/products/pdf/PBStateTakeovers.pdf>.

13. *Id.*

14. Reinhard, *Racial Issues*, *supra* note 11.

15. Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.).

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.¹⁶ States receiving Title I funds must implement an accountability system founded on State achievement standards and assessments.¹⁷ Under the NCLB's accountability system, districts failing to make adequate yearly progress (AYP) on state assessments¹⁸ are subject to sanctions under the Act, including State takeover of the district.¹⁹ States and school districts must disaggregate data on the yearly progress of "racial and ethnic groups;"²⁰ the "economically disadvantaged,"²¹ "students with disabilities;"²² and "students with limited English proficiency."²³ Each year, in grades 3 through 8²⁴ and at a minimum once during grades 10 through 12,²⁵ States must assess students in science in mathematics, reading or language arts.²⁶ States must also assess students in science at least once each during grades 3 through 5,²⁷ 6 through 9,²⁸ and 10 through 12.²⁹

NCLB requires that districts failing to make AYP for two consecutive years be "identif[ied] for improvement"³⁰ and develop an improvement plan.³¹ Those districts not making AYP for four consecutive years are identified for corrective

16. See 20 U.S.C. § 6301 (2006) (listing methods to improve equal access to high-quality education).

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).

20. 20 U.S.C. §§ 6311(b)(2)(C)(v)(II)(bb), 6316(a), (c) (2006).

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).

25. *Id.* § 6311(b)(3)(C)(v)(I)(cc).

26. *Id.* §§ 6311(b)(3)(C)(v)(I), 6311(b)(2)(C)(vii).

27. *Id.* § 6311(b)(3)(C)(v)(II)(aa).

28. *Id.* § 6311(b)(3)(C)(v)(II)(bb).

29. *Id.* § 6311(b)(3)(C)(v)(II)(cc).

30. *Id.* § 6316(c)(3).

31. *Id.* § 6316(c)(7).

action.³² The State must take at least one corrective action under the NCLB to address the failure of the district to make AYP.³³ 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]";³⁴ (2) appointment of a trustee or receiver through the state department of education to manage the district's affairs;³⁵ and (3) restructure or dissolution of the school district.³⁶ The district could subsequently emerge from State takeover or other corrective action by making AYP for two consecutive years.³⁷

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."³⁸ The assistance program entails a review of the district's low student achievement and efforts to improve the achievement levels.³⁹ If there is no progress in student achievement after three years relative to the prior year, the state superintendent must take over the district.⁴⁰ 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."⁴¹ Alabama provides for election and appointment of school board members.⁴²

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).

41. ALA. CODE § 16-6B-4 (2001 & Supp. 2008).

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 10.⁴³ As with the NCLB, those districts face corrective actions, including: (1) replacement of district personnel relevant to the failure to make AYP⁴⁴ and (2) appointment of a trustee or receiver to run the district.⁴⁵ The state requires election of board members.⁴⁶

3. *Arizona*.—Arizona permits takeovers of districts that have “systemic educational mismanagement.”⁴⁷ 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.⁴⁸ The State may also take over districts that are insolvent or grossly mismanaged.⁴⁹ The law is forceful that takeovers not impede the election of board members.⁵⁰ The receiver running the district after the takeover has authority to supersede decisions made by the elected board or superintendent.⁵¹ The state provides for election of board members.⁵²

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. ALASKA ADMIN. CODE tit. 4 § 06.840(k)(3) (2008).

45. *Id.* § 06.840(k)(6).

46. *See* ALASKA STAT. §§ 14.08.041, 14.08.045, 14.08.051, 14.08.071, 14.08.081, 14.12.030, 14.12.040, 14.12.050, 14.12.070, 14.12.080, 14.12.110, 14.14.070, 14.14.120, 29.20.300 (2008); ALASKA ADMIN. CODE tit. 6, § 27.010 (2008). In various states, vacancies on the boards can be filled by appointment until the next election. *See* ALASKA STAT. § 14.12.070 (2008); ARK. CODE ANN. § 6-13-611 (West 2004); CAL. EDUC. CODE § 5091 (West 2002 & Supp. 2009); FLA. STAT. ANN. § 1001.38 (West 2004); IDAHO CODE § 33-504 (West 2006); MINN. STAT. ANN. § 123B.09 subdiv. 5 (West 2008); S.D. CODIFIED LAWS § 13-8-25 (2004); VT. STAT. ANN. tit. 16, § 424(a) (West 2007 & Supp. 2008).

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.⁵³ The state law also authorizes takeover of districts in financial distress.⁵⁴ Arkansas requires election of school board members.⁵⁵

5. *California*.—California also has a NCLB-like provision.⁵⁶ The same three corrective actions under the NCLB could provide the avenue for takeover of school districts in this state.⁵⁷ California may also take over districts in fiscal distress.⁵⁸ In the event of a takeover, the district's board remains in an advisory role.⁵⁹ California requires election of board members.⁶⁰

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.”⁶¹ Those districts rated as Academic Review, Academic Progress or Academic Watch, are sanctioned pursuant to the NCLB.⁶² Qualified voters elect board members in Delaware.⁶³

Reg. Sess. (Ariz. 2008).

52. See ARIZ. REV. STAT. ANN. §§ 15-403, -421, -424 (2002 & Supp. 2008); ARIZ. REV. STAT. ANN. §§ 15-425, -426, -429, -431 (2002); see also *id.* §§ 15-428, -451.

53. ARK. CODE ANN. §§ 6-15-426(a)-(c) (West 2004 & Supp. 2009); see also *id.* §§ 6-15-403(1)-(2), -419, -428, -429.

54. *Id.* § 6-20-1909; see also ARK. CODE ANN. §§ 6-20-1901 to -1902 (West 2004); ARK. CODE ANN. §§ 6-20-1903 to -1906 (West 2004 & Supp. 2009); ARK. CODE ANN. § 6-20-1907 (West 2004); ARK. CODE ANN. §§ 6-20-1908 to -1910 (West 2004 & Supp. 2009); ARK. CODE ANN. § 6-20-1911 (West 2004).

55. See ARK. CODE ANN. §§ 6-13-604, -606 (West 2004 & Supp. 2009); ARK. CODE ANN. §§ 6-13-611 (West 2004); ARK. CODE ANN. §§ 6-13-615, 6-13-616(a), 6-13-631, 6-14-102, 6-14-121 (West 2004 & Supp. 2009).

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.

57. Compare 20 U.S.C. § 6316(c)(1)(C)(iii), (v), (vi) (2006), with CAL. EDUC. CODE § 52055.57(c)(1)(A), (C), (D) (West 2006 & Supp. 2009).

58. CAL. EDUC. CODE §§ 41320, 41326 (West 1993 & Supp. 2009).

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

60. See CAL. EDUC. CODE §§ 1007, 5000, 5016 (West 2002); CAL. EDUC. CODE § 5017 (West 2002 & Supp. 2009); CAL. EDUC. CODE § 5090 (West 2002); CAL. EDUC. CODE § 5091 (West 2002 & Supp. 2009); CAL. EDUC. CODE §§ 5092-5095, 5222 (West 2002) CAL. EDUC. CODE § 35012 (West 1993 & Supp. 2009); CAL. EDUC. CODE § 35103 (West 1993).

61. DEL. CODE ANN. tit. 14, § 155(a) (West 2006) (internal quotation marks omitted).

62. *Id.* § 155(d); see also 14-100-103 DEL. CODE REGS. § 7.0 (Weil 2009).

63. See DEL. CODE ANN. tit. 14, § 1051 (West 2006); DEL. CODE ANN. tit. 14, § 1052 (West

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

2006 & Supp. 2008); DEL. CODE ANN. tit. 14, § 1053 (West 2006); DEL. CODE ANN. tit. 14, § 1054 (West 2006 & Supp. 2008). In the case of consolidated districts, the state provides for initial appointment of board members but subsequently board members are elected. *Id.* § 1065(b). In this Article, the more pertinent and more interesting are the existing school boards, as takeovers of a newly consolidated district would be rare.

64. FLA. STAT. ANN. § 1008.33(1) (West 2004 & Supp. 2009) (emphasis added).

65. *Id.*

66. See FLA. STAT. ANN. §§ 105.031, .035, .061 (West 2008); FLA. STAT. ANN. §§ 1001.34, .35, .361, .362, .363 (West 2004).

67. GA. CODE ANN. § 20-14-26(a)(1) (West 2007); see also GA. COMP. R. & REGS. 160-7-1-.01 to .04 (2008); GA. DEPT. OF EDUC., APP. F: TABLE OF LEA CONSEQUENCES, available at <http://public.doe.k12.ga.us/DMGetDocument.aspx/FAQs%20-%20Consequences%20for%20NI%20Systems.pdf?p=6CC6799F8C1371F6A6272905BFB660C0817CDCAFA736D0E6F0E89008FE2FF5C3&Type=D>.

68. GA. COMP. R. & REGS. 160-7-1-.04(3)(d)(2) (2008).

69. GA. CONST. art. 8, § 5, ¶ II; accord GA. CODE ANN. § 20-2-50 (West 2007).

70. IDAHO ADMIN. CODE r. 08.02.03.112 (2008); *id.* r. 08.02.03.114.02.

71. *Id.* r. 08.02.03.114.02.

72. See *id.* r. 08.02.03.112; *id.* r. 08.02.03.114.

73. See IDAHO CODE ANN. § 33-501 (West 2006 & Supp. 2008); IDAHO CODE ANN. §§ 33-502, -502A-502D, -503, -504 (West 2006); IDAHO CODE ANN. § 33-505 (West 2006 & Supp. 2008); IDAHO CODE ANN. §§ 33-506 to -507 (West 2006); IDAHO CODE ANN. § 33-402 (West 2006

10. *Illinois*.—Illinois has an NCLB-based law that provides authority for takeovers.⁷⁴ The State also permits takeovers of districts failing to emerge from academic watch status after three years.⁷⁵ Districts in fiscal distress can be taken over with the appointment of an oversight panel for the district.⁷⁶ Ostensibly, the elected board is not replaced.⁷⁷ The district must remain under State control for a minimum of three and maximum of ten years.⁷⁸ This provision for fiscal takeovers only applies to districts with less than 500,000 inhabitants.⁷⁹ Local boards may petition for the State to take them over.⁸⁰ 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.⁸¹

Illinois also has a takeover provision that applies to cities with over 500,000 inhabitants.⁸² 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.⁸³ The provision is designed to improve the graduation rates, academic performance and student attendance rates in the district.⁸⁴ Pursuant to this provision, the State dissolved the Chicago Board of Education and transferred power to the mayor to appoint a board of trustees.⁸⁵ The mayor does not even have to seek the city council's approval in making the appointment.⁸⁶ Illinois provides for election of board members.⁸⁷

11. *Iowa*.—Iowa's school district accreditation provision also authorizes takeovers.⁸⁸ The accreditation committee's recommendations must "specify

& Supp. 2008); IDAHO CODE ANN. §§ 33-408, -419, -428 (West 2006).

74. 105 ILL. COMP. STAT. 5/2-3.25n(a) (West 2006); *see also id.* 5/2-3.25f(c) ("All federal requirements apply to schools and school districts utilizing federal funds under Title I, Part A of the [NCLB].").

75. *Id.* 5/2-3.25f(b)(1); *see also id.* 5/3-14.28.

76. *See id.* 5/1B.

77. *Id.* 5/1B-6, 5/1B-7, 5/1B-9. However, the panel might be able to remove the board as the state law gives the panel power "to do any and all things necessary or convenient to carry out its purposes and exercise the powers given to the [p]anel." *Id.* 5/1B-6(s); *see also* E. St. Louis Fed'n of Teachers v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel, 687 N.E.2d 1050, 1058 (Ill. 1997) (upholding statute and providing an example of the statute's operation).

78. 105 ILL. COMP. STAT. ANN. 5/1B-5 (West 2006).

79. *Id.* 5/1B-2(a)(3); *see also id.* 5/1B-3(e).

80. *Id.* 5/1B-4.

81. *See id.* 5/1E-5.

82. *Id.* 5/34-1, 5/34-1.01, 5/34-1.02, 5/34-1.1.

83. *See* statutes cited *supra* note 82; *see also infra* notes 623-24 and accompanying text.

84. 105 ILL. COMP. STAT. ANN. 5/34-1.01 to -1.02 (West 2006).

85. *Id.* 5/34-3, 5/34-3.3.

86. *Id.* 5/34-3(2).

87. *See, e.g., id.* 5/5-2, 5/6-3, 5/7-13; 105 ILL. COMP. STAT. 5/9-10 (West 2006 & Supp. 2008); 105 ILL. COMP. STAT. 5/10-1, 5/10-4, 5/10-10, 5/34-3.3 (West 2006).

88. IOWA CODE ANN. § 256.11(10)-(12) (West 2003 & Supp. 2008).

whether the school district or school shall remain accredited or under what *conditions* the district may remain accredited.”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.⁹⁰

If the district does not address its accreditation problems, the district can be placed in “receivership for the remainder of the school year.”⁹¹ The state provides for election of board members.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.⁹³ The state provides for election of school board members.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.”⁹⁵ A hearing is then held to verify this belief.⁹⁶ If verified, “the state board shall assume sufficient supervision of the district to ensure that appropriate corrective action occurs.”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.⁹⁸ The state provides for election of board members.⁹⁹

89. *Id.* § 256.11(12) (emphasis added).

90. *Id.*

91. *Id.*

92. *See id.* §§ 277.1 to .34, 275.12, 275.35, 275.41. It is important to point out that these statutory sections as well as section 256.11 are undergoing legislative action and Westlaw notes that the section’s “[t]ext [is] subject to final changes by the Iowa Code Editor for Code 2009.”

93. KAN. ADMIN. REGS. § 91-31-40(d) (2008). This restructure could provide the avenue for the State takeover of the district. *See id.* However, the Kansas Board of Education’s recommendation of a restructure must be approved by the state legislature. *Id.* The district can appeal the recommendation within fifteen days after receiving the recommendation. *Id.* 91-31-37(c).

94. *See* KAN. STAT. ANN. §§ 72-7902, -8009, -7901 to -7905 (2002).

95. KY. REV. STAT. ANN. § 158.780(1)(b) (West 2006).

96. *Id.*

97. *Id.*

98. *Id.* § 158.780(1)(c); *see also id.* § 158.785; 703 KY. ADMIN. REGS. 3:205 (2008). As with the other states herein, districts can emerge out of takeover once the deficiencies that led to the takeover are corrected. KY. REV. STAT. ANN. § 158.785 (West 2006).

99. *See* KY CONST. §§ 152, 155; KY. REV. STAT. ANN. §§ 116.200, 160.042, 160.044,

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.¹⁰⁰ Louisiana requires election of board members.¹⁰¹

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

16. *Massachusetts*.—Massachusetts’s law permits the State to take over chronically underperforming districts by appointing a receiver for the district.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.”¹⁰⁶

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

160.190, 160.200, 160.210, 160.220, 160.240 (West 2006).

100. LA. ADMIN CODE. tit. 28, §§ 1503, 1601, 1603, 4310, 4901, 4909, 4911 (2008); *see also id.* §§ 1609, 1901.

101. *See* LA. CONST. art. VIII, § 9(A); LA. REV. STAT. ANN. §§ 17:52, :52.1, :52.2 (2001); LA. REV. STAT. ANN. § 17:121 (2001 & Supp. 2009); *cf.* LA. REV. STAT. ANN. § 17:72.1 (2001) (providing for appointment of interim school board members in two parishes, which appointments, if at all, had to occur before 1999 and 2003).

102. MD. CODE REGS. 13A.01.04.08 (2008); *see also id.* 13A.01.04.09.

103. *Id.* 13A.01.04.08(B)(3)(f).

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 Ann 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).

105. MASS. GEN. LAWS ANN. ch. 69, § 1K (West 1996); 603 MASS. CODE REGS. 2.04 (2008). A chronically underperforming district is “a school district [that] has consistently failed to improve the performance of students attending school in the district.” MASS. GEN. LAWS ANN. ch. 69, § 1K (West 1996); 603 MASS. CODE REGS. 2.04(5) (2008); *see also* MASS. GEN. LAWS ANN. ch. 69, § 1B (West 1996 & Supp. 2008); MASS. GEN. LAWS ANN. ch. 69, § 1J (West 1996); 603 MASS. CODE REGS. 2.01-2.03 (2008).

106. MASS. GEN. LAWS ANN. ch. 71, § 14E (West 1996) (emphasis added); *see also* MASS. GEN. LAWS ANN. ch. 41, § 1 (West 2004); *id.* ch. 41, § 1B; *id.* ch. 41, § 9; MASS. GEN. LAWS ANN. ch. 43, § 31 (West 1994); *id.* ch. 43, § 36; *id.* ch. 43, § 102; *id.* ch. 43, § 109; MASS. GEN. LAWS ANN. ch. 54, § 162 (West 2007); MASS. GEN. LAWS ANN. ch. 71, § 16A (West 1996 & Supp. 2008); CHELSEA SCHOOL COMM., RULES AND REGULATIONS, *available at* http://www.chelseaschools.com/school_committee/RULESA~1.PDF.

