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## **School Choice as a Civil Right**

### **The Political Construction of a Claim and Its Implications for School Desegregation**

Over the past two decades, media outlets, advocates, and advocacy-based researchers have often described school choice as the sole remaining civil rights issue. While there is ideological diversity undergirding the school choice movement, conservative choice adherents typically believe the state should assume a diminished role in the provision of public education, clearing the way for what they argue is a more competitive and accountable private sector to provide educational services. While belief in the superiority of markets is paramount to these choice advocates, they tend to argue that the primary reason to expand school choice is because of its benefits for poor parents of color. They often claim that justice and even morality are on their side, and they embrace linguistic signifiers of the civil rights movement, such as school choice's role in ensuring democracy, full citizenship, and equal educational opportunity. At the same time, they often privilege specific school choice policies,<sup>1</sup> such as vouchers and charter schools, and place less emphasis on other school choice plans, such as magnet schools and voluntary transfer plans, which were originally enacted to achieve desegregation.

The association between the market-based choice and civil rights has in some ways become so sacrosanct that opponents of market-based school choice have been lambasted by choice advocates as being opposed to equal educational opportunity. For example, in 2004, when Congress was considering voucher legislation for the Washington, D.C., public schools, the advocacy group D.C. Parents for Choice released an advertisement comparing Senator Edward Kennedy's opposition to vouchers to Bull Connor's use of dogs to attack civil rights demonstrators during one of the most violent moments in the modern civil rights movement. Other choice advocates have questioned the political legitimacy of traditional civil rights organizations, claiming that they fail to represent African Americans' desire for school choice.<sup>2</sup> The purpose of this essay is not simply to critique these claims<sup>3</sup> but rather to examine their origins and to consider their interaction with liberal or progressive advocacy

and developments in law, social policy, and educational reform. This essay is a sociopolitical analysis of a central question: *Some four decades after it was used as a tool to preserve racial segregation in public education, how did school choice come to be constructed as a civil right?*<sup>4</sup> Drawing from historical, political, and sociological literatures as well as legal documents generated by advocacy organizations, I find three social and political factors have functioned together to construct market-based choice specifically as a civil right for poor parents of color. These include (1) conservative political framing coupled with progressive critiques of the state, (2) legal jurisprudence combined with the expansion of the suburbs and the subsequent race and social class isolation of many large urban school districts, and (3) the significant support of market-based choice by philanthropies, especially of charter school expansion and development.

There is significant historical and policy overlap between each of these factors. As I will discuss in the sections that follow, the first factor is the successful conservative framing of school choice as a civil right as one part of a broader neoliberal effort to diminish the state's role in providing public education; the ultimate goal of the agenda is a universal voucher and choice program that dismantles existing educational bureaucracies and teachers' unions. A part of this frame includes increasing the emphasis on "excellence" through the use of standards, testing, and accountability as measures of educational equity. The conservative reframing of equity focuses on expanding choice and high-stakes testing measures. This reframing of equity to look almost exclusively on outputs has led to a focus on replicating what has come to be termed "what's working" schools—often characterized by attempts to replicate high-achieving racially homogenous schools. Some liberals or progressives and communities of color support this policy direction, arguing that since urban school districts are already segregated and struggling, the expansion of high-quality schools of choice will give them access to better schools regardless of their racial homogeneity.

The second factor is that the courts have helped set boundaries for what kinds of choices are available to parents, and what tools school districts can use when establishing student assignment plans. While the courts have limited possibilities for school desegregation to be implemented by restricting the use of race in student assignments, geospatial alterations have resulted in racially identifiable suburbs and cities. With strict limits on the possibility of interdistrict choice and desegregation plans,<sup>5</sup> advocates are assured that any choice plan will keep urban students in their home districts, preserving what are often more highly resourced and white suburban school districts' demographic profiles.

A third factor helping to frame school choice as a civil right is related to the first: a recent group of philanthropists is supporting a rapid expansion of charter school reform in urban districts—specifically charter schools that are run by private management organizations—effectively driving public policy in key educational “markets” that serve high-poverty communities of color.

After discussing the essay’s framework and each of these sociopolitical influences, I explore the policy and political implications of the construction of school choice as a civil right for racial integration in public schools across the United States. While the construction of school choice as a civil right has helped to diminish the stature of school desegregation as an educational reform tool and remedy for educational inequality, there remain opportunities for multiracial advocacy coalitions to renew and reconsider a desegregation reform agenda within the broader school choice movement.