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

ANN. § 388.994 (West 2004).

108. See MICH. COMP. LAWS ANN. § 168.301 to .316 (West 2008); MICH. COMP. LAWS ANN. §§ 380.11a(7)-(10) (West 2005 & Supp. 2008); MICH. COMP. LAWS ANN. 380.611 (West 2005); *id.* § 380.703(7); DETROIT BD. OF EDUC., FAQs ABOUT THE DETROIT BOARD OF EDUCATION, available at <http://www.detroit.k12.mi.us/board/documents/FAQsDBOE.pdf>. In the case of consolidated districts, the state provides for initial appointment of board members but subsequently board members are to be elected. MICH. COMP. LAWS ANN. § 380.861 (West 2005).

109. MINN. STAT. ANN. § 127A.095 (West 2008).

110. *Id.* subdiv. 1.

111. See *id.* The same law requires the department to ask the federal government for various waivers from the NCLB. *Id.* subdiv. 2(b) (listing the waivers). In fact, the law adds that if the department is not able to obtain the waivers listed in the statute, then the department should advise “whether the state should opt out of the No Child Left Behind Act.” *Id.* subdiv. 2(a). Corrective action or state takeover is not one of the waivers the department is expressly ordered to seek. See *id.* subdiv. 2(b). Instead, the statute allows corrective action and a state takeover to be imposed pursuant to the NCLB. See generally *id.* § 127A.095.

112. See MINN. STAT. ANN. §§ 123A.48, 123A.58, 123A.68, 123B.09 (West 2008); MINN. STAT. ANN. §§ 205A.01 to .11 (West 1992 & Supp. 2009); see also MINN. STAT. ANN. §§ 120A.05, 123A.55, 123B.50, 123B.94, 128.01, 128.02, 128D.08 (West 2008); MINN. STAT. ANN. § 205A.03 (West 1992 & Supp. 2009); MINN. STAT. ANN. § 383B.041 (West 2004). For a provision for the appointment of joint boards for Intermediate School District Number 287, Hennepin and Wright Counties, see sections 136D.22 and 136D.24 of the Minnesota Code. See also MINN. STAT. ANN. § 136D.01 (West 2008) (defining an intermediate school district); *id.* §§ 136D.71, .76, .82, .84.

113. MISS. CODE ANN. § 37-17-6 (West 1999 & Supp. 2008).

114. *Id.* § 37-17-6(11).

115. *Id.* § 37-17-6(11)(c)(iii); 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).

116. *Id.* § 37-17-6(11)(c)(ii).

appointment of school boards.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.¹¹⁸ Once the district lapses, the State may appoint an administrative board to manage the district.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.”¹²⁰ The statute provides for election of board members.¹²¹

21. *Nevada*.—Nevada has a NCLB-like provision for takeovers.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.”¹²³ Nevada provides for election of board members.¹²⁴

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

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 school district are designated as Schools At-Risk in any one (1) year.” *Id.* § 37-18-7(6).

118. MO. ANN. STAT. § 162.081(1) (West 2000 & Supp. 2008).

119. *Id.* § 162.081(4).

120. *Id.* § 162.081(3).

121. See MO. ANN. STAT. § 115.125 (West 1997 & Supp. 2009); MO. ANN. STAT. § 162.211 (West 2000 & Supp. 2008); MO. ANN. STAT. § 162.241 (West 2000); MO. ANN. STAT. §§ 162.261, .301, .459, .471 (West 2000 & Supp. 2008); MO. ANN. STAT. §§ 162.491, .581 (West 2000); MO. ANN. STAT. § 162.601 (West 2000 & Supp. 2008).

122. NEV. REV. STAT. ANN. §§ 385.3772(4), .3773 (West 2006); see also 20 U.S.C. § 6316(c)(10)(C) (2006); NEV. REV. STAT. § 385.3774 (West 2006).

123. NEV. REV. STAT. ANN. § 385.3772(3) (West 2006).

124. See *id.* §§ 386.120, .160, .165, .180, .190, .200, .205, .215, .225, .240, .260, .270, .300.

125. N.J. STAT. ANN. § 18A:7A-10 (West 1999 & Supp. 2008).

126. *Id.*

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.”¹²⁸ Based on this evaluation, such districts must create an improvement plan to address their insufficiencies on the quality performance indicators.¹²⁹ 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.¹³⁰ Districts meeting “less than 50[%] of the quality performance indicators in *each* of the *five* key components of school district effectiveness”¹³¹ could face total State takeover.¹³² The state provides for appointment and election of board members.¹³³

23. *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.”¹³⁴ District noncompliance with state financial requirements could also catalyze a State takeover.¹³⁵ New Mexico provides for the election

[Q]uality performance indicators comprised of standards for each of the five key components of school district effectiveness. The quality performance indicators shall take into consideration a school district’s performance over time, to the extent feasible. Based on a district’s compliance with the indicators, the [state] commissioner [of education] shall assess district capacity and effectiveness and place the district on a performance continuum.

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(e)(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. § 52:27BBB-63 (West Supp. 2008).

134. N.M. STAT. ANN. § 22-2-2(C) (West Supp. 2008).

135. N.M. STAT. ANN. § 22-2-14(A)-(F) (West 2003 & Supp. 2008). Specifically, the law 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. STAT. ANN. § 22-2-14(A) (West 2003 & Supp. 2008); N.M. CODE R. § 6.30.6.9(A) (Weil 2009). “Instructional units or administrative functions [within such districts] may be disapproved for such deficiencies.” N.M. STAT. ANN. § 22-2-14(A) (West 2003 & Supp. 2008).

and appointment of board members.¹³⁶

24. *New York*.—New York State law authorizes the New York City School Chancellor¹³⁷ 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].”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.”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.”¹⁴⁰ The state also has a NCLB-like provision that would allow State takeovers.¹⁴¹ The state provides for the election and appointment of board members.¹⁴²

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

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. *Id.* § 22-4-10 to -12.

137. *See* 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. *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.” *Id.*

138. *Id.* § 2590-h(31).

139. *Id.*

140. *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* N.Y. EDUC. LAW § 2590-c (McKinney 2007); N.Y. EDUC. LAW § 2590-h(9), (11), (13) (McKinney 2007 & Supp. 2009); *see also id.* §§ 2554(2), 2590-h(17).

141. N.Y. COMP. CODES R. & REGS. tit. 8, §§ 100.2(p), 120.2 (2008).

142. *See* N.Y. EDUC. LAW §§ 2553, 2590-c (McKinney 2007) (providing for elections and appointments until June 30, 2009); *see also id.* §§ 1607, 1702; N.Y. EDUC. LAW §§ 1709(17), 1804 (McKinney 2007 & Supp. 2009); N.Y. EDUC. LAW §§ 1901, 1914, 2018-a, 2113, 2502, 2510, 2552, 2564 (McKinney 2007).

143. 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* N.C. GEN. STAT. ANN. § 115C-105.37A (West Supp. 2008) (defining “continually low-performing” schools).

of the incumbent superintendent.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ The state provides for appointment and election of school board members.¹⁴⁷

26. *Ohio*.—Ohio has a NCLB-like provision¹⁴⁸ requiring at least one corrective action in districts “identified for improvement for three consecutive school years.”¹⁴⁹ The sole corrective action authorizing a takeover, however, is the appointment of a trustee to run the district.¹⁵⁰ The state provides for appointment and election of school board members.¹⁵¹

27. *Oklahoma*.—Oklahoma law requires the State Board of Education to create an accountability system under the NCLB.¹⁵² While the law does not specifically provide for State takeovers,¹⁵³ the broad authority the statute confers on the State to implement the NCLB ostensibly necessarily includes such a power.¹⁵⁴ The state provides for election and appointment of board members.¹⁵⁵

144. N.C. GEN. STAT. ANN. § 115C-105.39(c)(1) (West 2000); *see generally* N.C. GEN. STAT. ANN. § 115C-12 (West 2000 & Supp. 2008) (outlining the power of the North Carolina Board of Education).

145. N.C. GEN. STAT. ANN. § 115C-105.39(d) (West 2000).

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).

150. OHIO REV. CODE ANN. § 3302.04(F)(3)(e) (West 2005).

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).

153. *See id.*; *see also* OKLA. ADMIN. CODE § 210:10-13-18 (2008).

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

intervention” in elementary school districts that do not “meet financial requirements for school districts or accreditation standards which negatively affects education or could result in the elementary school district not being able to operate for the remainder of the year.” OKLA. STAT. ANN. tit. 70, § 1210.543(A) (West Supp. 2009). In such cases, the state board has the option of “issu[ing] an administrative order placing the elementary school district under full state intervention.” *Id.* Elementary districts are those that have “grades kindergarten through eight and . . . have not met the minimum standards for, and have not been designated as, independent school districts by the State Board of Education.” OKLA. STAT. ANN. tit. 70, § 5-103 (West 2005). A further examination of the Oklahoma provision allowing full intervention reveals a list of interventions, only one of which is a takeover. OKLA. STAT. ANN. tit. 70, § 1210.543(B) (West Supp. 2009).

155. *See* OKLA. STAT. ANN. tit. 26, §§ 13A-101 to -111 (West 1997 & Supp. 2009); OKLA. STAT. ANN. tit. 70, §§ 5-107A to -107B (West 2005); OKLA. STAT. ANN. tit. 70, §§ 5-110 to -.1 (West 2005 & Supp. 2009); OKLA. STAT. ANN. tit. 70 §§ 14-110, 4419 (West 2005); OKLA. ADMIN. CODE 780:15-3-3 (2008); *id.* 780:15-3-5. In the case of consolidated districts, the state provides for initial appointment of board members but subsequently board members are to be elected. OKLA. STAT. ANN. tit. 70, § 7-101(C)(5)-(6) (West 2005); *id.* § 7-105.

156. 24 PA. CONS. STAT. ANN. § 6-692 (West 1992 & Supp. 2008); 24 PA. CONS. STAT. ANN. § 6-693 (West 1992). The State Secretary of Education could declare a district financially-distressed for various enumerated reasons, such as the district’s non-payment of teacher or other employee salaries for ninety days, PA. CONS. STAT. ANN. § 6-691(a)(1) (West 1992 & Supp. 2008); nonpayment of tuition owed another district, *id.* § 6-691(a)(2); default on bonds for ninety days, *id.* § 6-691(a)(4); and contracting for loans unauthorized by law, *id.* § 6-691(a)(5).

157. *Id.* § 6-692.

158. 24 PA. CONS. STAT. ANN. §§ 17-1703-B, -1714.1-B (West Supp. 2008). Districts having academic problems tend to be the ones placed on the list. Districts on the empowerment list or those certified as empowerment districts can emerge out of State takeover when the history of low test performance stops and improvement plan goals are satisfied. *Id.* § 17-1710-B; *see also id.* § 17-1714.1-B. The Education Empowerment Act will expire June 30, 2010. *Id.* § 17-1716-B.

159. *Id.* §§ 17-1703-B to -1707-B.

160. *See* 24 PA. CONS. STAT. ANN. §§ 3-301 to -323 (West 1992); 24 PA. CONS. STAT. ANN. 3-24 (West 1992 & Supp. 2008); 24 PA. CONS. STAT. ANN. §§ 3-325 to -327 (West 1992); 24 PA. CONS. STAT. ANN. § 6-692 (West 1992 & Supp. 2008); 24 PA. CONS. STAT. ANN. § 6-692.1 (West 1992); 24 PA. CONS. STAT. ANN. § 6-696 (West 1992 & Supp. 2008); 24 PA. CONS. STAT. ANN. § 17-1707-B (West Supp. 2008).

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”¹⁶¹ 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.”¹⁶² 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

161. R.I. GEN. LAWS ANN. § 16-7.1-5(a) (West 2006 & Supp. 2008).

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).

165. *See* R.I. GEN. LAWS ANN. §§ 16-2-5, 17-19-7.1 (West 2006).

166. S.C. CODE ANN. § 59-18-1570(B)(4) (West 2004 & Supp. 2008), as amended by H.B. 4662, 2008 Leg., 117th Sess. (S.C. 2008).

167. S.C. CODE ANN. § 59-18-1570(C) (West 2004 & Supp. 2008).

168. *Id.*

169. *Id.*

170. *Id.*

171. In South Carolina, state law largely provides for appointment of the board members. *See* S.C. CODE ANN. § 59-15-10 (West 2004); S.C. CODE ANN. § 59-18-1570(C) (West 2004 & Supp. 2008); S.C. CODE ANN. §§ 59-19-20, -30, -40, -45, -50, -60 (West 2004).

172. *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”¹⁷⁴ or the appellation “LEA Restructuring 2.”¹⁷⁵ “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).”¹⁷⁶ 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]”¹⁷⁷; or (2) “[r]eorganiz[ation] of the internal management structure.”¹⁷⁸

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.¹⁷⁹ 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).”¹⁸⁰ In this phase, the State Commissioner of Education could either “[a]ssume any or all powers of governance for the LEA”¹⁸¹ or “[r]ecommend to the state board that some or all of the local board of education members be replaced.”¹⁸² Tennessee provides for election of board members.¹⁸³

sanctions for school districts, S.D. CODIFIED LAWS §§ 13-3-67, -69(8) (2004), and to promulgate any other rule to help implement the NCLB, *id.* § 13-3-69(13). *See also id.* §§ 13-3-62, -68. Pursuant to this authority, the state administrative rules created this accountability system which is an implementation of the NCLB. S.D. ADMIN. R. 24:42:03:01 to :28 (2008). Before a district is identified for corrective action, the district is entitled to examine the data used for the identification. *Id.* R. 24:42:03:04 to :06.

173. *See* S.D. CODIFIED LAWS §§ 13-5-2, 13-6-13.1, 13-6-62 to -64 (2004); S.D. CODIFIED LAWS §§ 13-7-6 to -6.1 (2004 & Supp. 2008); S.D. CODIFIED LAWS §§ 13-7-7 to -10.2 (2004); S.D. CODIFIED LAWS §§ 13-7-10.3 to -10.4 (2004 & Supp. 2008); S.D. CODIFIED LAWS §§ 13-7-11 to -12 (2004); S.D. CODIFIED LAWS § 13-7-13 (2004 & Supp. 2008); S.D. CODIFIED LAWS §§ 13-7-14 to -27 (2004); S.D. CODIFIED LAWS § 13-8-7.1 (2004 & Supp. 2008); S.D. CODIFIED LAWS §§ 13-8-24 to -25 (2004); S.D. ADMIN. R. 5:02:04:15, 5:02:06:15, 5:02:06:16, 5:02:08:11, 5:02:15:10 to -:11 (2008).

174. TENN. CODE ANN. § 49-1-602(k) (West 2006 & Supp. 2009). LEA is a reference to the school district. TENN. CODE ANN. § 49-1-103(2) (West 2006).

175. TENN. CODE ANN. § 49-1-602(1) (West 2006 & Supp. 2009).

176. *Id.* § 49-1-602(k).

177. *Id.* § 49-1-602(k)(2)(A).

178. *Id.* § 49-1-602(k)(2)(D).

179. *See id.* § 49-1-602(l).

180. *Id.*

181. *Id.* § 49-1-602(l)(1)(A).

182. *Id.* § 49-1-602(l)(1)(C).

183. *See* TENN. CODE ANN. § 6-53-110 (West 2002 & Supp. 2009); TENN. CODE ANN. § 7-1-112 (West 2007); TENN. CODE ANN. §§ 49-1-602(l)(3), 49-2-201 (West 2006 & Supp. 2009);

33. *Texas*.—In Texas,¹⁸⁴ the State could, among other sanctions,¹⁸⁵ take over districts that fail to meet the state standards for academic performance,¹⁸⁶ accreditation,¹⁸⁷ or financial accountability.¹⁸⁸ 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”¹⁸⁹; (2) “appoint a management team to direct the operations of the district in areas of unacceptable performance”¹⁹⁰; 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.”¹⁹¹ The first two provisions are suggestive of partial takeovers¹⁹² and a district might not be able to complete a total takeover under those provisions.¹⁹³ Indeed, the first suggests more of an oversight/supervisory role,¹⁹⁴ whereas the second indicates a takeover limited to “areas of unacceptable performance.”¹⁹⁵ The third

TENN. CODE ANN. § 49-2-201 (West 2006 & Supp. 2008); TENN. CODE ANN. §§ 49-2-202, -1205, -1254(c)(8) (West 2006).

184. See TEX. EDUC. CODE ANN. § 39.131 (Vernon 2006 & Supp. 2008) (spelling out Texas’s takeover requirements); see also TEX. EDUC. CODE ANN. § 39.133 (Vernon 2006); 19 TEX. ADMIN. CODE §§ 97.1035, .1051 to .1073 (2008).

185. For the other sanctions in the law, see TEX. EDUC. CODE ANN. § 39.131(a) (Vernon 2006 & Supp. 2008).

186. See *id.* § 39.072 (setting forth the academic performance standards); see also *id.* § 39.131.

187. See *id.* § 39.071 (setting forth Texas’s accreditation requirements); see also *id.* § 39.131.

188. The financial accountability standards are set by the state commissioner of education. *Id.* § 39.131(a).

189. *Id.* § 39.131(a)(7).

190. *Id.* § 39.131(a)(8).

191. *Id.* § 39.131(a)(9); see also § 39.136(a). Further, “[i]f the commissioner appoints a board of managers to govern a district, the powers of the board of trustees of the district are suspended for the period of the appointment.” TEX. EDUC. CODE ANN. § 39.136(b) (Vernon 2006).

192. See *id.* § 39.135(c)(3)-(6). Also in Texas, “[i]f the commissioner appoints a board of managers to govern a campus, the powers of the board of trustees of the district *in relation to* the campus are suspended for the period of the appointment.” *Id.* § 39.136(c) (emphasis added).

193. For example, the state law in defining powers of the conservator or management team points out that neither the conservator nor the management team can, inter alia, “take any action concerning a district election, including ordering or canceling an election or altering the date of or the polling places for an election,” *id.* § 39.135(c)(3), or “change the number of or method of selecting the board of trustees.” *Id.* § 39.135(c)(4).

194. See *id.* § 39.131(a)(7). This shows that the powers of the conservator and management team are limited. At the same time, the law gives the conservator and management team power to direct as well as approve or disapprove actions of the school board. *Id.* § 39.135(c)(1)-(2).

195. See *id.* § 39.131(a)(8).

provision is the most pellucid on State takeover.¹⁹⁶ The state provides for appointment and election of board members.¹⁹⁷

34. *West Virginia.*—West Virginia’s accountability system for districts¹⁹⁸ 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.¹⁹⁹ The pertinent rating for State takeovers is the nonapproval rating.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.²⁰¹

When the state board assigns a district nonapproval status, the board must “declare a state of emergency.”²⁰² The district then has six months to address the

196. *See id.* § 39.131(a)(9). This is evident in the fact that in another subsection, the law states that irrespective of a district’s compliance with accreditation standards, “[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.” *Id.* § 39.131(b).

197. *Id.* §§ 11.052, 11.057; *id.* § 11.351 (describing special-purpose districts); *id.* § 11.352 (appointments for special-purpose districts); *id.* § 39.136(e); TEX. ELEC. CODE ANN. § 41.001 (Vernon 2003 & Supp. 2008); TEX. ELEC. CODE ANN. §§ 41.0011 to .005 (Vernon 2003); TEX. ELEC. CODE ANN. §§ 41.0051 to -.0052 (Vernon 2003 & Supp. 2008); TEX. ELEC. CODE ANN. §§ 41.0053 to .006 (Vernon 2003); TEX. ELEC. CODE ANN. § 41.007 (Vernon 2003 & Supp. 2008); TEX. ELEC. CODE ANN. § 41.008 to .031 (Vernon 2003); TEX. REV. CIV. STAT. ANN. art. 2688k §§ 1-2 (Vernon 1965 & Supp. 2008).

198. W. VA. CODE R. §§ 126-13-1 to -19 (2008); *see also* W. VA. CODE ANN. §§ 18-1-4, -18-2E-5(p) (West 2002 & Supp. 2008). The state law suggests that this accountability system is an attempt to implement the NCLB. *See* W. VA. CODE R. § 126-13-1.2 (2008) (identifying the NCLB as authority for the state law). However, this state law has no real semblance to the NCLB provisions, including the NCLB’s corrective actions. *See generally* W. VA. CODE ANN. § 18-2E-5 (West 2002 & Supp. 2008); W. VA. CODE R. §§ 126-13-1 to -19 (2008).

199. W. VA. CODE ANN. § 18-2E-5(p) (West 2002 & Supp. 2008); W. VA. CODE R. § 126-13-14.1 (2008); *see also* W. VA. CODE ANN. § 18-2E-5 (West 2002 & Supp. 2008).

200. *See* W. VA. CODE ANN. § 18-2E-5(p)(4)(C) (West 2002 & Supp. 2008); W. VA. CODE R. § 126-13-15 (2008).

201. W. VA. CODE § 18-2E-5(p)(4) (West 2002 & Supp. 2008); W. VA. CODE R. §§ 126-13-14.5, -15.1 to -15.4 (2008). The state board defined “reasonable time period” as “30 days following written notification of the temporary approval status.” *Id.* § 126-13-15.2.

202. W. VA. CODE ANN. § 18-2E-5(p)(4)(C) (West 2002 & Supp. 2008); W. VA. CODE R. § 126-13-15.6.1 (2008).

emergency or face at least a partial takeover.²⁰³ The State is not required to give the district the full six-month period before it intervenes.²⁰⁴ The state provides for election of board members.²⁰⁵

35. *Wyoming*.—Wyoming has a NCLB-like provision.²⁰⁶ The state provides for appointment and election of school board members.²⁰⁷

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,²⁰⁸ 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 1999.²⁰⁹ This partial takeover ended in 2006.²¹⁰ Over 90% of the students in this district are minorities.²¹¹ Similarly, the Alabama State

203. W. VA. CODE ANN. § 18-2E-5(p)(4)(C) (West 2002 & Supp. 2008); W. VA. CODE R. § 126-13-15.6.2 (2008).

204. W. VA. CODE ANN. § 18-2E-5(q) (West 2002 & Supp. 2008); W. VA. CODE R. § 126-13-15.6.4 (2008). Once the conditions necessary for an intervention are present, the state could immediately intervene if “delaying intervention for any period of time would not be in the best interests of the students of the county school system,” W. VA. CODE ANN. § 18-2E-5(q)(1) (West 2002 & Supp. 2008); W. VA. CODE R. § 126-13-15.6.4(1) (2008), or “the state board had previously intervened in the operation of the same school system and had concluded that intervention within the preceding five years.” W. VA. CODE ANN. § 18-2E-5(q)(2) (West 2002 & Supp. 2008); W. VA. CODE R. § 126-13-15.6.4(2) (2008).

205. See W. VA. CONST. art. XII, § 6; W. VA. CODE ANN. § 18-5-1 (West 2002); W. VA. CODE ANN. § 18-5-1a (West 2002 & Supp. 2008); see also W. VA. CONST. art. XII, § 10.

206. 005-000-0006 WYO. CODE R. §§ 10 (b)(ii)(D) (Weil 2008); see also *id.* § 4-21.

207. See WYO. STAT. ANN. §§ 21-3-105, 21-3-108, 21-3-111(b)-(c), 21-6-216 (2007).

208. See *supra* notes 11-14.

209. See Ala. State Bd. of Educ., Resolution Removing the Barbour County School System from State Financial Intervention (Feb. 9, 2006), available at http://www.alsde.edu/html/boe_resolutions2.asp?id=1144.

210. *Id.*

211. See New Am. Found., Fed. Educ. Budget Project, Barbour County School District Demographics, <http://feb.newamerica.net/k12/al/100300> (last visited Aug. 6, 2009) (reporting on the district's demographics).

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

212. See Ala. State Bd. of Educ., Resolution Removing the Macon County School System from State Financial Intervention (Dec. 13, 2001), available at http://www.alsde.edu/html/boe_resolutions2.asp?id=383&.

213. *Id.*

214. See New Am. Found., Fed. Educ. Budget Project, Macon County School District Demographics, <http://www.febp.newamerica.net/k12/al/102190> (last visited Aug. 6, 2009) (reporting on the district's demographics).

215. See Ala. State Bd. of Educ., Resolution Removing the Wilcox County School System from State Financial Intervention (Dec. 14, 2000), available at http://www.alsde.edu/html/boe_resolutions2.asp?id=195.

216. See New Am. Found., Fed. Educ. Budget Project, Wilcox County School District Demographics, <http://www.febp.newamerica.net/k12/al/103510> (last visited Aug. 6, 2009).

217. John Archibald & Charles J. Dean, *Lax Rules, Oversight Let Millions Disappear*, BIRMINGHAM NEWS (Ala.), Dec. 3, 2000, at 1, available at 2000 WLNR 8957346.

218. Ala. State Bd. of Educ., Resolution Removing the Bessemer City School System from State Financial Intervention (Mar. 11, 2004), available at http://www.alsde.edu/html/boe_resolutions2.asp?id=914&.

219. See New Am. Found., Fed. Educ. Budget Project, Bessemer City School District Demographics, <http://www.febp.newamerica.net/k12/al/100330> (last visited Aug. 6, 2009).

220. See Ala. State Bd. of Educ., Resolution Removing the Greene County School District from State Financial Intervention (Aug. 11, 2005), available at http://www.alsde.edu/html/boe_resolutions2.asp?id=1072&; see also Charles J. Dean, *State to Run Schools in Greene County System Plummets \$1.2 Million in Red*, BIRMINGHAM NEWS (Ala.), Oct. 11, 2002, at 1, available at 2002 WLNR 13153610; Editorial, *Turning Greene: State Takeover Is Positive Step for Rebuilding Schools*, BIRMINGHAM NEWS (Ala.), Oct. 13, 2002, at 2, available at 2002 WLNR 13158329.

221. See New Am. Found., Fed. Educ. Budget Project, Greene County School District Demographics, <http://www.febp.newamerica.net/k12/al/101680> (last visited Aug. 6, 2009).

222. See Archibald & Dean, *supra* note 217; Rebecca Catalanello, *Jefferson County Looking*

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.²²⁶ 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 Fundamental Church of Jesus

at Dodge, MOBILE REGISTER (Ala.), Mar. 1, 2003, at A1, available at 2003 WLNR 15769646; see also Steve French, *State-Controlled Schools Need Local Involvement*, BIRMINGHAM NEWS (Ala.), Apr. 23, 2001, at 7, available at 2001 WLNR 11236582.

223. Vicki McClure, *Jeffco Schools Declared Stable: Richardson Ends Three Years of State Supervision*, BIRMINGHAM NEWS (Ala.), June 27, 2003, at 1, available at 2003 WLNR 15948655; see also Marie Leech, *Jeffco School System Audit Rates Another Perfect Score Clean Slate 2nd Year in Row Follows Earlier State Takeover*, BIRMINGHAM NEWS (Ala.), Mar. 29, 2008, at 2, available at 2008 WLNR 6199044.

224. See New Am. Found., Fed. Educ. Budget Project, Jefferson County School District Demographics, <http://www.febp.newamerica.net/k12/al/101920> (last visited Aug. 6, 2009).

225. See Ala. State Bd. of Educ., Resolution Removing the Dale County School System from State Financial Intervention (Mar. 10, 2005), available at http://www.alsde.edu/html/boe_resolutions2.asp?id=1027&.

226. See New Am. Found., Fed. Educ. Budget Project, Dale County School District Demographics, <http://www.febp.newamerica.net/k12/al/101050> (last visited Aug. 6, 2009).

227. See Archibald & Dean, *supra* note 217; McClure, *supra* note 223.

228. See Briefs, *Marshall County Teachers Imperiled*, BIRMINGHAM NEWS (Ala.), Sept. 18, 2005, at 20, available at 2005 WLNR 24080544 (discussing the Marshall County financial troubles and the potential for State takeover).

229. See New Am. Found., Fed. Educ. Budget Project, Marshall County School District Demographics, <http://www.febp.newamerica.net/k12/al/100006> (last visited Aug. 6, 2009).

230. Mary Ann Zehr, *Ariz. Schools Chief Seeks Takeover of Troubled District*, EDUC. WK., Aug. 31, 2005, at 4; Ariz. State Bd. of Educ., Meeting Minutes (Dec. 5, 2005), available at <http://www.azed.gov/stateboard/minutes/12-05-05.pdf>; see also Catherine Gewertz, *Pupil Loss Hits District in Arizona*, EDUC. WK., Nov. 17, 2004, at 10 [hereinafter Gewertz, *Pupil Loss Hits District*]; Catherine Gewertz, *Student Exodus Hits Schools in 2 Towns*, EDUC. WK., Sept. 13, 2000, at 1 [hereinafter Gewertz, *Student Exodus Hits Schools*]; Nancy Perkins, *Appointee Labors on Colorado City School Finances: State Receiver Trims Airplane, Cell Phones, Cars from Budget*, DESERET MORNING NEWS, Jan. 25, 2006, at B5, available at 2006 WLNR 1332430.

Christ of Latter-day Saints²³¹ which urges its members to home-school their children, accounting for a steep decline in enrollment in the district.²³² The district remains under State control,²³³ but there is some indication that it might soon emerge from State control.²³⁴ One hundred percent of the district's students are white.²³⁵ The State also took over the Saddle Mountain Unified School District #90 in 2007 due to financial problems in the district.²³⁶ The district has also not yet emerged from State control.²³⁷ About 41% of the district's student body are minorities.²³⁸ Arizona also took over the Union Elementary School District in 2007 because of that district's fiscal troubles.²³⁹ Like Saddle Mountain, Union Elementary School District was still under State control as of 2008.²⁴⁰ The district's student body is approximately 88% minority.²⁴¹ 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.

233. See H.B. 2569, 48th Leg., 2d Reg. Sess. (Ariz. 2008).

234. Ariz. State Bd. of Educ., Meeting Minutes (Jan. 22, 2007), at 3, *available at* <http://www.azed.gov/stateboard/minutes/2007/01-22-07.pdf> (discussing potential acceleration of the termination of the takeover); Ariz. State Bd. of Educ., Meeting Minutes (June 25, 2007), at 3, *available at* <http://www.azed.gov/stateboard/minutes/2007/06-25-07.pdf> (noting that if the district maintained its compliance with financial standards then the board "may propose termination" of the takeover).

235. See New Am. Found. Fed. Educ. Budget Project, Colorado City Unified District Demographics, <http://www.febp.newamerica.net/k12/az/400021> (last visited Aug. 6, 2009).

236. Ariz. State Bd. of Educ., Meeting Minutes (June 25, 2007), *supra* note 234, at 9-10.

237. See H.B. 2469, 48th Leg., 2d Reg. Sess. (Ariz. 2008); Notice of Public Meeting from the Ariz. State Bd. of Educ. (Mar. 14, 2008), *available at* <http://www.azed.gov/stateboard/agendas/2008/03-14-08.pdf>; VERITI CONSULTING LLC, RECEIVER'S FIFTH QUARTERLY PROGRESS REPORT FOR SADDLE MOUNTAIN UNIFIED SCHOOL DISTRICT #90, at 1 (2009), *available at* <http://www.veriticonsulting.com/educationconsulting.html>.

238. See U.S. Dep't of Educ., Inst. of Educ. Sci., Nat'l Ctr. for Educ. Statistics, *District Detail for Saddle Mountain Unified School District*, http://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=1&InstName=Saddle&State=04&DistrictType=1&DistrictType=2&DistrictType=3&DistrictType=4&DistrictType=5&DistrictType=6&DistrictType=7&NumOfStudentsRange=more&NumOfSchoolsRange=more&ID2=0407170&details=5 (last visited May 7, 2009).

239. Ariz. State Bd. of Educ., Meeting Minutes (June 25, 2007), *supra* note 234, at 11-13.

240. See H.B. 2469, 48th Leg., 2d Reg. Sess. (Ariz. 2008).

241. See New Am. Found., Fed. Educ. Budget Project, Union Elementary District Demographics, <http://www.febp.newamerica.net/k12/az/408820> (last visited Aug. 6, 2009).

2007.²⁴² The State retains control of the district.²⁴³ Fifty-three percent of the district's students are minorities.²⁴⁴

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.²⁴⁵ 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.²⁴⁶ Approximately 11% of the district's students are minorities.²⁴⁷ 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.²⁴⁸ This district's student body is about 6% minority.²⁴⁹ Arkansas also took over the Helena-West Helena School District for fiscal mismanagement;²⁵⁰ the State

242. VERITI CONSULTING LLC, RECEIVER'S 120-DAY REPORT AND FINANCIAL IMPROVEMENT PLAN FOR PEACH SPRINGS UNIFIED SCHOOL DISTRICT #8, at 1-2 (2009), available at <http://www.veriticonsulting.com/educationconsulting.html> [hereinafter VERITI CONSULTING LLC, RECEIVER'S 120-DAY REPORT].

243. See H.B. 2469, 48th Leg., 2d Reg. Sess. (Ariz. 2008); Ariz. State Bd. of Educ., Meeting Minutes (May 19, 2008), at 2-3, available at <http://www.azed.gov/stateboard/Minutes/2008/05-19-08.pdf>; VERITI CONSULTING LLC, RECEIVER'S 120-DAY REPORT, *supra* note 242, at 1-2.