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## **Conceptual Framework**

This essay joins linguistic analyses of political framing<sup>6</sup> with a consideration of political values and the sense-making in which citizens engage as they seek to realize public policy agendas in seemingly paradoxical ways. It assumes that social and political dynamics influence the framing of public policy, which is also informed by ideology, values, racial hierarchies, political power, and past social policy. As Deborah Stone argues, ideas and power work together to establish policy action, and the struggle over the multiple meanings of these ideas creates spaces for democratic action: “Political conflict is never simply over material conditions and choices, but over what is legitimate. The passion in politics comes from conflicting senses of fairness, justice, rightness, and goodness. . . . Political fights are conducted with money, with rules, with votes, and with favors, to be sure, but they are conducted above all with words and ideas.”<sup>7</sup>

Under this frame, the association of school choice with civil rights emerges as a result of long-standing power struggles over American political and social values. Given this interaction, the school choice–civil rights claims must also be considered against their particular social and political contexts. This framing helps us to acknowledge the presence and importance of liberal or progressive support for school choice as well as the influence of conservative marketization of civil rights rhetoric in constructing choice as a civil rights claim. As a result of this interaction, much of the traditional discourse of equity and equality established in the civil rights era remains, but it is often removed from

substantive critique of the distribution of social, political, and economic resources, and it tends to be silent on issues of racial segregation.<sup>8</sup>

Despite school choice reformers' silence on broader social inequality, African American and Latino support of contemporary school choice forms, whether it stems from progressive, conservative, or neoliberal philosophical commitments, makes sense. African Americans have a long history, after all, of utilizing alternatives to public education; have a deep-seated dissatisfaction with their public schooling options, as well as a shared history in which they along with Latino students, bore most of the burden for the implementation of school desegregation; and often felt the brunt of within-school segregationist tactics.<sup>9</sup> For desegregation supporters who also value increasing options in public schooling, these experiences and perspectives present an opportunity to engage parental frustrations with public education and join them with broader, community-based grassroots efforts not only to reform schools, but also to create more equitable and responsive social policies in general.<sup>10</sup>

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### **Political Ideology, Values, and Framing**

School choice has had a complicated history with race in American society. African Americans have embraced alternative schooling forms for hundreds of years to realize goals of self-determination and culturally responsive schooling. But choice has also been a tool of segregationists. For example, early state sponsored school choice programs were mechanisms for southern segregated school systems to avoid implementing court-ordered desegregation.<sup>11</sup> In the North, desegregation-related school transfer plans largely relied on African American students' being bused from schools where they were the majority to schools where they were in the minority, placing the burden for school desegregation largely on the shoulders of those students who had been victims of state-sponsored segregation and educational inequality. Moreover, these students often found themselves tracked into low-level segregated classrooms once they entered their new schools, causing many African American parents and community members to decry school desegregation and instead embrace and advocate for community-based and controlled schools that better served the needs of students and communities of color.

Due to the massive resistance to school desegregation implementation in all regions of the country, school choice plans—such as magnet schools and controlled choice plans—were designed as less controversial compromises.<sup>12</sup> That is, reformers designed magnet schools to stabilize enrollments, particu-

larly in urban schools, which were most vulnerable to white and middle-class flight. Thus magnet schools offered a particular curricular or career focus, and administrators monitored admission with an eye to achieving racial balance in student enrollment. Controlled choice plans allowed for choice of schools, but they also bounded that choice to maintain racial balance.<sup>13</sup> In terms of maintaining racial balance in schools, these forms of choice have been fairly successful, albeit certainly complicated by issues of resegregation in classrooms, selectivity in student admissions, and limited numbers of students served. In addition, they are politically vulnerable, especially after recent court decisions limiting the use of race in student assignment, most recently in Wake County, North Carolina, and also under the Supreme Court decisions striking down Louisville's and Seattle's student assignment plans.<sup>14</sup> Instead of equity-based choice, conservatives, and increasingly many liberals or progressives, are embracing market-based choice reforms.

Different forms of school choice have historically appealed to varying political ideologies, with progressives, conservatives, and others supporting an array of educational choice for different reasons, and with race usually implicated across ideological perspectives. Contemporary market-based choice forms, which involve competition and deregulation, generally owe their modern iteration to political conservatives.<sup>15</sup> This political construction largely, but by no means exclusively, emanates from conservatives who adopt civil rights rhetoric to support what is largely a reform movement led by white elites, what Michael Katz has called "the normalization of formerly radical rhetoric."<sup>16</sup> Traditional civil rights organizations like the National Association for the Advancement of Colored People (NAACP), which has long opposed vouchers,<sup>17</sup> are prime targets of conservative critique.