244. See New Am. Found. Fed. Educ. Budget Project, Peach Springs Unified District Demographics, <http://www.febp.newamerica.net/k12/az/406120> (last visited Aug. 6, 2009).

245. Jim Watts, *Arkansas Takes Over School District, Rejects Recovery Plan*, BOND BUYER, July 16, 2008, at 4, available at 2008 WLNR 13243445.

246. *Id.*

247. See U.S. Dep't of Educ., Inst. of Educ. Sci., Nat'l Ctr. for Educ. Statistics, District Detail for Greenland School District, available at http://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=1&InstName=Greenland+&State=05&DistrictType=1&DistrictType=2&DistrictType=3&DistrictType=4&DistrictType=5&DistrictType=6&DistrictType=7&NumOfStudentsRange=more&NumOfSchoolsRange=more&ID2=0506930&details=5 (last visited Apr. 14, 2009).

248. Jim Watts, *Arkansas: Bald Knob Gets More Time*, BOND BUYER, Oct. 2, 2007, at 9; see also News Release, Ark. Dep't of Educ., ADE Recommends Annexation for Bald Knob (Aug. 22, 2007), available at http://www.arkansased.org/communications/pdf/bald_knob_release_082207.pdf [hereinafter News Release, ADE Recommends Annexation].

249. See New Am. Found., Fed. Educ. Budget Project, Bald Knob School District Demographics, <http://www.febp.newamerica.net/k12/ar/502700> (last visited Aug. 6, 2009).

250. News Post, *State's Takeover of Helena-West Helena School District Discussed*, ARK. NEWS BUREAU, Oct. 14, 2005, available at <http://www.arkansasnews.com/archive/2005/10/14/states-takeover-of-helena-west-helena-school-district-discussed/>. For a recent legislative financial audit of the district, see ARK. LEGISLATIVE JOINT AUDITING COMM., HELENA-WEST HELENA SCHOOL DISTRICT NO. 2: REGULATORY BASIS FINANCIAL STATEMENTS AND OTHER REPORTS (June 30, 2007), available at <http://www.legaudit.state.ar.us/AuditReports/PublicSchools/2007/HelenaWestHelenaSD2007.pdf>.

removed the school board.²⁵¹ Over 90% of the district's student body are minority.²⁵²

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.²⁵³ Nearly all the district's students are minorities.²⁵⁴ A state senator suggested that race might be a factor in the State's takeover decisions.²⁵⁵ That senator later apologized.²⁵⁶ There is no direct evidence that racism motivated the takeovers in the State.²⁵⁷ The State board took over the Midland School District in 2006 for fiscal problems, and the State replaced the local school board.²⁵⁸ Less than 3% of the district's student body is minority.²⁵⁹ 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 2007.²⁶⁰ On July 14, 2008, the state board voted to approve the State Superintendent's recommendation that the State remove the Greenland School District.²⁶¹ It

251. See News Release, Ark. Dep't of Educ., State Removes Eudora School Board from Office (Jan. 13, 2006), available at <http://www.arkansased.org/communications/pdf/eudorafirst0113.pdf> [hereinafter News Release, State Removes Eudora School Board].

252. See New Am. Found., Fed. Educ. Budget Project, Helena-West Helena School District Demographics, <http://www.febp.newamerica.net/k12/ar/507680> (last visited Aug. 6, 2009).

253. See News Release, State Removes Eudora School Board, *supra* note 251. The Eudora School District eventually "was annexed into the Lakeside (Chicot County) school district at of the beginning of the 2006-2007 school year." News Release, ADE Recommends Annexation, *supra* note 248.

254. See New Am. Found., Fed. Educ. Budget Project, Eudora Public School District Demographics, <http://www.febp.newamerica.net/k12/ar/500007> (last visited Aug. 6, 2009).

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.*

258. See Ark. State Bd. of Educ., Meeting Minutes (Feb. 13, 2006), at 3-4, available at http://www.arkansased.org/sbe/pdf/sbe_minutes_021306.pdf; see generally News Release, Ark. Dep't of Educ., State Takes Administrative Control over Midland School District (Jan. 13, 2006), available at <http://www.arkansased.org/communications/pdf/midland0113.pdf>.

259. See New Am. Found., Fed. Educ. Budget Project, Midland School District Demographics, <http://www.febp.newamerica.net/k12/ar/50020> (last visited Aug. 6, 2009).

260. See News Release, Ark. Dep't of Educ., Helena-West Helena, Midland Districts to Regain Some Control (May 7, 2007), at 1, available at http://www.arkansased.org/communications/pdf/districts_regain_release_050707.pdf. A separate press release also stated that the Midland School District would "eventually regain control of its school district after the September school board elections, in which all school board positions are open and subsequent training." See News Release, ADE Recommends Annexation, *supra* note 248, at 2.

261. See Ark. State Bd. of Educ., Meeting Minutes (July 14, 2008), at 2-3, available at

appears that the board members were subsequently removed.²⁶²

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

D. California

In 2003, California took over the West Fresno Elementary School District because of fiscal instability.²⁶⁵ It is important to note that in California, when takeovers occur, local school boards usually lose voting power.²⁶⁶ This loss of power led to citizen outcry and allegations of racial animus in the West Fresno District.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.²⁶⁸ A state-appointed administrator was given total control of the district in 2005.²⁶⁹ As of September 2008, the administrator retains control over academics and finances and the power to overrule the decisions of the local school board.²⁷⁰ As reported by the

http://www.arkansased.org/sbe/pdf/sbe_minutes_071408.pdf.

262. See Associated Press, *Arkansas to Take Over Troubled School District*, AP ALERT (Ark.), July 14, 2008; News Release, Ark. Dep't of Educ., Greenland (July 24, 2008), available at http://arkansased.org/communications/pdf/greenland_release_072408.pdf (announcing a new superintendent for the district and noting the removal of the previous board).

263. See News Release, Ark., Dep't of Educ., Decatur (Aug. 7, 2008), available at http://www.arkansased.org/communications/pdf/decatur_release_080708.pdf; Leadership Support Serv., Ark. Dep't of Educ., *State Takes Control of Two Districts*, ARK. EDUC. MATTERS, Sept. 2008, at 5, available at http://www.arkansased.org/communications/pdf/ed_matters_v1n1_0908.pdf.

264. See New Am. Found., Fed. Educ. Budget Project, Decatur School District Demographics, <http://www.febp.newamerica.net/k12/ar/504980> (last visited Aug. 6, 2009).

265. Anne Dudley Ellis, *West Fresno Board Is Back: School District Moves Toward Local Control*, FRESNO BEE (Cal.), Sept. 1, 2008, at A1, available at 2008 WLNR 16606653; *Progress in West Fresno: School District Gets Partial Measure of Control Back from the State, Five Years After Painful Takeover*, FRESNO BEE (Cal.), Sept. 3, 2008, at C4, available at 2008 WLNR 16683885 [hereinafter *Progress in West Fresno*].

266. Meredith May, *Panel OKs Oakland Loan \$100 Million to Bail Out Schools*, S.F. CHRON., Apr. 10, 2003, at A27.

267. See Lesli A. Maxwell, *Appeals Fail to Halt Takeover Bill Senate Committee Hears Residents' Allegations of Racism Against Pete Mehas*, FRESNO BEE (Cal.), Feb. 20, 2003, at A1, available at 2003 WLNR 2840353 (noting several comments by citizens regarding racial animus).

268. See *id.* (noting that despite the outcry, the financial numbers led the Senate Committee to vote for the takeover).

269. See Ellis, *supra* note 265.

270. *Id.* The board now has some management and operational control, such as power over district facilities and staff. *Id.* However, the administrator retains the power to override board decisions. *Id.*

Fresno Bee, in 2008 the “district’s five-member board cast its first real vote since the state took control of district affairs in 2003,”²⁷¹ as the district finally regained a level of control.²⁷² If the district continues improving, then the district may regain full control in 2009.²⁷³ Approximately 96% of the district’s students are minorities.²⁷⁴

California took over the Oakland Unified School District in 2003 as a result of the district’s burgeoning financial crisis.²⁷⁵ By 2008, the State had restored some control to the local board such as power over facilities, community, relations, and personnel, “including the authority to hire a leader who would report directly to the locally elected officials for the first time since the 2003 fiscal crisis and [S]tate takeover.”²⁷⁶ The State retains control over the budget and academic policy.²⁷⁷ This district has a 94% minority student body.²⁷⁸

The State took over the Coachella Valley Unified School District in 1992 due to a district financial crisis.²⁷⁹ Eventually, the State restored control to the local board,²⁸⁰ but the district is still under great threat of takeover for failing to make AYP pursuant to the NCLB.²⁸¹ Approximately 99% of the district’s students are

271. *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.*

274. See New Am. Found., Fed. Educ. Budget Project, West Fresno Elementary Demographics, <http://www.febp.newamerica.net/k12/ca/6145808> (last visited Aug. 6, 2009).

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.*

278. See New Am. Found., Fed. Educ. Budget Project, Oakland Unified Demographics, <http://www.febp.newamerica.net/k12/ca/628050> (last visited Aug. 6, 2009).

279. See J. Douglas Allen-Taylor, *School Takeover Oversight Committee to Hold Hearings Early Next Year*, BERKELEY DAILY PLANET, Oct. 23, 2007, available at <http://www.berkeleydailyplanet.com/issue/2007-10-23/article/28289> (last visited Apr. 15, 2009); Katy Murphy, *State Senators Hear Advice on School Debt and Takeovers*, OAKLAND TRIB., Dec. 4, 2007, n.p., available at 2007 WLNR 23987941.

280. Shirin Parsavand, *Coachella Schools: District Warned of State Takeover*, PRESS-ENTERPRISE (Riverside, Cal.), Dec. 19, 2007, at A1.

281. See Kimberly Cheng, *Coachella Valley Unified Faces Severe State Action*, CBS2NEWS, Mar. 3, 2008, <http://www.kpslocal2.com/Global/story.asp?S=7936689> (last visited Apr. 15, 2009); Parsavand, *supra* note 280 (“The district increased its chances of a state takeover by accepting a \$2 million grant in 2005. As a condition of the grant, Coachella Valley officials promised to meet

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.

282. See New Am. Found., Fed. Educ. Budget Project, Coachella Valley Unified Demographics, <http://www.febp.newamerica.net/k12/ca/609070> (last visited Aug. 6, 2009).

283. Simone Sebastian, *Vallejo School Board Hands Control to State \$20 Million Debt Too Deep for Locals to Dig out of Alone*, S.F. CHRON., Apr. 1, 2004, at B1.

284. Rich Saskal, *California: Vallejo USD Regains Control*, BOND BUYER, July 20, 2007, at 9, available at 2007 WLNR 13817548.

285. See New Am. Found., Fed. Educ. Budget Project, Vallejo City Unified Demographics, <http://www.febp.newamerica.net/k12/ca/640740> (last visited Aug. 6, 2009).

286. See Alex Katz, *Schools' Boss Vows Tight Ship: State Administrator Ward Starts Today, Already Has Cracked Down on Student Absenteeism*, ALAMEDA TIMES-STAR (Cal.), June 16, 2003, n.p., available at 2003 WLNR 16018290.

287. See *id.* It appears that at least partial control was restored in 2001. See Ian Hanigan, *Compton Reclaims Its Schools; Education: Locals Take Control After Eight Years of Intervention from State*, LONG BEACH PRESS-TELEGRAM, Dec. 13, 2001, at A1, available at 2001 WLNR 1291333. Full control was restored in 2003. See Katz, *supra* note 286.

288. See New Am. Found., Fed. Educ. Budget Project, Compton Unified Demographics, <http://www.febp.newamerica.net/k12/ca/609620> (last visited Aug. 6, 2009).

289. See *State to Control Emery Unified School District*, W. COUNTY TIMES (Cal.), Dec. 24, 2000, at A28, available at 2000 WLNR 5371199; Dan Walters, *Misconduct Jeopardizes School Funds*, FRESNO BEE (Cal.), Aug. 13, 2001, at A9, available at 2001 WLNR 1649525 [hereinafter Walters, *Misconduct*]; Dan Walters, *Why School Districts Collapse*, LONG BEACH PRESS-TELEGRAM, Aug. 14, 2001, at A7, available at 2001 WLNR 1288282.

290. See Simone Sebastian, *Emeryville Schools Hailed as Model for Recovery Community Support Leads to Improved Test Scores, Finances*, S.F. CHRON., Oct. 4, 2005, at B1; see also Alex Katz, *2 Years Later, School District is On Track: State Overseer Who Helped Rein in Budget is Moving on to New Job*, ALAMEDA TIMES-STAR, Nov. 19, 2003, n.p., available at 2003 WLNR 16002722 [hereinafter Katz, *2 Years Later*] (discussing how in 2003 the district regained its financial footing which led to the district eventually regaining control).

291. See New Am. Found., Fed. Educ. Budget Project, Emery Unified Demographics,

While the State has taken over many minority districts, there appears to be no evidence that the takeovers were a result of racial animus.²⁹² Indeed, many of these districts were laden with corruption, and the State was left with no choice but to take them over.²⁹³ Further, in a number of districts, frustrated residents themselves petitioned to recall the elected board.²⁹⁴

E. Illinois

In 1994, Illinois took over the East St. Louis School District due to the district's financial troubles.²⁹⁵ The State appointed a panel to oversee the finances of the district but retained the board;²⁹⁶ the state-appointed panel, however, maintained the power to veto the decisions of the board.²⁹⁷ 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).

295. Peter Schmidt, *Ill. Board Moves to Take Over Troubled East St. Louis Schools*, EDUC. WK. Oct. 26, 1994, n.p.; see also Aisha Sultan, *Panel Opposes Giving Money Control to East St. Louis Board: School Board Members Act from Personal, Political Interest, Report Says*, ST. LOUIS POST-DISPATCH, Feb. 22, 2001, at A1, available at 2001 WLNR 11360687.

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.²⁹⁸ Nearly all of the district's students are minorities.²⁹⁹ The Venice Community Unit School District #3 voted to petition the State to take over the district.³⁰⁰ Subsequently, in 2003 the State did take over the district because of its financial problems.³⁰¹ The district remains under the financial takeover.³⁰² The district's student body is 95% minority.³⁰³

Round Lake Area Schools District 116 also experienced a financial takeover in 2000 when an oversight panel was appointed for the district.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 2002.³⁰⁵ The district remains under the control of the School Finance Authority.³⁰⁶ Over 70% of the district's students are minorities.³⁰⁷ Dire insolvency in the Hazel Crest School District 152.5 led to its financial takeover in 2002.³⁰⁸ In December 2002,

298. See Press Release, Ill. State Bd. of Educ., East St. Louis Board of Education and ISBE Join Together: Agreement Ensures Continued Financial Stability (June 9, 2004), *available at* http://www.isbe.net/news/2004/june9_04.htm; Press Release, Ill. State Bd. of Educ., Schiller Announces East St. Louis Interim CEO (June 24, 2004), *available at* http://www.isbe.net/news/2004/june24_04.htm.

299. See New Am. Found., Fed. Educ. Budget Project, East St. Louis School District 189 Demographics, <http://www.febp.newamerica.net/k12/il/1713320> (last visited Aug. 6, 2009).

300. Ill. State Bd. of Educ., Motion to Grant Petition for Emergency Financial Assistance and the Establishment of a Financial Oversight Panel for Venice Community Unit School District 3 (2003), *available at* http://www.isbe.net/news/2003/venice_petition_motion.htm [hereinafter Ill. State Bd. of Educ., Motion to Grant Petition].

301. *Id.*; Press Release, Ill. State Bd. of Educ., State Superintendent Appoints Three-Member Oversight Panel for Venice School District (July 3, 2003), *available at* <http://www.isbe.net/news/2003/jul3-03.htm>.

302. For more information on the state-appointed oversight panel, see School Fin., Ill. State Bd. of Educ., Venice Community Unit School District #3 Financial Oversight Panel, <http://www.isbe.net/finance/v/default.htm> (last visited Apr. 16, 2009).

303. See New Am. Found., Fed. Educ. Budget Project, Venice Community Unit School District Demographics, <http://www.febp.newamerica.net/k12/il/1740200> (last visited Aug. 6, 2009).

304. See Press Release, School Fin., Ill. State Bd. of Educ., State Board Authorizes School Finance Authority for Round Lake School District 116: State Superintendent Names Members, Aug. 21, 2002, *available at* <http://www.isbe.net/finance/RL/pr082102.htm>.

305. *Id.*

306. *Id.* For more information on the state-appointed School Finance Authority, see School Fin., Ill. State Bd. of Educ., Round Lake Area Schools District # 116: School Finance Authority, *available at* <http://www.isbe.net/finance/RL/default.htm>.

307. See New Am. Found., Fed. Educ. Budget Project, Round Lake Area Schools District Demographics, <http://www.febp.newamerica.net/k12/il/1734990> (last visited Aug. 6, 2009).

308. See Press Release, Ill. State Bd. of Educ., State Board of Education Approves Continuation of Hazel Crest School District for FY05, Board Cites District's Dramatic Turnaround Under School Finance Authority (Jan. 22, 2004), *available at* <http://www.isbe.net/news/>

a School Finance Authority replaced the oversight panel that the State appointed after the takeover.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.³¹⁰ The district remains under the control of the School Finance Authority.³¹¹ More than 96% of the district's student body are minority.³¹² Financial crisis also spurred the financial takeover of the Cairo Unit School District 1 in 2003 through the appointment of an oversight panel.³¹³ This takeover, which occurred after a petition by the local board for the district, continues.³¹⁴ Approximately 91% of the district's students are minorities.³¹⁵

The State took over the Chicago Public School District in 1979 to address the grim financial condition of the district.³¹⁶ In 1995, to address continuing financial and academic problems, the State transferred control to the mayor of Chicago³¹⁷ where it remains today.³¹⁸ The mayor appoints the members of the

2004/jan22-04.htm [hereinafter Press Release, Ill. State Bd. of Educ., Continuation of Hazel Crest Schools].

309. Press Release, Ill. State Bd. of Educ., Continuation of Hazel Crest Schools, *supra* note 308; Press Release, School Fin., Ill. State Bd. of Educ., State Board of Education Established School Finance Authority for Hazel Crest Schools (Dec. 9, 2002), *available at* <http://www.isbe.net/finance/HC/pr120902.htm> [hereinafter Press Release, Ill. State Bd. of Educ., Finance Authority for Hazel Crest Schools]; Press Release, School Fin., Ill. State Bd. of Educ., State Superintendent Appoints School Finance Authority Members for Hazel Crest Schools: Reassures Community That Schools Will Complete Year (Dec. 23, 2002), *available at* <http://www.isbe.net/finance/HC/pr122302.htm>.

310. Press Release, Ill. State Bd. of Educ., Continuation of Hazel Crest Schools, *supra* note 308; Press Release, Ill. State Bd. of Educ., Finance Authority for Hazel Crest Schools, *supra* note 309.

311. For more on the state-appointed School Finance Authority, see School Fin., Ill. State Bd. of Educ., Hazel Crest School District 152-5 School Finance Authority, <http://www.isbe.net/finance/HC/default.htm> (last visited Apr. 16, 2009).

312. See New Am. Found., Fed. Educ. Budget Project, Hazel Crest School District 152-5 Demographics, <http://www.febp.newamerica.net/k12/il/1718600> (last visited Aug. 6, 2009).

313. Ill. State Bd. of Educ., Meeting Minutes (Feb. 6, 2003), at 2-5, *available at* <http://www.isbe.net/board/meetings/feb03special.pdf>.

314. See *id.* at 4-5 (noting that the district petitioned for the takeover); Press Release, Ill. State Bd. of Educ., State Board Approves Oversight Panel for Cairo School District (Feb. 6, 2003), *available at* <http://www.isbe.net/news/2003/feb6-03.htm> [hereinafter Press Release, Ill. State Bd. of Educ., Cairo School District]; Ill. State Bd. of Educ. For more on the State-appointed School Finance Authority, see Sch. Fin., Ill. State Bd. of Educ., Cairo Unit School District 1 Financial Oversight Panel, *available at* <http://www.isbe.net/finance/C/default.htm>.

315. See New Am. Found., Fed. Educ. Budget Project, Cairo Community Unit School District Demographics, <http://www.febp.newamerica.net/k12/il/1708070> (last visited Aug. 6, 2009).

316. See Yvette Shields, *Chicago School Reformer Stepping Down After Six Years at Helm*, BOND BUYER, June 8, 2001, at 3, *available at* 2001 WLNR 835351.

317. Paul G. Vallas, *Making the Grade: Chicago Schools CEO Tells How He Rescued a*

school board.³¹⁹ Nearly 92% of the students in the Chicago Public Schools are minorities.³²⁰ While it appears that the State has taken over mostly minority districts, there is no indication that racial animus was involved in the takeover decisions.³²¹ Indeed, as noted earlier, some local boards actually petitioned for the State takeover.³²² Moreover, there is no question that the districts that the State did take over were in financial crisis.³²³

F. Kentucky

Financial and academic problems in the Whitley County School District triggered Kentucky's takeover of the district in 1989.³²⁴ A year later the State restored control to the district.³²⁵ Ninety-three percent of the district's students are white.³²⁶ Also in 1989, the State took over the Floyd County School District.³²⁷ In 1990, the school district regained control.³²⁸ Eight years later, however, the State reassumed control because of continuing financial troubles and poor management in the district.³²⁹ The district regained control in 2005.³³⁰ Approximately 94% of Floyd County School District's students are white.³³¹ The State took over the Letcher County District in 1994 to address mismanagement of the district and its financial crisis.³³² The State returned control to the district

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.

319. *See* Chicago Public Schools, http://cps.edu/About_CPS/The_Board_of_Education/Pages/TheChicagoBoardofEducation.aspx (last visited Apr. 16, 2009).

320. *See* New Am. Found., Fed. Educ. Budget Project, City of Chicago School District Demographics, <http://www.febp.newamerica.net/k12/il/1709930> (last visited Aug. 6, 2009).

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.

324. Reagan Walker, *2 Kentucky Districts Deemed 'Deficient,' Face State Takeover*, EDUC. WK., Jan. 18, 1989, n.p.; *District News Roundup*, EDUC. WK., May 23, 1990, n.p..

325. *See District News Roundup*, *supra* note 324.

326. *See* New Am. Found., Fed. Educ. Budget Project, Whitley County School District Demographics, <http://www.febp.newamerica.net/k12/ky/2105880> (last visited Aug. 6, 2009).

327. Walker, *supra* note 324.

328. *District News Roundup*, *supra* note 324.

329. Raviya H. Ismail & Linda J. Johnson, *Kentucky Schools Struggle with Federal Mandate*, LEXINGTON HERALD-LEADER, Aug. 6, 2008, available at <http://www.kentucky.com/news/state/story/481216.html>; Kerry A. White, *Ky. Chief Says State Should Take Over District*, EDUC. WK., Nov. 19, 1997, n.p.

330. Ismail & Johnson, *supra* note 329.

331. *See* New Am. Found., Fed. Educ. Budget Project, Floyd County School District Demographics, <http://www.febp.newamerica.net/k12/ky/2101950> (last visited Aug. 6, 2009).

332. White, *supra* note 329; Lonnie Harp, *Audit Spurs Board to Eye Takeover of Ky. District*,

in 1997.³³³ About 93% of the students in the district are white.³³⁴ The districts taken over in Kentucky have been heavily non-minority districts.³³⁵ Ostensibly, there is no racial animus here, as districts taken over had major financial or other problems.³³⁶

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.³³⁷ The State appointed a new board to replace the elected board.³³⁸ In 2006, the State restored control to an elected school board.³³⁹ However, the district remains under threat of takeover for failure to make AYP.³⁴⁰ The district's student body is close to 94% minority.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.³⁴² Pursuant to this partnership, the mayor and the governor jointly appoint the district's board members.³⁴³ Approximately 92% of the district's students are minorities.³⁴⁴ While both districts are disproportionately minority, there was no apparent racial animus in the takeovers as burgeoning financial and academic problems dictated

EDUC. WK., May 25, 1994, n.p.

333. See White, *supra* note 329.

334. See New Am. Found., Fed. Educ. Budget Project, Letcher County School District Demographics, <http://www.febp.newamerica.net/k12/ky/2103360> (last visited Aug. 6, 2009).

335. See *supra* notes 324-34 and accompanying text.

336. See *supra* notes 324-34 and accompanying text.

337. David J. Hoff, *Maryland: Maryland Generates Record School Aid*, EDUC. WK., May 29, 2002, at 20. This takeover was made possible by House Bill 949. H.B. 949, Reg. Sess. (Md. 2002).

338. See Hoff, *supra* note 337.

339. See Steve Giegerich, *The Jury Is Still Out*, ST. LOUIS POST-DISPATCH, Feb. 14, 2007, at A1, available at 2007 WLNR 11976107 (noting that the district regained control in November 2006).

340. See Guy Leonard, *Next Two Years Critical for County Schools System*, GAZETTE.NET, Nov. 9, 2006, http://www.gazette.net/stories/110906/princou194118_31944.shtml (noting that the district was placed on a state watch list for failure to meet national standards).

341. See New Am. Found., Fed. Educ. Budget Project, Prince Georges County Public Schools Demographics, <http://www.febp.newamerica.net/k12/md/2400510> (last visited Aug. 6, 2009).

342. David J. Hoff, *Baltimore Bailout in Doubt; State Takeover on the Table*, EDUC. WK., Mar. 3, 2004, at 6; Hoff, *supra* note 337. This takeover was made possible by Senate Bill 795. S.B. 795, Reg. Sess. (Md. 1997).

343. See BALT. CITY BD. OF SCH. COMM'RS, SCHOOL BOARD RULES, ARTICLE 1: BOARD OF SCHOOL COMMISSIONERS, available at http://www.baltimorecityschools.org/School_Board/PDF/Article_1.pdf; see also Hoff, *supra* note 337; Jessica L. Sandham, *Despite Takeover Laws, States Moving Cautiously on Interventions*, EDUC. WK., Apr. 14, 1999, at 21.

344. See New Am. Found., Fed. Educ. Budget Project, Baltimore City Public School System Demographics, <http://www.febp.newamerica.net/k12/md/2400090> (last visited Aug. 6, 2009).

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.

346. John Gehring, *Boston University-Chelsea Match Endures*, EDUC. WK., Nov. 23, 2004, at 1; Robert Rothman, *Governor Creates Panel to Monitor Chelsea Accord*, EDUC. WK., June 21, 1989, n.p.; see also Boston Univ. Sch. of Educ., *The Boston University/Chelsea Partnership*, <http://web.bu.edu/sed/outreachProjects/chelsea> (last visited Apr. 17, 2009).

347. Rothman, *supra* note 346. The state legislature made the partnership by enacting Chapter 133 of the Acts of 1989. Legis. Acts 1989, Chap. 133 (Mass. 1989), available at <http://archives.lib.state.ma.us/actsResolves/1989/1989acts10133.pdf>; see also Gehring, *supra* note 346; Silber and Chelsea: *A Lasting Legacy?*, EDUC. WK., Nov. 5, 1997, n.p.; Silber Enters Governor's Race, EDUC. WK., Jan. 24, 1990, n.p. (all outlining the 1989 State takeover).

348. Legis. Acts 1989, Chap. 133, § 2 (Mass. 1989), available at <http://archives.lib.state.ma.us/actsResolves/1989/1989acts0133.pdf>.

349. See Rothman, *supra* note 346.

350. Chelsea Public Schools, Boston University/Chelsea Partnership, http://www.chelseaschools.com/management_team/ (last visited Apr. 17, 2009); see also Gehring, *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.

356. See New Am. Found., Fed. Educ. Budget Project, Chelsea Demographics, available at <http://www.febp.newamerica.net/k12/ma/2503540> (last visited Aug. 6, 2009).

Massachusetts partially intervened in the Lawrence Public Schools beginning in 1998 pursuant to a memorandum of agreement with the City of Lawrence.³⁵⁷ That agreement authorized the State, in consultation with the mayor, to appoint a state representative for the district.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.³⁵⁹ The State opened an office in the district “to oversee daily operations and provide technical assistance to school administrators.”³⁶⁰ The State also appointed a representative in 2000 “to guide the management and governance of [the district].”³⁶¹ This included the district “budget, personnel, contracts, collective bargaining, major policy issues and all improvement plans for the district.”³⁶² The local election of board members continued.³⁶³ The district and the State decided to extend the memorandum of agreement which permitted the State intervention, until 2005.³⁶⁴ The district has about a 92% minority student body.³⁶⁵

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

357. Robert C. Johnston, *Lawrence, Mass., Reaches Deal With State*, EDUC. WK., Feb. 4, 1998, n.p.; Press Release, Massachusetts Dep’t of Elementary & Secondary Educ., Commissioner of Education Appoints Representative to Guide Lawrence Public Schools (Jan. 31, 2000) *available at* <http://www.doe.mass.edu/news/news.asp?id=691> [hereinafter Press Release, Commissioner of Education Appoints Representative].

358. Johnston, *supra* note 357; Press Release, Commissioner of Education Appoints Representative, *supra* note 357.

359. *See Association Expected to Yank Accreditation of District’s Only High School*, EDUC. WK., Feb. 12, 1997, n.p.; Caroline Hendrie, *Mass. Board Moves to Take Over Lawrence Schools*, EDUC. WK., June 25, 1997, n.p.; Johnston, *supra* note 357; Commissioner’s Update from Robert V. Antonucci, Mass. Comm’r of Educ., to Mass. Local Sch. Districts (Jan. 21, 1998), *available at* <http://www.doe.mass.edu/mailings/1998/cm012198.pdf>. Some characterize the friendly takeover as a partnership. *See, e.g., MASSACHUSETTS DEP’T OF ELEMENTARY & SECONDARY EDUC., Lawrence Public Schools Partnership: Proposal to Update Agreement*, in BOARD IN BRIEF (Mar. 25, 2003), *available at* <http://www.doe.mass.edu/boe/bib/03/0325.html>.

360. Johnston, *supra* note 357.

361. Press Release, Commissioner of Education Appoints Representative, *supra* note 357.

362. *Id.*

363. *See* Johnston, *supra* note 357.

364. *See, e.g., MASSACHUSETTS DEP’T OF ELEMENTARY & SECONDARY EDUC., supra* note 359.

365. *See* New Am. Found., Fed. Educ. Budget Project, Lawrence Demographics, <http://www.febp.newamerica.net/k12/ma/2506660> (last visited Aug. 6, 2009).

366. The legislature enabled this takeover by special legislation. Legis. Acts 1991, Chap. 133 (Mass. 1989); *see also* Boston Public Schools, <http://www.bostonpublicschools.org/node/285> (last visited Apr. 19, 2009) (discussing the 1991 legislation and the steps leading up to such legislation).

367. *A History of Intervention*, EDUC. WK., Jan. 9, 2002, at 14.

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.

369. See New Am. Found., Fed. Educ. Budget Project, Boston Demographics, <http://www.febp.newamerica.net/k12/ma/2502790> (last visited Aug. 6, 2009).

370. See *supra* notes 346-69 and accompanying text.

371. Boston Public Schools, *supra* note 366.

372. See Gehring, *supra* note 346; Boston Univ. Sch. of Educ., *supra* note 346.

373. See *A History of Intervention*, *supra* note 367; Assoc. Press, *Michigan Governor's Plan to Reform Detroit Schools Divides City Residents; Ditching Elected Board Looks Like Racist Power Grab, Some Are Charging*, ST. LOUIS POST-DISPATCH, Feb. 21, 1999, at A3, available at 1999 WLNR 949902 [hereinafter Assoc. Press, *Michigan Governor's Plan*].

374. *A History of Intervention*, *supra* note 367.

375. See New Am. Found., Fed. Educ. Budget Project, Detroit City School District Demographics, <http://www.febp.newamerica.net/k12/mi/2612000> (last visited Aug. 6, 2009).

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; Detroiters Challenged Takeover by the State*, DETROIT FREE PRESS, Feb. 25, 2003, n.p..

377. See Wilbur C. Rich, *Who's Afraid of a Mayoral Takeover of Detroit Public Schools?*, in WHEN MAYORS TAKE CHARGE: SCHOOL GOVERNANCE IN THE CITY 148, 159-60 (Joseph P. Viteritti ed., 2009); see generally CRC Memorandum, *Proposal E: Form of Governance for the Detroit Public Schools*, CITIZENS RES. COUNCIL, Sept. 2004, available at <http://www.crcmich.org/PUBLICAT/2000s/2004/memo1077.pdf>. Many problems persist in the district, however. See, e.g., Diane Bukowski, *Eliminate Debt to State, Not Teachers: DPS Announces \$45 Million Deficit*, MICHIGAN CITIZEN, <http://michigancitizen.com/default.asp?sourceid=&smenu=1&twindow=&mad=&sdetail=6066&wpage=1&keyword=&sidate=&cdate=&cdate=&ccat=&ccatm=&restate=&restatus=&reoption=&retype=&repmin=&repmax=&rebed=&rebath=&subname=&pform=&sc=1070&hn=michigancitizen&he=.com> (last visited Apr. 27, 2009); Diane Bukowski, *Where Did the First Billion Go?: DPS Wants Another \$2.5 Billion Bond, Community Wants DPS Audit*, MICHIGAN CITIZEN, 2007 (discussing a \$45 million deficit in the district); Jennifer Mrozowski, *DPS Board Seeks Answers to Money Woes: District Officials Say Accounting Irregularities Have Existed for*

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

Years for Unbudgeted Teachers, DETROIT NEWS, June 6, 2008, n.p. (discussing accounting problems that persist in the district).