In order to challenge the authority of the NAACP and other civil rights groups, conservative donors have supported the creation of new civil rights groups.<sup>18</sup> These include the Black Alliance for Educational Options (BAEO), formed in 1999, and the Hispanic Council for Reform and Educational Options (HCREO), formed in 2001. The BAEO and the HCREO have similar missions of informing parents on their choice options, and they also serve as powerful examples of minority support for school choice. Yet unlike the NAACP and other civil rights groups, they are single-issue organizations; school choice is the only policy area on these organizations' respective agendas. Notably, desegregation choice plans are not mentioned on either organization's website; instead, charter schools, vouchers, and privately managed schools are touted. While these organizations advertise community-based and community-oriented agendas,

their rhetoric in support of choice is much closer to that of their conservative supporters.

Political progressives have also advocated for forms of school choice during specific historical moments. They have tended to ground these efforts in concerns over community control and participation in school governance and curriculum, with a role for the state in regulating equal distribution of resources and allowing African American children to have access to schools historically restricted to white children.<sup>19</sup> An example is Herbert Gintis's progressive defense of vouchers if they are sufficiently large to have redistributive effects.<sup>20</sup> For liberals or progressives, having safeguards to ameliorate against what they see as limitations to school choice is critical to their tenuous support. Among liberal or progressive concerns about school choice are several critiques: it reaches a relatively small population, those best positioned to utilize it are relatively more privileged, and it can siphon off resources from public schools. As these examples indicate, school choice is a reservoir with multiple ideological tributaries. How conservatives moved from embracing it for segregation to championing it for minority empowerment bears scrutiny.

During the civil rights movement, choice became a controversial and popular tool for policy makers who wished to defy *Brown*'s mandate to desegregate public schools by providing "multiple escape routes" for white students.<sup>21</sup> This happened perhaps most infamously in Virginia, where in 1958 Governor J. Lindsay Almond closed schools in three cities for a full year and allowed white students tuition to attend all-white private schools. Choice was also a segregationist instrument in other states across the South, with instances in which the state paid teacher salaries in private schools, or exclusively allowed white students "freedom of choice" to avoid schooling with black students.<sup>22</sup>

In recent years, some researchers and advocates have argued that this depiction of school choice history fails to acknowledge the ways African Americans employed choice long before conservatives used it to maintain the social order, specifically by developing self-sustaining schools that reflected particular cultural, pedagogical, and political orientations.<sup>23</sup> Nor does it recognize liberal or progressive school choice proposals, which often include provisions for racial balance and adequate resources, or place limits on the involvement of private schools, such as the short-lived Alum Rock school voucher program in 1972.<sup>24</sup> For example, James Forman argues that African Americans have a long history of advocating for alternative schooling, at times pushing for choice within public education systems and often building self-supporting schools outside of it.<sup>25</sup> Their choice strategies were diverse and influenced by

the political context in which they operated, with African Americans founding and operating schools after emancipation and community-control advocates demanding that they be given the reins of their local schools in the 1960s and 1970s. More recently, in the school voucher and charter school movements, African Americans are active participants in creating and utilizing private and public schools that they regard as more culturally and educationally responsive than what has been available to them in traditional public schools. What is common across these different forms of choice involvement is a sense that a quality education is key not only to social and economic mobility, but also to challenging the American racial hierarchy.<sup>26</sup> Yet even when African Americans have challenged public officials and the status quo in public education, they have generally called for greater inputs into public education; rather than the removal of the state from providing education, they demand that the state redistribute educational resources and opportunities, regulate equitable practices, and remedy past injustices.<sup>27</sup>

In contrast, one of the most influential strands of conservative support for school choice emanates from a desire to dismantle the public administration of education, leaving it instead to private entities to deliver. Milton Friedman first suggested that parents be given publicly funded vouchers that they could supplement with their own money to redeem schooling for their children from an array of providers: “The educational services could be rendered by private enterprises operated for profit, or by nonprofit institutions. The role of the government would be limited to insuring that the schools met certain minimum standards, such as the inclusion of a minimum content in their programs, much as it now inspects restaurants to insure that they maintain minimum sanitary standards.”<sup>28</sup> While Friedman did not explicitly argue that choice was a civil right, he did frame educational choice as an issue of individual freedom from state control, setting the foundation for later choice arguments that would call for parental empowerment, and tie school choice to the longstanding desire of African Americans for liberation from inequality.