378. Meg Sommerfeld, *Mississippi Poised to Take over Cash-Short District*, EDUC. WK., Jan. 17, 1996, n.p. (discussing the State's initial action in 1996 to begin the takeover process); Meg Sommerfeld, *Takeover of Financially Strapped District in Miss. Sought*, EDUC. WK., Feb. 28, 1996, n.p. (noting that the North Panola district was financially troubled and that the State was moving to solve the financial troubles); Shelly Hansen, *Gov. Barbour Okays State Take Over of North Panola Schools*, <http://www.wreg.com/Global/story.asp?S=8206588&nav=3HvDMIou> (last visited Apr. 19, 2009) (noting the initial financial troubles in the district and the governor's final action to initiate the takeover).

379. See *At North Panola, The State Moves in . . . and We've Been Here Before*, THE PANOLIAN, Apr. 25, 2008, at A6; *News in Brief: A National Roundup: Ex-Schools Chief Denied Job*, EDUC. WK., Dec. 10, 1997, n.p.

380. See, e.g. Hank M. Bounds, *State Takeover Necessary to Improve Learning Outcomes for Students*, DAILY TIMES LEADER, Sept. 11, 2008, available at <http://www.dailytimesleader.com/content/view/82381/130/>; Hansen, *supra* note 378.

381. See New Am. Found., Fed. Educ. Budget Project, North Panola School District Demographics, <http://www.febp.newamerica.net/k12/ms/2803210> (last visited Aug. 6, 2009).

382. See Assoc. Press, *State May Run School System: Hazlehurst District on Track for \$1M Deficit; Layoffs Possible*, COM. APPEAL (Tenn.), May 17, 2008, at 5, available at 2008 WLNR 9456291; Marquita Brown, *State Planning Major Hazlehurst School Overhaul*, CLARION-LEDGER (Jackson, Miss.), Sept. 18, 2008, at 1A; *State Moving to Take Over Hazlehurst Schools: District Facing Academic, Financial Problems*, WAPT CHANNEL 16 (Jackson, Miss.), May 16, 2008, <http://www.wapt.com/news/16293583/detail.html>.

383. See North Am. Found., Fed. Educ. Budget Project, Hazlehurst City School District Demographics, http://www.newamerica.net/education_budget_project/districts/hazlehurst_city_school_district#districtform-2 (last visited Apr. 19, 2009).

384. See Bounds, *supra* note 380; see also Assoc. Press, *Board of Education Expected to Suspend Ratings System*, NATCHEZ DEMOCRAT (Miss.), Apr. 18, 2008, available at <http://natchezdemocrat.com/news/2008/apr/18/board-education-expected-suspend-ratings-system/> (noting that the Jefferson Davis County School District was taken over in 2007).

body.³⁸⁵ Tunica County School District succumbed to State take over because of its academic problems.³⁸⁶ The district regained control after a couple of years.³⁸⁷ However, the district could face another takeover if academic deficiencies persist.³⁸⁸ Ninety-eight percent of the district's students are minorities.³⁸⁹ Academic problems in the Oktibbeha County School District led to Mississippi's takeover of the district in 1997.³⁹⁰ Within a few years, the State declared the takeover a success, returning control to the district.³⁹¹ Approximately 91% of the district's student population is minority.³⁹² In 2005, the State took over the North Bolivar School District because of its financial and academic problems.³⁹³ In 2006, the local board regained control of the district.³⁹⁴ Almost all the district's students are minorities.³⁹⁵ 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

385. See New Am. Found., Fed. Educ. Budget Project, Jefferson Davis County School District Demographics, <http://www.febp.newamerica.net/k12/ms/2802250> (last visited Aug. 6, 2009).

386. See, e.g., Stephanie Scurlock, *Mississippi Threatens Take Over if Tunica Schools Don't Improve*, WREG-TV CHANNEL 3 (Memphis, Tenn.), Nov. 30, 2007, <http://www.wreg.com/global/story.asp?s=7434283> (last visited Apr. 19, 2009).

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").

389. See New Am. Found., Fed. Educ. Budget Project, Tunica County School District Demographics, <http://www.febp.newamerica.net/k12/ms/2804290> (last visited Aug. 6, 2009).

390. See STATE OF MISS. JOINT COMM. ON PERFORMANCE EVALUATION AND EXPENDITURE REVIEW (PEER), REPORT TO THE MISSISSIPPI LEGISLATURE: A REVIEW OF TUMICA COUNTY SCHOOL DISTRICT'S ADMINISTRATIVE AND INSTRUCTIONAL SPENDING, No. 360, at 3 (1997), available at <http://www.peer.state.ms.us/reports/rpt360.pdf>.

391. See Assoc. Press, *State Calls Oktibbeha Takeover a Success*, COM. APPEAL (Tenn.), Aug. 20, 1999, at A18, available at 1999 WLNR 4505627.

392. See New Am. Found., Fed. Educ. Budget Project, Oktibbeha County School District Demographics, <http://www.febp.newamerica.net/k12/ms/2803420> (last visited Aug. 6, 2009).

393. See Alan Richard, *Mississippi Takes Control of North Bolivar District*, EDUC. WK., Jan. 4, 2006, at 4; Press Release, Miss. Dep't of Educ., Mississippi Board of Education Meets in Cleveland After Touring North Bolivar Schools (Apr. 18, 2006), available at <http://www.mde.k12.ms.us/Extrel/news/06AprilBoard.html> (noting the board of education's review of the North Bolivar district facilities after the State's November 2005 takeover of the district); Press Release, Miss. Dep't of Educ., North Bolivar Schools Taken Over by State Receive Exemplary Rating: State Takeover of School Succeeds—A Rarity Nationwide (July 27, 2006), available at <http://www.mde.k12.ms.us/extrel/news/06NBolivarExemplary.html>.

394. See Assoc. Press, *Shelby Schools Focus on Improving Student Achievement*, PICAYUNE ITEM (Miss.), Oct. 2, 2007, available at http://www.picayuneitem.com/local/local_story_275135740.html.

395. See New Am. Found., Fed. Educ. Budget Project, North Bolivar School District Demographics, <http://www.febp.newamerica.net/k12/ms/2800720> (last visited Aug. 6, 2009).

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.

398. *See* New Am. Found., Fed. Educ. Budget Project, *Holmes County School District Demographics*, <http://www.febp.newamerica.net/k12/ms/2801980> (last visited Aug. 6, 2009).

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

400. *See* Lisa Jennings, *New Jersey Judge's Ruling Clears Path for State to Take over School District*, EDUC. WK., Aug. 2, 1989, n.p..

401. *See* Winnie Hu, *2 New Jersey School Districts Regain Some Local Control*, N.Y. TIMES, July 25, 2007, at B3.

402. *A History of Intervention*, *supra* note 367; Kerry A. White, *N.J. Plans to End Takeover in Jersey City*, EDUC. WK., May 26, 1999, at 1.

403. *See* Hu, *supra* note 401.

404. *See id.*

405. *See* New Am. Found., Fed. Educ. Budget Project, *Jersey City Demographics*, <http://www.febp.newamerica.net/k12/nj/3407830> (last visited Aug. 6, 2009).

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

407. *See* Newark Public Schools, *Chronological History of the Newark Schools*, <http://www.nps.k12.nj.us/history.html> (last visited Apr. 19, 2009).

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.”⁴⁰⁸ The current elected board serves in an advisory capacity.⁴⁰⁹ Like Jersey City Public Schools, academic instruction remains under State control.⁴¹⁰ This district has about a 92% minority student body.⁴¹¹ The State took over the Paterson Public Schools in 1991 because of endemic academic problems and mismanagement in the district.⁴¹² State officials removed the local board and replaced it with a state-appointed board;⁴¹³ an elected board is now in place but serves only in an advisory role.⁴¹⁴ The district, however, remains under State control as the State evaluates the district.⁴¹⁵ Nearly 95% of the district’s students are minorities.⁴¹⁶

The State took steps to take over the Camden Public Schools in 2002.⁴¹⁷ Academic and other problems in Camden fueled the State effort to take over the district.⁴¹⁸ A state judge ruled that the portion of the Camden Rehabilitation and

408. Hu, *supra* note 401.

409. See Newark Public Schools, District Information, <http://www.nps.k12.nj.us/districtinfo.html> (last visited Apr. 19, 2009) (listing the members of the elected board as “Advisory Board Members”); The Newark Public Schools, Advisory Board Members 2008-2009, <http://www.nps.k12.nj.us/members.html> (last visited Apr. 19, 2009) (naming the elected members as an “Advisory Board”).

410. See Hu, *supra* note 401.

411. See New Am. Found., Fed. Educ. Budget Project, Newark City Demographics, <http://www.febp.newamerica.net/k12/nj/3411340> (last visited Aug. 6, 2009).

412. See Jonathan Weisman, *Citing ‘Inept’ Management, N.J. Chief Targets Paterson Schools for Takeover*, EDUC. WK., Apr. 24, 1991, n.p.; see also *A History of Intervention*, *supra* note 367; Bess Keller, *Red Ink in Newark Mars State Takeover*, EDUC. WK., Feb. 2, 2000, at 1; White, *supra* note 402.

413. See Jonathan Weisman, *New Jersey Officials Seize Control of ‘Bankrupt’ Paterson Schools*, EDUC. WK., Sept. 4, 1991, n.p.

414. See Paterson Public Schools, <http://www.paterson.k12.nj.us/boardofeducation.html> (last visited Apr. 19, 2009) (listing the names of the board members); Winnie Hu, *Still Lagging, Paterson Schools Stay Under New Jersey Control*, N.Y. TIMES, Aug. 1, 2007, at B3.

415. See Hu, *supra* note 414; Danielle Shapiro, North Jersey.com: State Keeps Control of Paterson District, Feb. 24, 2008, <http://www.northjersey.com/education/15915687.html>.

416. See New Am. Found., Fed. Educ. Budget Project, Paterson City Demographics, <http://www.febp.newamerica.net/k12/nj/3412690> (last visited Aug. 6, 2009).

417. See Catherine Gewertz, *News in Brief: Across the Nation: Camden, N.J., School Board Sues to Block Governance Changes*, EDUC. WK., Aug. 7, 2002, at 4 [hereinafter Gewertz, *Camden, N.J., School Board Sues*].

418. See Catherine Gewertz, *News in Brief: Across the Nation: N.J. Judge Blocks Takeover of Camden School Board*, EDUC. WK., Sept. 4, 2002, at 4 [hereinafter Gewertz, *N.J. Judge Blocks Takeover*]; Melanie Burney & Frank Kummer, *Cheating’s Roots Deep in Camden: Citing Pressure from Above, Teachers Said It Was a Culture that Went Back at Least to the 1980s*, PHIL. INQUIRER, Dec. 17, 2006, available at http://www.philly.com/inquirer/education/camden_schools/camscores

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-

17.html; *see also* The Camden Rehabilitation and Economic Recovery Act, S. 428, 210th Leg., Reg. Sess. §§ 2-3 (N.J. 2002).

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

420. *Id.*; *see also* Gewertz, *Camden, N.J., School Board Sues*, *supra* note 417. The State did take over the city of Camden itself, however, due to problems in the city. Assoc. Press, *State Takeover of Camden Extended*, N.J. REC., Sept. 17, 2007, at A03.

421. *See* New Am. Found., Fed. Educ. Budget Project, *Camden City Demographics*, <http://www.febp.newamerica.net/k12/nj/3402540> (last visited Aug. 6, 2009).

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

423. Drew Lindsay, *N.Y. Regents Oust Local Board, Take Over District*, EDUC. WK., Jan. 10, 1996, at A3; *see also* Bess Keller, *News in Brief: A State Capitals Roundup: N.Y. State Eyes District Takeover*, EDUC. WK., Mar. 28, 2001, at 20.

424. *See Under State Control*, EDUC. WK., Jun 12, 1996, n.p.

425. *See id.*

426. *See* John Gehring, *News in Brief: State-Appointed Board Takes Over N.Y. District*, EDUC. WK., June 5, 2002, at 17. This takeover was enabled by Senate Bill 6617 (2002). S. 6617, Reg. Sess. (N.Y. 2002).

427. *See e.g.*, John Gehring, *N.Y. District Braces for State Takeover*, EDUC. WK., May 15, 2002; *see also* Roosevelt Sch. Dist., The Bd. of Educ., http://www.rooseveltufsd.com/rufsd/boe_information.php (last visited Apr. 20, 2009) (discussing the composition of the board).

428. *See* Gehring, *supra* note 427.

429. *Id.*

minority student body,⁴³⁰ residents criticized the takeover as “an ominous blow to local control, [which] has come to symbolize the historical neglect of predominantly black districts.”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.”⁴³² Also, all members of the current board (four state-appointed and one elected by residents) are minorities.⁴³³

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

M. Ohio

Ohio took over the Cleveland Public Schools in 1995 because of several significant problems in the district.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.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

430. See New Am. Found., Fed. Educ. Budget Project, Roosevelt Union Free School District Demographics, <http://www.febp.newamerica.net/k12/ny/3624990> (last visited Aug. 6, 2009).

431. Gehring, *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.” *Id.*

432. *Id.*

433. See Roosevelt Sch. Dist., The Bd. of Educ.—Members, http://www.rooseveltufsd.com/rufsd/boe_members.php (last visited Apr. 20, 2009).

434. See Catherine Gewertz, *N.Y.C. Mayor Gains Control over Schools*, EDUC. WK., June 19, 2002, at 1.

435. *Id.*

436. N.Y. EDUC. LAW § 2590-h (McKinney 2007 & Supp. 2009).

437. See Gewertz, *supra* note 434.

438. *Id.*

439. See New Am. Found., Fed. Educ. Budget Project, New York City Public Schools Demographics, <http://www.febp.newamerica.net/k12/ny/3620580> (last visited Aug. 6, 2009).

440. See Ann Bradley, *‘Crisis’ Spurs State Takeover of Cleveland*, EDUC. WK., Mar. 15, 1995, at 1 (noting that a federal judge turned control of the school over to the State of Ohio).

441. *Id.*

program.”⁴⁴² In 1997, the State transferred control of the district to the mayor.⁴⁴³ The State gave the mayor the power to appoint the school board members.⁴⁴⁴ The mayor took control in 1998.⁴⁴⁵ The National Association for the Advancement of Colored People (NAACP) expressed concern that the takeover bill “was sponsored by two white, suburban lawmakers.”⁴⁴⁶ The political liaison for the Cleveland Teachers’ Union called the takeover “white colonialism.”⁴⁴⁷ There is no disputing that the district, which is over 80% minority,⁴⁴⁸ was in a major crisis at the time of the takeover.⁴⁴⁹ In 2002, Clevelanders voted to permanently keep mayoral appointment of the school board.⁴⁵⁰ 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.⁴⁵¹ The State of Ohio did not replace the local board.⁴⁵² About 78% of the district’s students are minorities.⁴⁵³

442. *Id.*

443. See Beth Reinhard, *Bill to Give Cleveland Mayor School Control Advances*, EDUC. WK., May 21, 1997, at 12 [hereinafter Reinhard, *Bill Advances*]. This control was subsequently made possible by House Bill 269. H.B. 269, 122d Legis., Reg. Sess. (Ohio 1998); see also Caroline Hendrie, *Plan Gives Mayor Control Over Cleveland Schools*, EDUC. WK., Oct. 9, 1996, at 3; Beth Reinhard, *Mayor to Get School Control in Cleveland*, EDUC. WK., July 9, 1997, at 1; Kerry A. White, *Mayor to Control Cleveland Schools After Judge Ends State Intervention*, EDUC. WK., Aug. 5, 1998, at 4.

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.

448. See New Am. Found., Fed. Educ. Budget Project, Cleveland Municipal School District Demographics, <http://www.febp.newamerica.net/k12/oh/3904378> (last visited Aug. 6, 2009).

449. See *supra* notes 440-48 and accompanying text.

450. See Martha T. Moore, *More Mayors Move to Take Over Schools*, USA TODAY, Mar. 20, 2007, available at http://www.usatoday.com/news/education/2007-03-20-cover-mayors-schools_N.htm; see also Catherine Gewertz, *Clevelanders to Weigh in on Mayoral Control of Schools*, EDUC. WK., Oct. 30, 2002, at 8 [hereinafter Gewertz, *Clevelanders to Weigh in*] (noting the then upcoming ballot decision of whether to retain mayoral control).

451. See Caroline Hendrie, *State Declares Fiscal Emergency in Cleveland Schools*, EDUC. WK., Nov. 6, 1996, at 3.

452. See *id.*; see generally Youngstown City Schools, <http://www.ycsd.k12.oh.us/> (last visited Apr. 19, 2009).

453. See New Am. Found., Fed. Educ. Budget Project, Youngstown City School District Demographics, <http://www.febp.newamerica.net/k12/oh/3904516> (last visited Aug. 6, 2009).

N. Pennsylvania

Pennsylvania took over the Chester-Upland School District in 1994 after declaring the district financially distressed.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.⁴⁵⁵ In 2007, based on financial improvements in the district, the State removed the district from fiscal distress status.⁴⁵⁶ However, given the district's persisting academic problems, the State appointed an empowerment board to control the district's academics.⁴⁵⁷ This district's student body is approximately 98% minority.⁴⁵⁸

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

454. See Catherine Gewertz, *It's Official: State Takes Over Philadelphia Schools*, EDUC. WK., Jan. 9, 2002, at 1 [hereinafter Gerwertz, *It's Official*]; Caroline Hendrie, *Panel Proposes Breaking up Phila. District*, EDUC. WK., Jan. 19, 1998, at 1; Robert C. Johnston, *Edison to Study Woes of Philadelphia Schools*, EDUC. WK., Aug. 8, 2001, at 3 [hereinafter Johnston, *Edison to Study Woes*]; Robert C. Johnston, *Pa. Targets 11 Districts for Takeover*, EDUC. WK., May 17, 2000, at 1; see also *A History of Intervention*, *supra* note 367.

455. See sources cited *supra* note 454.

456. See Press Release, Pa. Dep't of Educ., Secretary of Education Removes Chester Upland School District from Fiscal Distress, Appoints Empowerment Board (Mar. 8, 2007), available at <http://www.pdenewsroom.state.pa.us/newsrooms/cwp/view.asp?a=3&q=125660>.

457. *Id.*

458. See New Am. Found., Fed. Educ. Budget Project, Chester-Upland School District Demographics, <http://www.febp.newamerica.net/k12/pa/4205860> (last visited Aug. 6, 2009).

459. See Gewertz, *It's Official*, *supra* note 454; Catherine Gewertz, *State Review Panel Weighs in on Progress of Phila. Schools*, EDUC. WK., Apr. 6, 2005, n.p.

460. See Rick Ahl, *Edison Schools and the Philadelphia School District*, BROWN POL'Y REV., Fall 2006, n.p.; *What Helped Philadelphia?: Study Prompts Debate on Role of Outside Groups in Schools*, EDUC. WK., Feb. 12, 2007, at 5; Gewertz, *It's Official*, *supra* note 454; Catherine Gewertz, *Phila. to Keep Outside School Managers One More Year*, EDUC. WK., June 28, 2007, n.p.; Catherine Gewertz, *Phila. Lines up Outside Groups to Run Schools*, EDUC. WK., Aug. 7, 2002, at 1; Karla Scoon Reid, *Groups Named to Lead Dozens of Ailing Phila. Schools*, EDUC. WK., Apr. 24, 2002, at 10; Katrina Trinko, *Report: EMO School Students Improved at Faster Rate than School District Students*, THE BULLETIN, July 11, 2008, n.p.; Press Release, Edison Schools, Edison Schools Disputes Flawed Findings in Philadelphia Report: Facts Show Multiple Provider Model Has Dramatically Improved Philadelphia Schools (Feb. 1, 2007), available at <http://www.edisonschools.com/edison-schools/edison-news/edison-schools-disputes-flawed-findings-in-philadelphia-report>; see also Nat'l Council of Educ. Providers, Edison School, Inc., <http://www.educationproviders.org/members/edison/htm> (last visited Apr. 20, 2009).

461. See School Reform Commission—The School District of Philadelphia, <http://www>.

commission members are appointed by the governor with the mayor appointing the other two.⁴⁶² Over 86% of the district's students are minorities.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 2000.⁴⁶⁴ The board of control, appointed by the mayor, runs the district under the direction of the mayor.⁴⁶⁵ However, there is also a local elected board whose members meet once a year to approve tax plans.⁴⁶⁶ Just under 95% of the district's student population are minorities.⁴⁶⁷ Declining enrollment and fiscal crisis led to the State's appointment of a board of control for the Duquesne City School District in 2000.⁴⁶⁸ The district's only high school was closed in 2007 as persisting fiscal challenges made continued operation of the high school infeasible.⁴⁶⁹ Students now attend high school in the West Mifflin Area and East Allegheny school districts.⁴⁷⁰ More than 93% of the district's students are minorities.⁴⁷¹

phila.k12.pa.us/src/ (last visited Apr. 20, 2009).

462. See 24 PA. CONS. STAT. § 6-696 (West 1992 & Supp. 2008); BROWN UNIVERSITY, ANNENBERG INST. PHILADELPHIA 1, available at http://www.annenberginstitute.org/pdf/EKF06_Philadelphia.pdf (last visited Apr. 20, 2009); see also School Reform Commission, *supra* note 461.

463. See New Am. Found., Fed. Educ., Budget Project, Philadelphia City School District Demographics, <http://www.febp.newamerica.net/k12/pa/4218990> (last visited Aug. 6, 2009).

464. See Jessica L. Sandham, *Mayoral Takeover of Schools off to Tumultuous Start in Pa. Capital*, EDUC. WK., Jan. 10, 2001, at 5.

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.hbgds.k12.pa.us/2043906322912/site/default.asp> (listing the members of the board of control).

466. See J.D. LaRock, *Harrisburg: A Mayor Making Strides in Public Education*, U.S. MAYOR NEWSPAPER, July 14, 2003, available at http://www.usmayors.org/uscm/us_mayor_newspaper/documents/07_14_03/harrisburg.asp; Harrisburg School District, *supra* note 465 (listing members of the board of directors).

467. See New Am. Found., Fed. Educ. Budget Project, Harrisburg City School District Demographics, <http://www.febp.newamerica.net/k12/pa/4211580> (last visited Aug. 6, 2009).

468. See Press Release, Pa. Dept. of Educ., Distinguished Educator Audrey Utley Named to Lead Duquesne Board of Control (Mar. 17, 2008), available at <http://www.pdenewsroom.state.pa.us/newsroom/cwp/view.asp?Q=139184&A=3>.

469. Celanie Polanick, *When the State Steps in: Boards of Control*, VALLEY NEWS DISPATCH (Pa.), Mar. 30, 2008, available at http://www.pittsburghlive.com/x/pittsburghtrib/news/print_559802.html.

470. *Id.*

471. See New Am. Found., Fed. Educ. Budget Project, Duquesne City School District Demographics, <http://www.febp.newamerica.net/k12/pa/4208010> (last visited Aug. 6, 2009).

Due to financial problems, the State has control of the Clairton City School District a few times, with the first ending in 1988⁴⁷² and another for six years ending in 1999.⁴⁷³ The district is now under local control.⁴⁷⁴ Approximately 67% of the students in the district are minorities.⁴⁷⁵ The State also placed the Sto-Rox School District under a board of control in 1992 due to financial troubles in the district.⁴⁷⁶ Pennsylvania returned this district to local control in 1999.⁴⁷⁷ A history of academic problems led to State control of the district again in 2000.⁴⁷⁸ About 41% of Sto-Rox School District's students are minorities.⁴⁷⁹ 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.⁴⁸⁰

O. Rhode Island

Rhode Island took over the Central Falls School District in 1991 because of growing fiscal problems in the district.⁴⁸¹ In fact, this district asked that the State take over, becoming the first district to do so in the nation.⁴⁸² A tentative agreement giving the State control was signed in 1991, with the State assuming

472. See Karen Diegmüller, *Hard Times*, EDUC. WK., Nov. 24, 1993, at 1; Press Release, Pa. Assoc. of Rural and Small Schs., Equity Suit Updates from the Courtroom: Day 2 (Jan. 7, 1997), available at http://www.parss.org/_trial/day02.asp.

473. See Eleanor Chute, *A Chance for Change: Rebuilding a School District Means Changing the 'Duquesne Way,'* PITT. POST-GAZETTE, Feb. 19, 2001 available at <http://www.post-gazette.com/regionstate/20010219duquesnedaytworeg2.asp>; Diegmüller, *supra* note 472; Rona Kobell, *Clairton, Sto-Rox School Districts Are Taken off the 'Distressed' List*, PITT. POST-GAZETTE, Feb. 19, 1999, available at <http://www.post-gazette.com/regionstate/19990219distressed7.asp>; Duquesne City: Special Board Named to Deal with Distressed School District, TROUBLED CO. REPORTER, Oct. 16, 2000, available at http://bankrupt.com/TCR_Public/001016.MBX.

474. See Brian David, *State Official Calls for Financial Incentives to Merge School Districts*, PITT. POST-GAZETTE, Mar. 8, 2007, available at <http://www.post-gazette.com/pg/07067/767653-54.stm>; see generally Clairton City School District, <http://www.clairton.k12.pa.us> (last visited Apr. 20, 2009).

475. See New Am. Found., Fed. Educ. Budget Project, Clairton City School District Demographics, <http://www.febp.newamerica.net/k12/pa/4206030> (last visited Aug. 6, 2009).

476. See Kobell, *supra* note 473.

477. *Id.*

478. See Brian David, *Troubled District Still Can Offer Excellence, Superintendent Says*, PITT. POST-GAZETTE, Sept. 6, 2007, available at <http://www.post-gazette.com/pg/07249/814877-57.stm>.

479. See New Am. Found., Fed. Educ. Budget Project, Sto-Rox School District Demographics, <http://www.febp.newamerica.net/k12/pa/4222830> (last visited Aug. 6, 2009).

480. See *supra* notes 454-79 and accompanying text.

481. See Karen Diegmüller, *Troubled R.I. District Becomes First to Request State Takeover*, EDUC. WK., Apr. 3, 1991, n.p.

482. *Id.*

full control a year later.⁴⁸³ The district remains under state control.⁴⁸⁴ Over 80% of the district's students are minorities.⁴⁸⁵

P. South Carolina

Academic problems in the Allendale County School District led to the 1999 South Carolina takeover of the district.⁴⁸⁶ At first a few people in the district opposed the takeover, with one person referring to the State Superintendent as "Hitler."⁴⁸⁷ However, at a community meeting on the takeover, most of those present did not question the takeover.⁴⁸⁸ 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.⁴⁸⁹ In 2007, the State returned the district to local control.⁴⁹⁰ Over 96% of the district's students are minorities.⁴⁹¹

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.⁴⁹² In the same year, the State returned the district to local control.⁴⁹³ Some believe that protests and

483. *Id.*

484. See William R. Holland, Letter to the Editor, *Central Falls Schools Still Need Help*, PROVIDENCE J., Apr. 29, 2007, available at http://www.projo.com/opinion/letters/content/CT_holland29_04-29-07_3F593H9.168bba3.html (letter from interim superintendent outlining the continuing issues and the continuing State control); see generally Central Falls School District, www.cfschools.net (last visited Apr. 20, 2009).

485. See New Am. Found., Fed. Educ. Budget Project, Central Falls School District Demographics, <http://www.febp.newamerica.net/k12/ri/4400120> (last visited Aug. 6, 2009).

486. See Alan Richard, *Starting from Scratch*, EDUC. WK., Oct. 13, 1999, at 30.

487. *Id.*

488. See *id.*

489. *Id.*

490. See Diette Courrégé, *Allendale Gets Its Schools Back*, CHARLESTON POST & COURIER, July 27, 2007, available at http://www.charleston.net/news/2007/jul/22/allendale_gets_its_schools_back11178/?print; see also *State Won't Take Over Allendale Schools Again*, AP ALERT, July 10, 2008. Problems persist in the district but in July 2008 the state superintendent opted not to takeover the district again, though he did leave open the possibility. *Id.* He did add, however, that takeover of districts would be a last resort. *Id.*

491. See New Am. Found., Fed. Educ. Budget Project, Allendale County School District Demographics, <http://www.febp.newamerica.net/k12/sc/4500750> (last visited Aug. 6, 2009).

492. See Cindy Ramos, *TEA Takes Over Somerset—Fearing Violence, Agency Steps in to Monitor Troubled District*, SAN ANTONIO EXPRESS-NEWS, Feb. 22, 1995, at 1A, available at 1995 WLNR 5430810.

493. See Cindy Ramos, *TEA Bows out at Somerset—Control of Embattled School District to*

challenges, fueled by the State taking away control from the elected board, sparked the brevity of the State takeover.⁴⁹⁴ However, the State explained the brevity as a response to quick improvements made in the few months of the takeover.⁴⁹⁵ The district has about an 84% minority student body.⁴⁹⁶

The State also took over Wilmer-Hutchins Independent School District in 1996 because of cronyism, mismanagement, and academic and fiscal problems.⁴⁹⁷ The State appointed a management team for the district.⁴⁹⁸ The district regained control in 1998.⁴⁹⁹ However, problems persisted in the district, including sexual harassment allegations forcing a superintendent to resign,⁵⁰⁰ State investigations of inaccurate data on dropouts,⁵⁰¹ low academic achievement,⁵⁰² and abysmal financial crisis,⁵⁰³ leading the state comptroller to implore the district to ask for a State takeover.⁵⁰⁴ 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 mismanagement⁵⁰⁵ and document tampering in a criminal investigation, even leading to grand jury indictments.⁵⁰⁶

Be Passed to New Board, SAN ANTONIO EXPRESS-NEWS, May 6, 1995, at 1C, available at 1995 WLNR 5432087.

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

495. *Id.*

496. See New Am. Found., Fed. Educ. Budget Project, Somerset Independent School District Demographics, <http://www.febp.newamerica.net/k12/tx/4840740> (last visited Aug. 6, 2009).

497. See Caroline Hendrie, *Ill Will Comes with Territory in Takeovers*, EDUC. WK., June 12, 1996, at 1 (discussing the problems that led to the eventual takeover); Jen Sansbury, *DeKalb's Finalist for Superintendent in Alabama, Brown Wins Over Detractors*, ATL. J.-CONST., Mar. 4, 2002, at B1, available at 2002 WLNR 4647379 (mentioning the 1996 Texas Education Agency's takeover of Wilmer-Hutchins).

498. See Sansbury, *supra* note 497.

499. See *Not Measuring up: A Look at Wilmer-Hutchins ISD*, DALLAS MORNING NEWS, <http://www.dallasnews.com/sharedcontent/dws/img/08-04/0822wh.pdf> (last visited Apr. 20, 2009) [hereinafter *Not Measuring up*]; Jim Watts, *Texas: School Takeover Seen*, BOND BUYER, Nov. 9, 2004, at 31 [hereinafter Watts, *Texas: School Takeover*].

500. *Not Measuring up*, *supra* note 499.

501. *Id.*

502. See Jim Watts, *Texas Officials Close Wilmer-Hutchins ISD*, BOND BUYER, June 29, 2005, at 4 [hereinafter Watts, *Texas Officials Close*] (noting low test scores and allegations of teacher's assisting students in cheating on exams).

503. See *Texas News Briefs: State Paving Way for Possible Takeover of Troubled District*, AP ALERT, Aug. 31, 2004; Watts, *Texas Officials Close*, *supra* note 502.

504. See *Not Measuring up*, *supra* note 499.

505. See Jim Watts, *School District Bond Election Scheduled Despite Investigation*, BOND BUYER, Sept. 13, 2004, at 43.

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 District⁵¹¹ 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

507. See Press Release, Tex. Educ. Agency, Board of Managers and New Superintendent to be Installed in Wilmer-Hutchins ISD (May 12, 2005), available at <http://www.tea.state.tx.us/press/whmanagers.html> [hereinafter Press Release, Board of Managers].

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.

510. Watts, *Texas Officials Close*, *supra* note 502.

511. See Press Release, Tex. Educ. Agency, Commissioner Orders Annexation of Wilmer-Hutchins to Dallas ISD, Effective July 2006 (Sept. 2, 2005), available at <http://www.tea.state.tx.us/press/wilmerhutchinsannex.html>.

512. See New Am. Found., Fed. Educ. Budget Project, Dallas Independent School District Demographics, <http://www.febp.newamerica.net/k12/tx/4816230> (last visited Aug. 6, 2009).

513. Joshua Benton, *A Call for Wilmer-Hutchins' Reopening: Group Seeks to Revive Fallen District, Says Area Deserves Its Own Schools*, DALLAS MORNING NEWS, July 2, 2007, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/070207dnmetwilmeryear.377659b.html>.

514. *Id.*

515. See *Not Measuring up*, *supra* note 499.

516. See Sally K. Gifford, *W. Va. Board Assumes Control of District for 1st Time*, EDUC. WK., Sept. 9, 1992, n.p.; David J. Hoff, *W. Va. Leaves District Better Than It Found It*, EDUC. WK., Sept. 18, 1996, at 17.