In the face of the social transformations brought by the civil rights movement in terms of redistributing downward resources and expanding access to public institutions, conservative opponents began to build a countermovement whose influence has shaped the school choice–civil rights framing. For instance, in 1971, Lewis Powell (who would go on to serve as a Supreme Court justice) wrote a confidential memo known as the Powell Manifesto. Addressed to the chair of the Education Committee of the U.S. Chamber of Commerce, the memo was titled “Attack of American Free Enterprise System.” Powell argued that the social changes brought by the civil rights and related social

movements were undermining individual liberties and American capitalism.<sup>29</sup> He called on corporations to provide financial support to develop conservative organizations that could challenge these changes. He called for the financing of a countermovement that would recruit students on university campuses, support conservative scholarship and researchers, and use the media to shape public opinion. This memo inspired wealthy conservative donors, such as the Scaife family, to become key supporters of think tanks, scholars, and advocacy organizations like the Heritage Foundation and Cato Institute, whose influence has directly shaped the conservative school choice–civil rights claim.<sup>30</sup>

The conceptualization of choice as an individual right, while not new, embraced, and arguably co-opted, civil rights language beginning in the 1980s. The Reagan administration's hostility to civil rights enforcement (following Richard Nixon's staunch opposition to busing to achieve desegregation) was coupled with a movement to focus more on educational "excellence" and less on educational equity.<sup>31</sup> With help from the publication of *A Nation at Risk* in 1983,<sup>32</sup> the popular discourse about public schooling became one of schools in steep decline. Improving them would require not more inputs, for those had been ineffective and even wasteful, but rather a different focus on standards, testing, competition, and choice.<sup>33</sup> This would be the new civil rights agenda: a focus on achievement in schools and individual responsibility. These arguments were the precursors to the current focus on the racial achievement gap in public education.

This reframing of educational equity was greatly assisted by the Heritage Foundation and the Landmark Legal Foundation. In 1989, these organizations convened a meeting in which participants articulated a conservative civil rights platform. As William Snider recounts: "The theme of this conservative platform, most participants agreed, should be 'individual dignity and empowerment' for minorities, with an emphasis on lifting regulatory barriers that conservatives say prevent minorities from pursuing economic advancement."<sup>34</sup> Besides choice, other components of this agenda were opposition to affirmative action, welfare, and regulation of businesses. Advocates began calling for school choice on the grounds that it would empower African Americans, freeing them from oppressive government regulations. In this rendering, civil rights became an individual commodity, as opposed to a community or civic good, and became a social imperative. A key architect of this rationale, Clint Bolick, has argued that "school choice is not a panacea, but it is a prerequisite to delivering on the promise of equal educational opportunities. Alone among school reforms, it promises to move children out of failing schools and into good schools, and to do so *today*—not ten years from now,



not another wasted billion dollars from now, but *now*.”<sup>35</sup> Much of the legal, scholarly, and political advocacy that has followed over the past several decades echoes this framing.<sup>36</sup>

For the framing of school choice as a civil right to gain popular currency, however, other social and political developments were necessary. My discussion turns now to an examination of how the courts have assisted in this framing by setting increasingly narrow legal possibilities for race-based student assignment given the spatial and racial isolation of cities and suburbs, while simultaneously expanding the boundaries of school choice policies.

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### **School Choice, Geography, and Jurisprudence**

U.S. Supreme Court decisions on race and education are best located on a spectrum of state action between *Plessy v. Ferguson* and *Brown v. Board of Education*. Where the former upheld the doctrine of separate but equal, the latter upended it by holding that state-sponsored, segregated schools were inherently unequal. With its decision in *Parents Involved in Community Schools v. Seattle School District No. 1* (*PICS*, 2007), the Court has come full circle by restricting the ability of school districts to take race into account when assigning students to schools to achieve diversity. Even before *PICS*, however, many U.S. public school systems that had once achieved desegregation had become, or were on their way to becoming resegregated, largely due to demographic trends, a series of court decisions that have declared school systems unitary, and state policies. This regression had happened in tandem with the expansion of market-based school choice policies and the Court’s upholding of the constitutionality of publicly funded school voucher plans.<sup>37</sup>

Two voucher programs enacted by state legislators have been the subject of most controversy: Milwaukee’s 1990 plan and Cleveland’s 1995 plan, which became a statewide program in 2005. Both are targeted programs for poor families whose incomes are below a particular threshold. The Cleveland school voucher program allowed city students to attend school outside of Cleveland, but to date, no suburban district has opened its school doors to voucher families. The 1974 Supreme Court decision in *Milliken v. Bradley*<sup>38</sup> held that inter-district school choice and transfer plans were no longer options as desegregation remedies, effectively reinforcing city-suburban racial divides that became more pronounced given labor, housing, and economic policy.<sup>39</sup>