517. Hoff, *supra* note 516.

over maintenance and transportation,⁵¹⁸ while the State was responsible for “personnel, curriculum budget, and school calendar.”⁵¹⁹ Keeping the elected board in place helped minimize local opposition to the takeover.⁵²⁰ In 1995, the local board regained control over the school calendar and the budget.⁵²¹ Finally, in 1996, the State restored full control of the district to the local board.⁵²² Over 96% of the district’s students are white.⁵²³

In 2000, West Virginia took over the Lincoln County School District after the State found fiscal, academic, and personnel problems in the district.⁵²⁴ The State retained the local board but the significant responsibilities for the district were vested in the State.⁵²⁵ Nearly 100% of the district’s students are white.⁵²⁶ The State took over the Mingo County Schools in 1998;⁵²⁷ a review found “a total of 172 deficiencies in Mingo County school operations,”⁵²⁸ including “budget deficits, low student achievement and a lack of leadership.”⁵²⁹ The State restored control to the elected board in December 2002.⁵³⁰ 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.⁵³¹ Approximately 3% of the district is minority.⁵³² Fiscal and personnel problems, as well as mismanagement,

518. *Id.*

519. *Id.*

520. *See id.*

521. *Id.*

522. *Id.*

523. *See* New Am. Found., Fed. Educ. Budget Project, Logan County School District Demographics, <http://www.febp.newamerica.net/k12/wv/5400690> (last visited Aug. 6, 2009).

524. *See* Bess Keller, *West Virginia Seizes Control of Its Third School District*, EDUC. WK., June 21, 2000, at 22.

525. *Id.*

526. *See* New Am. Found., Fed. Educ. Budget Project, Lincoln County School District Demographics, <http://www.febp.newamerica.net/k12/wv/5400660> (last visited Aug. 6, 2009).

527. *See* Dianne Weaver, *ED-WATCH: State Takes Over Hampshire Schools*, HUR HERALD (W. Va.), Jan. 25, 2006, available at http://www.hurherald.com/cgi-bin/db_scripts/articles?Action=user_view&db=hurheral_articles&id=17808; Press Release, W. Va. Dep’t of Educ., Mingo County Regains Control of School System (Dec. 11, 2002), available at <http://wvde.state.wv.us/news/539> [hereinafter Press Release, Mingo County Regains Control].

528. Weaver, *supra* note 527.

529. *See* Press Release, Mingo County Regains Control, *supra* note 527.

530. *See* Jim Lees, *The Mingo County School Takeover*, THE LEG.: W. VA. SCH. BDS. ASSOC., Nov. 30, 2005, at 20; Press Release, Mingo County Regains Control, *supra* note 527.

531. Weaver, *supra* note 527; *see also* Alan Richard, *West Virginia Governor Cool to School Consolidation*, EDUC. WK., April 13, 2005, at 28; Press Release, W. Va. Dep’t of Educ., Supreme Court Upholds State Intervention in Mingo County (Oct. 10, 2006), available at <http://wvde.state.wv.us/news/1294>.

532. *See* New Am. Found., Fed. Educ. Budget Project, Mingo County School District Demographics, <http://www.febp.newamerica.net/k12/wv/5400900> (last visited Aug. 6, 2009).

led to West Virginia's takeover of the Hampshire County Schools in 2006.⁵³³ A year later, the State returned control of the district to the elected board.⁵³⁴ Approximately 2% of the district's students are minorities.⁵³⁵

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 2001.⁵³⁶ 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.⁵³⁷ According to the report, "extraordinary circumstances exist[ed] in the county that constitute[d] major impediments to the provision of education programs and services."⁵³⁸ In fact, district leadership declared that they were no longer able to run the district.⁵³⁹ The minority student body of the district is 12%.⁵⁴⁰

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.

533. See Press Release, W. Va. Dep't of Educ., Hampshire County Schools to Return to Local Control (May 10, 2007), available at <http://wvde.state.wv.us/news/1427/>.

534. *Id.* (quoting the auditor's report).

535. See New Am. Found., Fed. Educ. Budget Project, Hampshire County School District Demographics, <http://www.febp.newamerica.net/k12/wv/5400420> (last visited Aug. 6, 2009).

536. See Lisa Fine, *Troubled West Virginia District Invites State to Take Over*, EDUC. WK., Nov. 21, 2001, at 9.

537. See Press Release, W. Va. Dep't of Educ., State Board of Education Takes Control of McDowell County School System (Nov. 8, 2001), available at <http://wvde.state.wv.us/news/383/>.

538. *Id.* (quoting the auditor's report).

539. See Fine, *supra* note 536.

540. See New Am. Found., Fed. Educ. Budget Project, McDowell County School District Demographics, <http://www.febp.newamerica.net/k12/wv/5400810> (last visited Aug. 6, 2009). The Lincoln, McDowell, and Mingo County Schools appear to remain under State control as of this writing. See W. Va. Dep't of Educ., Meeting Minutes (Apr. 10, 2008), available at <http://wvde.state.wv.us/boe-minutes/2008/wvbeminutes041008.html> (noting the State Superintendent's Report on the three districts under State control); W. Va. Dep't of Educ., Meeting Minutes (May 15, 2008), available at <http://www.wv.us/2008/wvbeminutes051508.html> (noting the State Superintendent's Report of continued evaluation of the three districts); W. Va. Dep't of Educ., Meeting Minutes (Aug. 14, 2008), available at <http://wvde.state.wv.us/wvbeminutes081408.html>.

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.”⁵⁴¹ 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,⁵⁴² and rational basis.⁵⁴³ 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.’”⁵⁴⁴ 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.⁵⁴⁵ The United States Supreme Court has recognized race as a suspect class⁵⁴⁶ and the right to vote as a fundamental right.⁵⁴⁷ 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.⁵⁴⁸ 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.

543. *Kadmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 457-59 (1988) (discussing and outlining the tests for strict scrutiny and rational basis review).

544. *Id.* at 457.

545. See *Roe v. Wade*, 410 U.S. 113, 155 (1973).

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).

547. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) (“[T]he right to vote is too precious, too *fundamental* to be so burdened or conditioned.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (dicta).

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

on fundamental rights nor suspect classes; the classification will be upheld “if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.”⁵⁴⁹

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.⁵⁵⁰ The United States Supreme Court has stated, however, that territorial uniformity is not a constitutional requirement under the Equal Protection Clause.⁵⁵¹ 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.”⁵⁵² 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.⁵⁵³ 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.”⁵⁵⁴

The United States District Court for the District of Maryland held similarly in *Welch v. Board of Education*.⁵⁵⁵ 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.⁵⁵⁶ The federal district court found that the classification was not suspect and did not interfere with a fundamental right.⁵⁵⁷ Thereupon, the court ruled that strict scrutiny was inapplicable, and instead it applied the rational basis standard of review in upholding the classification.⁵⁵⁸ The *Welch* court relied on the United States Supreme Court’s holding in *Sailors*

fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.”).

549. *Id.*

550. See Alicia Sikkenga, Note, *Detroit School Reform: A Necessary Means to Improve the Schools and End the Cycle of Mismanagement*, 77 U. DET. MERCY L. REV. 321, 325 (2000).

551. *Fort Smith Light & Traction Co. v. Bd. of Improvement*, 274 U.S. 387, 391 (1927).

552. *Id.*

553. *See id.*

554. *McGowan v. Maryland*, 366 U.S. 420, 427 (1961).

555. 477 F. Supp. 959 (D. Md. 1979).

556. *Id.* at 964.

557. *Id.*

558. *Id.* at 964-65.

*v. Board of Education (Sailors II)*⁵⁵⁹ to determine whether there is a fundamental right to vote for school board members.⁵⁶⁰

In *Sailors v. Board of Education (Sailors I)*,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.⁵⁶² The plaintiffs also alleged that the statute violated the one person, one vote principle⁵⁶³ by giving one vote to each school district despite the wide variations in the populations of the school districts.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.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.⁵⁶⁶ Instead, a delegate chosen from among the elected members of each district's school board voted for the county school board members.⁵⁶⁷ The members of the county school board did not have to be members of any of the school districts' school boards.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.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.”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.’”⁵⁷¹

559. 387 U.S. 105 (1967).

560. *Welch*, 477 F. Supp. at 964-65.

561. 254 F. Supp. 17 (W.D. Mich. 1966), *aff'd*, 387 U.S. 105 (1967).

562. *Id.* at 18.

563. *See generally* *Reynolds v. Sims*, 377 U.S. 533 (1964) (establishing the one person, one vote principle as a matter of constitutional law).

564. *Sailors I*, 254 F. Supp. at 18.

565. *See id.* (citing Mich. Comp. Laws §§ 340.291-340.330x (repealed 1977)).

566. *Id.*

567. *Id.* at 18-19; *Sailors v. Bd. of Educ. (Sailors II)*, 387 U.S. 105, 106-07 (1967).

568. *See id.*

569. *Sailors I*, 254 F. Supp. at 19.

570. *Sailors II*, 387 U.S. at 107-08 (quoting *Reynolds v. Sims*, 377 U.S. 533, 575 (1964)).

571. *Id.* at 108 (quoting *Reynolds*, 377 U.S. at 575).

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.⁵⁷² 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.”⁵⁷³ In essence, the Court ruled that there was no fundamental right to vote for school board members.⁵⁷⁴ 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.⁵⁷⁵ 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.⁵⁷⁶

Building on the above reasoning, the Supreme Court held that there is no fundamental right to vote for local school boards.⁵⁷⁷ The Court applied rational basis review, rather than strict scrutiny.⁵⁷⁸ 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.⁵⁷⁹ It must be noted that in precedent, the Court ruled that the Federal Constitution protects the right to vote in federal and state elections.⁵⁸⁰ However, a key distinction arises from the fact that the right to vote in *local* elections is the State’s prerogative,⁵⁸¹

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).

573. *Sailors II*, 387 U.S. at 108.

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.

576. See *Van Zanen v. Keydel*, 280 N.W.2d 535, 537-39 (Mich. Ct. App. 1979) (declining to limit *Sailors II* to solely administrative functions, and *Sailors II*’s holding applying to a metropolitan authority).

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

578. *Id.*

579. See, e.g., *Reynolds v. Sims*, 377 U.S. 533, 560-62 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 369-71 (1886).

580. *Reynolds*, 377 U.S. at 554-77.

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.”⁵⁸² 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.*”⁵⁸³ 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.*”⁵⁸⁴ 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.”⁵⁸⁵ 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.⁵⁸⁶ Essentially, there is a fundamental right to equal access to participation in elections.⁵⁸⁷

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.”).

585. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966).

586. *See Dunn*, 405 U.S. at 336; *Harper*, 383 U.S. at 665.

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.⁵⁸⁸ The Court applied this reasoning in *Welch* and many other cases since *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*."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 *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 *Sailors [II]*, the need to experiment seemingly was the only basis relied upon to satisfy the test of rational nexus."⁵⁹⁰ The district court acknowledged that there is no fundamental right to vote for school board members.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.⁵⁹²

In addition, the Supreme Court held in *Sailors II* that the one person, one vote principle is only relevant to elective systems, not appointive systems.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 *Sailors II* and *Hadley v. Junior College District of Metropolitan Kansas City*⁵⁹⁴ in its declaration that the one person, one vote doctrine is of no relevance whatsoever to appointive boards.⁵⁹⁵ In essence, the State can choose to replace an elective system for school board members with an appointive system.⁵⁹⁶

588. *Sailors v. Bd. of Educ. (Sailors II)*, 387 U.S. 105, 110-11 (1967).

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).

590. *Welch v. Bd. of Educ.*, 477 F. Supp. 959, 965 (D. Md. 1979).

591. *Id.* at 964-65.

592. *Id.*

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

594. 397 U.S. 50 (1970).

595. *Sovak v. Bd. of Educ.*, No. 97 CIV. 7407(HB), 1998 WL 470507, at *1 n.4 (S.D.N.Y. Aug. 11, 1998), *aff'd*, No. 98-9287, 1999 WL 335380 (2d Cir. May 20, 1999); *see also* *Fumarolo v. Chicago Bd. of Educ.*, 566 N.E.2d 1283, 1292-93, 1302-03 (Ill. 1990) (discussing *Hadley*, 397 U.S. 50, and *Sailors II*, 387 U.S. 105, and concluding that the State may determine to appoint rather than permit election of a local board).

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.⁵⁹⁷ 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.⁵⁹⁸ Indeed, the Supreme Court has also given states latitude to experiment with a hybrid system—combining appointive and elective systems for local school boards.⁵⁹⁹

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*.⁶⁰⁰ In fine, the Court declared that government functions “cannot easily be classified in . . . neat categories.”⁶⁰¹ 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.⁶⁰² 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.⁶⁰³

In *Van Zanen v. Keydel*,⁶⁰⁴ 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.⁶⁰⁵ The court held that substituting an appointive system for an elective system is not a violation of the Equal Protection Clause.⁶⁰⁶ 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.”⁶⁰⁷ 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*⁶⁰⁸ 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

597. See *Mixon v. Ohio*, 1999 FED App. 0347P, 193 F.3d 389, 402-03 (6th Cir.)

598. *Id.*

599. *Sailors II*, 387 U.S. at 111 (noting that there is nothing unconstitutional with “experimenting”).

600. See *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 397 U.S. 50, 55-56 (1970).

601. *Id.* at 56 (quoting *Avery v. Midland County*, 390 U.S. 474, 482 (1968)).

602. *Id.* at 58-59.

603. *Id.* at 58.

604. 280 N.W. 2d 535 (Mich. Ct. App. 1979).

605. *Id.* at 536, 538-39.

606. *Id.* at 539.

607. *Id.*

608. 201 N.E.2d 111 (Ill. 1964).

legislature.”⁶⁰⁹

In fact, most state constitutions have no provision for local school districts or local control of education;⁶¹⁰ constitutionally, the responsibility for education lies with the State.⁶¹¹ The very small minority of states that do constitutionally provide for local control of education do not provide for local school boards.⁶¹² Still, the tradition in America has been for States to delegate governance of schools to local school boards.⁶¹³ 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.⁶¹⁴

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.⁶¹⁵ 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.⁶¹⁶ 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.⁶¹⁷

Furthermore, the Supreme Court has ruled that “[w]hen racial classifications are explicit [in a law], no inquiry into legislative purpose is necessary”⁶¹⁸ and

609. *Id.* at 116 (quoting *People v. Deatherage*, 81 N.E.2d 581, 588 (Ill. 1945)).

610. *See* Saiger, *supra* note 7, at 1846-47.

611. *Id.* at 1846.

612. *Id.*

613. *Id.* at 1846-47.

614. *Id.* at 1847.

615. *See supra* notes 551-609 and accompanying text.

616. *See* *Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 397 U.S. 50, 58-59 (1970); *Sailors v. Bd. of Educ. (Sailors II)*, 387 U.S. 105, 108 (1967). For an overview of *Sailors II*, see *supra* notes 561-83 and accompanying text. For an overview of *Hadley*, see *supra* notes 600-03 and accompanying text.

617. *See* *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999) (stating that “all laws that classify citizens on the basis of race, . . . , are constitutionally suspect and must be strictly scrutinized”); *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (noting that it is constitutionally suspect to pursue a legislative action “because of” that action’s “adverse effects upon an identifiable group”).

618. *Hunt*, 526 U.S. at 546.

such laws must be strictly scrutinized.⁶¹⁹ None of the State takeover laws examined in Part I could be deemed to have explicit racial classifications,⁶²⁰ except, arguably, those state laws that allow takeovers in cities with large populations.⁶²¹ For example, an Illinois provision applies to cities with over 500,000 inhabitants,⁶²² which means the law only affects Chicago, a high-minority school district.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,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.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

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)).

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.

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.*

622. 105 ILL. COMP. STAT. ANN. 5/34-1 (West 2006).

623. See City Population, http://www.citypopulation.de/USA-Illinois.html#Stadt_gross (last visited May 13, 2009).

624. *Id.*

625. 105 ILL. COMP. STAT. ANN. 5/34-1.01 (West 2006).

legislation.”⁶²⁶ 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.”⁶²⁷ 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.”⁶²⁸

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*⁶²⁹ that “[its] cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact.”⁶³⁰ The Court also pointed out that it had

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.”⁶³¹

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.”⁶³²

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.⁶³³ If those options are ineffective, a court might be hard-pressed to

626. *Latham v. Bd. of Educ.*, 201 N.E.2d 111, 114 (Ill. 1964) (quoting *Apex Motor Fuel Co. v. Barrett*, 169 N.E.2d 769, 775 (Ill. 1960)).

627. *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999) (internal quotation marks and citation omitted).

628. *Latham*, 201 N.E.2d at 114.

629. 426 U.S. 229 (1976).

630. *Id.* at 239.

631. *Id.* at 240-41 (quoting *Jefferson v. Hackney*, 406 U.S. 535, 548 (1972)).

632. *Id.* at 241 (quoting *Alexander v. Louisiana*, 405 U.S. 625, 632 (1972)).

633. It must also be noted that flexibility also exists for various jurisdictions pursuant to the NCLB section providing for State takeovers, which states:

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

[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.

20 U.S.C. § 6316(d) (2006).

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,⁶³⁹ 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.⁶⁴⁰ 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.⁶⁴¹ 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

639. *See Sailors v. Bd. of Educ. (Sailors II)*, 387 U.S. 105, 107-08 (1967).

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 Brateahl, 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

655. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).