As a result of these policy trends, predominantly white and middle-class suburban communities for the most part are protected from racial and class

struggles over quality schools, since urban students are not likely to attend the relatively racially and socioeconomically homogenous schools in the suburbs.<sup>40</sup> This has led some critics of market-based school choice to argue that choice is nothing more than a “containment strategy” for ensuring that urban students stay out of suburban schools, while appeasing parents with an opportunity to choose among a closed set of schools that promise an alternative.<sup>41</sup>

In *Zelman v. Simmons-Harris* (2002), the Supreme Court not only upheld the constitutionality of Cleveland’s school voucher program but also solidified the link between school choice and civil rights for African American students, most explicitly in Justice Clarence Thomas’s opinion concurring with the majority. Thomas linked African American activist Frederick Douglass’s notions of racial liberation and African Americans’ quest for access to public schools during Reconstruction to the provision of school choice and vouchers in the inner city, and he criticized voucher opponents as indifferent elites. Recent U.S. Supreme Court decisions not only have helped frame the educational policy options available to federal and state policy makers by restricting even voluntary student assignment plans that consider the race of an individual student but also, by relying on advocacy-based school choice scholarship, have helped further concretize the association between school choice and civil rights.

The Court’s restrictions on desegregation and support of school choice interact with the racial, geospatial development of cities and suburbs following World War II. Through the use of redlining, restrictive covenants, and federal highway subsidies, the suburbs developed and became enclaves that were largely racially homogenous. According to Harvey Kantor and Barbara Brenzel, “What changed most dramatically with the suburbanization of the American population was not just the relative proportion of the population living in cities and suburbs, but the racial and economic distribution of the population within the metropolitan areas.”<sup>42</sup>

These shifts in urban-suburban demographics have had political consequences. Kevin Kruse argues that white flight after *Brown* solidified a conservative social agenda. Suburbs were home to one-fourth of the U.S. population in 1950; by 1990, half of the nation’s inhabitants resided there.<sup>43</sup> According to Kruse, this population shift had ideological implications, “During the 1980s and 1990s, a powerful new political philosophy took hold in these post-secession suburbs. Finally free to pursue a politics that accepted as its normative values an individualistic interpretation of ‘freedom of association,’ a fervent faith in free enterprise, and a fierce hostility to the federal government, a new suburban conservatism took the now-familiar themes of isolation, indi-

vidualism, and privatization to unprecedented levels.”<sup>44</sup> In 1992, suburban voters outnumbered urban and rural voters combined.<sup>45</sup> In many states, then, suburban voters are largely responsible for electing the majority of state legislators who, in turn, are positioned to shape urban educational policies to meet their constituents’ preferences.<sup>46</sup> According to Matthew Lassiter, white southern suburbs tend to possess a “meritocratic ethos” that privileges individual accomplishments, resulting in the belief “that children of privilege should receive every advantage of the consumer affluence accumulated by their parents instead of competing on an egalitarian playing field.”<sup>47</sup>

These demographic trends, coupled with Supreme Court rulings and the marketization rhetoric of school choice as a civil right, have solidified the relationship between charter schools, vouchers, and race as particularly urban school reforms. Since legal remedies and constrained housing policies have all but ensured that city schools will be comprised of students of color and be poorly resourced, and suburban schools will be predominantly white and comparatively wealthy, many choice adherents argue that efforts to desegregate city schools are misplaced. Instead, dismantling unresponsive urban school district bureaucracies by developing alternative educational providers and expanding charter schools should be the preferred route to educational reform. Whites who are interested in preserving homogenous suburban schools can support school choice with the knowledge that their communities will be largely unaffected by it.

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## **Charter Schools and Choice as a Civil Right**

The marketization of education has helped inform the development of charter school reform. Like other choice forms, charter schools have progressive and conservative roots, but they are increasingly associated with private, for-profit, and nonprofit management organizations, whose mission is to replicate their models across numerous urban school systems. Under this vision of charter school reform, parental choice comes to be defined as the ability to choose from an array of different school franchises.

Because many state constitutions explicitly forbid the use of state funds for private schools, vouchers have remained a relatively small item on the school choice menu, though the political rhetoric surrounding them has often been more expansive. In contrast, there are charter school laws in 41 states, and with more than 4,000 charter schools serving over 1.5 million children. Under the federal education legislation known as No Child Left Behind, charter schools

are offered as a remedy to parents with students in schools failing to meet annual yearly progress. Recent federal initiatives under the Obama administration, such as Race to the Top (rttt) and the Investing in Innovation (i3) programs, have also incentivized charter school expansion. Charter schools are also often the dominant educational reform in school districts under state takeover and under mayoral control, such as in New Orleans, Philadelphia, and New York. Reformers claim that the schools produce superior academic outcomes, and as I have argued, closing the achievement gap is a key educational goal of many choice supporters.<sup>48</sup>

Empirical evidence on charter school achievement is much more mixed than these claims reflect, however.<sup>49</sup> In response to the mixed achievement results across the charter school sector, a set of venture philanthropies such as the Broad Foundation, the Bill and Melinda Gates Foundation, and the NewSchools Venture Fund are pouring tens of millions of dollars into developing charter school management organizations that appear to produce high-achieving students.<sup>50</sup> For these philanthropic supporters, developing charter schools run by for-profit and nonprofit educational management organizations for poor children and children of color is a civil right because they believe such schools produce higher test scores. Equity is measured in a reduction of the racial achievement gap. In several cities, management organizations funded by these philanthropies now operate the majority of existing charter schools.<sup>51</sup>

Due to this political and philanthropic support, targeted cities are likely to see a dramatic increase in charter schools in the immediate future. A number of philanthropies, for example, have dedicated significant funds to the Knowledge Is Power Program (KIPP) charter school network to expand charter schools in Houston and Dallas, and many of these foundations are also active in the transformation of the New Orleans public schools by charter schools and management organizations.<sup>52</sup>

What is significant about these efforts is that instead of considering desegregation or fiscal equity in the development of school choice, they focus on specific pedagogical, disciplinary, and cultural approaches to schooling for low-income, predominantly African American and Latino children and, ultimately, on the re-creation of racially homogenous and racially isolated schooling.<sup>53</sup> Given the seeming success of some of these schools in posting high student achievement, and thereby, closing the racial achievement gap, advocates hold them up as reform models that both empower parents and provide high-quality schooling for students.<sup>54</sup>

Since charter school reform models are being developed specifically for

African American and Latino children in urban school districts, it is not surprising that data indicate that most charter schools are racially homogenous. While African American students are well represented in the aggregate charter school enrollment, they tend to go to schools that are majority African American.<sup>55</sup> Segregation measures become especially stark in individual charter schools; researchers have found extreme racial homogeneity across charter schools in particular school districts.<sup>56</sup>

The latest crop of charter school models not only reflects existing urban school segregation, but it also reinforces and, in essence, requires it. For if charter school founders have as their charge to prove that their models are effective and excellent places for students of color to perform at high levels on achievement measures, having racial diversity could undermine their ability to sell their models to donors and to policy makers. In this regard, the current direction of charter schools operated by management organizations seeks to provide parents with choices, but it also narrows the possibility for desegregated schooling when such schools are perhaps best positioned to achieve it, given their freedom to draw student populations from multiple attendance zones. The legislative flexibility charter schools have in being able to enroll students from across cities and districts is not enjoyed in any systematic way by school systems, and to target recruitment and enrollments to achieve racial homogeneity in effect squanders an opportunity to create racially diverse schools that the courts have otherwise limited for school districts.

The political construction of school choice as a civil right has created an environment that not only tolerates but also embraces segregation in U.S. public schooling at the exact moment when school choice is expanding across the country.<sup>57</sup> The interaction of charter schools with school districts that have had long-standing struggles over desegregation has been complex, and as charter school reform has expanded without an explicit policy mandate to create schools with diverse student enrollments, it has further complicated the racial and ethnic landscape, often resulting in racially homogenous charter schools and further segregating the students who remain in traditional public schools by race and socioeconomic status. While charter schools have been slow to take hold across the South, their numbers in that region are growing, and in key southern and southwestern states, such as Florida and Texas, charter schools are growing rapidly.

Despite the segregative trends in charter school reform, there exists an opportunity for lawyers, advocates, public school teachers, parents, unions, community members, and philanthropists to join in the policy design of school choice that might avoid the link between school choice and segregation, and

remedy the segregation found across the broader national landscape. Despite the political construction that has made market-based school choice the last remaining civil right to be achieved, there is space for those committed to racially integrated schooling to redefine the kind of school choice and charter school reform that the South and the rest of the nation will pursue in the coming years, and to reframe the civil rights agenda as one that includes schools and other social institutions.

One promising development in national leadership around desegregation has come from the Obama administration. In 2009, on the 45th anniversary of the passage of Title VI of the Civil Rights Act of 1964, the U.S. Department of Justice's Civil Rights Division indicated it would take steps to strengthen its enforcement of the measure by enforcing antidiscrimination statutes and providing localities with technical assistance to bolster their civil rights compliance programs.<sup>58</sup> It is as yet unclear how these efforts will be linked with the U.S. Department of Education's support of charter school expansion, or if they will be connected at all. At minimum, however, it signals to local officials that federal funding could be linked to efforts to create diverse schools, and this signal could help local desegregation or integration advocates pressure school boards and charter school founders to make diverse schools a reality.

Such efforts might learn from the advocacy that resulted in the *Brown* decision. *Brown* was in many ways the result of a long-brewing social movement comprised of grassroots organizations, churches, and elite supporters. Their movement for educational and social opportunity included an argument for why desegregation, and ultimately, integration, was important for American society and the health of U.S. democracy, and why a remedy for past injustice and discrimination was in order. In other words, the movement articulated a civic benefit that would emanate from the realization of civil rights for disenfranchised communities.

Progressive or liberal support of market-based choice has often been strategic; advocates have embraced choice in the hopes that it would provide educational respite for communities whose public school systems have struggled or failed to serve them well. The alliances these advocates have formed with conservatives—especially those who favor more universal programs, are always tenuous. When Polly Williams, a prominent African American supporter of choice in Milwaukee, learned that efforts were afoot to expand vouchers to all Wisconsin students regardless of income, she decried the maneuver, noting that she was always aware that “white Republican and rich, right-wing foundations” had other agendas, but that she had hoped the voucher program would encourage public schools to serve children better. “I had hoped to nudge the

public schools themselves to respond to the challenge and work harder to keep parents from wanting vouchers.”<sup>59</sup>

Williams’s experience in Milwaukee points to the political vulnerability of even modestly equity-minded choice plans, but it also demonstrates the potential power coalitions could have to reframe issues of equity to support and sustain school choice plans that make redistributive forms of equity a priority. The challenge for such coalitions is to successfully reclaim the civil rights terrain, place pressure on policy makers when they enact choice without equity provisions, provide support for school districts to operate more equitably, and reframe the discourse on school reform to focus on the role and benefits of equitable and quality schooling for an educated citizenry and a robust democracy. A potentially fruitful strategy would join housing, voting rights, and fair labor and employment advocates with educational supporters of integrated schooling to articulate a broad-based school reform agenda incorporating school choice.

This coalition would need to articulate a school choice agenda that embraces the importance of integrated schooling, while being flexible enough to allow for the paradoxical importance of racially homogenous charter schools that have provided parents and students with quality educational experiences. In doing so, this coalition would be able to counter market-based advocates whose agendas are not necessarily consistent with the long-term needs or complaints of communities of color. Such an agenda would include an expansion of magnet schools and controlled choice plans. With adequate resources and oversight, some of the issues that have vexed these choice programs, including selectivity and lack of capacity, could be mitigated. Researchers could also produce more and better evaluations of these programs, helping to establish their educational and social value so that policy makers feel more comfortable supporting them. Similarly, a coordinated advocacy effort that involves charter school leaders could tap into the Obama administration’s emphasis on creating stimulating school reform by creating incentives for charter schools to develop racially, ethnically, linguistically, and socioeconomically diverse student bodies. There are currently no fiscal incentives for charter school developers to do so. Such incentives could help diminish the segregation and re-segregation of students in charter schools, especially as charter school reform is posed to expand in the southern United States, where Latino students, especially, are vulnerable to such segregation.

While the Supreme Court has limited school districts’ abilities to enact choice plans that consider race, the new charter school networks supported by philanthropists are not necessarily similarly restricted, and coalitions of advo-



cates might begin a new movement for desegregated choice schools. Such a coalition would be well-positioned—given the indication of support from the federal government—to argue to local policy makers and philanthropists why they should support such an agenda, drawing from empirical studies demonstrating the effectiveness of well-designed school desegregation plans for students of all racial and ethnic backgrounds.

Finally, and perhaps most important, in order for choice to have a chance at helping create desegregated schools, suburban districts must also be participants in this coalition. Researchers have documented not only the racial divide between cities and suburbs, but also the growing segregation between many outer-ring suburbs themselves, which are often the communities in which African Americans and Latinos settle when they migrate from cities, often ending up in segregated suburban schools.<sup>60</sup> The creation of voluntary transfer and choice plans between these suburbs could help ease the hypersegregation that has evolved in these environments. So, too, could fiscal support for charter schools that are strategically located to maximize enrollments from adjoining cities, suburbs, and outer-ring suburbs.

The United States periodically revisits policy approaches aimed at reconciling past injustices. For example, in 2009, the Charlottesville, Virginia, City Council issued a public apology for its role in aiding the massive resistance to school desegregation following *Brown*. A renewed public education and re-framed civil rights agenda that includes choice, desegregation, and equality of opportunity can be generated from these moments of recharged political spaces if civil rights and education advocates can mobilize and pressure policy makers to realize it.

## NOTES

1. “Market-based choice” encompasses educational reforms whose hallmarks are competition, deregulation, private sector provision of education, and a focus on the rights of individual parents.

2. M. Holt, *Not Yet “Free at Last”: The Unfinished Business of the Civil Rights Movement* (Oakland, CA: Institute for Contemporary Studies, 2000); T. Moe, *Schools, Vouchers, and the American Public* (Washington, DC: Brookings Institution Press, 2002).

3. For critiques, see B. Miner, “Distorting the Civil Rights Legacy,” *Rethinking Schools Online* (2004), [http://www.rethinkingschools.org/special\\_reports/voucher\\_report/v\\_kpsp183.shtml](http://www.rethinkingschools.org/special_reports/voucher_report/v_kpsp183.shtml) (accessed 26 February 2009); People for the American Way, “Community Voice or Captive of the Right? A Closer Look at the Black Alliance for Educational Options” (Washington, DC: People for the American Way Foundation, 2001); and People for the American Way, “The Voucher Veneer: The Deeper Agenda to Privatize Public Education” (Washington, DC: People for the American Way Foundation, 2003).



4. For example, Georgia lawyer Glenn Delk has been pursuing the passage of school vouchers; one of his strategies has been to argue for the use of a state statute from 1961 that had previously provided whites access to private schools to avoid desegregation.

5. Under *Milliken v. Bradley* 418 U.S. 717 (1974), the Court held that urban school district student assignment plans could not require suburban districts to participate. For a good discussion, see F. Margonis and L. Parker, "Choice, Privatization, and Unspoken Strategies of Containment," *Educational Policy* 9, no. 4 (1995): 375–403.

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7. D. Stone, *Policy Paradox: The Art of Political Decision Making* (New York: W. W. Norton, 2002), 34.

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11. R. Kluger, *Simple Justice* (New York: Vintage, 1975).

12. O. Patterson, *The Ordeal of Integration: Progress and Resentment in America's "Racial" Crisis* (Washington, DC: Civitas, 1997).

13. C. V. Willie et al., *Student Diversity, Choice, and School Improvement* (Westport, CT: Bergin and Garvey, 2002).

14. *Parents Involved in Community Schools v. Seattle School District No. 1*, 05-908, 426 F. 3d 1162; *Meredith v. Jefferson County Board of Education*, 05-915, 416 F. 3d 513.

15. M. W. Apple, *Educating the "Right" Way: Markets, Standards, God, and Inequality* (New York: Routledge Falmer, 2001). An extensive discussion of political ideology is beyond the scope of this analysis. For the purposes of this essay, I define conservatives as people who favor limited state involvement and progressives as people who envision an active role for the state in providing for social and educational opportunity. Within conservative ranks are neoliberals, neoconservatives, authoritarian populists, and the managerial and professional class. Within progressive camps are those on the left, the center-left, and multiculturalists. An African American nationalist and school choice supporter identifies African American ideological perspectives as Black Right, Middle, and Left, and argues that the Black Left is the only camp still in support of desegregation. See Holt, *Not Yet "Free at Last"*.

16. M. Katz, "Politics, Activism, and the History of America's Public Schools Conference," lecture delivered at University of Pennsylvania, 12 April 2008.

17. The national NAACP passed resolutions in 1970, 1971, 1992, and 2003 opposing vouchers on the grounds that voucher plans undermined school desegregation, siphoned money from public schools, and failed to provide sufficient tuition funds for poor black and Latino families to put them to use. Local affiliates have also opposed other school choice measures, such as the Seattle/King County NAACP's 2004 opposition to Washington's charter schools law, Referendum 55. See <http://www.RejectR55.org>.

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26. Mwalimu Shuja, *Too Much Schooling, Too Little Education: The Paradox of Black Life in White Societies* (Trenton, NJ: Africa World, 1993); Amy Stuart Wells, Alejandra Lopez, Janelle Scott, and Jennifer Jellison, "Charter Schools as Postmodern Paradox: Rethinking Stratification in an Age of Deregulated School Choice," *Harvard Educational Review* 69, no. 2 (1999): 172-204.

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*New Era in American Educational Policy*, edited by A. S. Wells and J. Petrovich (New York: Teachers College Press, 2005), 219–43.

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