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Centering Students' Rights in Our Democracy: A Case Study from Maryland's Eastern Shore

SAMANTHA C. POWNALL*

Introduction

Across the country, state legislators and school districts have invoked “parents’ rights” to justify attempts to limit discussions of race, sexual orientation, gender, and history, including African American history and slavery, in public schools.¹ These efforts are part of a larger far-right movement to strip away human and civil rights that have been protected

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1. See TAIFHA ALEXANDER ET AL., UCLA SCH. OF L. CRITICAL RACE STUD., CRT FORWARD: TRACKING THE ATTACK ON CRITICAL RACE THEORY (2023), https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf; Jonathan Friedman et al., *Educational Intimidation: How “Parents’ Rights” Legislation Undermines the Freedom to Learn*, PEN AM. (Aug. 23, 2023), <https://pen.org/report/educational-intimidation/>; Kiara Alfonseca, *So-called “Don’t Say Gay” Rules Expanded Through 12th Grade in Florida*, ABC NEWS (Apr. 19, 2023), <https://abcnews.go.com/Politics/called-dont-gay-rules-expanded-12th-grade-florida/story?id=98691183>; Nathaniel Frank, *What the Science Says About “Don’t Say Gay” and Young People*, N.Y. TIMES (Apr. 20, 2023), <https://www.nytimes.com/2023/04/20/opinion/dont-say-gay-bill-florida.html>.

by our federal government.² They take aim at public education because of its necessary role in a democracy,³ and because this country’s educational structure makes it an easy target.⁴ As Professor LaToya Baldwin Clark so clearly distills in her scholarship, these so-called “anti-critical race

2. *Id.*; see Jamelle Bouie, *The Real Threat to Freedom Is Coming from the States*, N.Y. TIMES (May 26, 2023), <https://www.nytimes.com/2023/05/26/opinion/freedom-states-rights.html> (“Across the country, we are seeing sharp new limits on the rights and privileges of Americans. And despite a national mythology that ties the threat of tyranny to the machinations of a distant, central government, the actual threat to American freedom is coming from the states. It is states that have stripped tens of millions of American women of their right to bodily autonomy, with disastrous consequences for their lives and health. It is states that have limited the right to travel freely if it means trying to obtain an abortion. It is states that have begun a crusade against the right to express one’s gender and sexuality, under the pretext of ‘protecting children.’ It is states that are threatening to seize the children of parents who believe their kids need gender-affirming care. And it is states that have begun to renege on the promise of free and fair elections.”) (paragraph break omitted); Brian Klaas, *The Red States Experimenting with Authoritarianism*, ATLANTIC (Apr. 18, 2023), <https://www.theatlantic.com/ideas/archive/2023/04/america-democracy-autocracy-laboratories/673751/>; Amy Siskind, *This Is Not Normal: A Guide to What the Next President Will Have to Unwind*, WASH. POST (Oct. 16, 2020), <https://www.washingtonpost.com/graphics/2020/outlook/siskind-list-trump-norms/> (based on Amy Siskind’s *The Weekly List*, which documented authoritarian trends during Donald Trump’s presidency).

3. See *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (“[A]s . . . pointed out early in our history, . . . some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.”); *Ambach v. Norwick*, 441 U.S. 68, 77 (1979) (“[P]erceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists.”).

4. See LaToya Baldwin Clark, *The Critical Racialization of Parents’ Rights*, 132 YALE L.J. 2139, 2146 (2023) (“[S]chools have long been foundational sites of racial contestations, and curriculum wars are not new.”); see also Penn GSE News, *Penn GSE Alumni Event Focuses on Free Speech in Education*, UNIV. OF PA. GRADUATE SCH. OF EDUC. (Dec. 13, 2022), <https://www.gse.upenn.edu/news/penn-gse-alumni-event-focuses-free-speech-education/>; Jon Valant, *It’s Time to Start Voting in Your Local School Board Elections*, BROOKINGS (Nov. 1, 2021), <https://www.brookings.edu/articles/its-time-to-start-voting-in-your-local-school-board-elections/>; Carrie Douglass, *The Big Problem with Who Runs for School Boards—and How to Fix It*, EDUC. WEEK (Dec. 20, 2022), <https://www.edweek.org/leadership/opinion-the-big-problem-with-whoruns-for-school-boards-and-how-to-fix-it/2022/12/>; Vladimir Kogan, *Locally Elected School Boards Are Failing*, 22 EDUC. NEXT, no. 3, Summer 2022, at 8, https://www.educationnext.org/wp-content/uploads/2022/06/ednext_XXII_3_kogan.pdf; Vladimir Kogan et al., *Who Governs Our Public Schools?*, BROOKINGS (Feb. 17, 2021), <https://www.brookings.edu/articles/who-governs-our-public-schools/>.

theory” and “parents’ rights”⁵ initiatives are designed to maintain white privilege and power.⁶ This article documents how a local “parents’ rights” organization in Queen Anne’s County, Maryland, attempted to undermine a community’s efforts to address deep-seated racism in its school district, and the students’ and educators’ powerful response. Drawing from interviews, school board meeting videos, news articles, and federal and state court decisions, Part I tells the story of Queen Anne’s County. Part II situates Queen Anne’s County within the national context. Part III analyzes students’ rights in public education, and Part IV identifies strategies to protect every child’s right to learn in school.

I. Queen Anne’s County

A. History and Background

This remarkable story comes from the Eastern Shore of the Chesapeake Bay in Maryland. This region, part of the Delmarva peninsula,⁷ has strong agricultural and maritime industries that began in the mid-seventeenth

5. See Clark, *supra* note 4, at 2146–48. I use quotations to indicate that “anti-CRT” advocates using these terms have created a “caricatured version of CRT” that “is often in direct opposition to what CRT actually argues.” *Id.* at 2147. Professor Clark offers a primer on CRT:

CRT is an intellectual movement that “challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole.” CRT “questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.” Unlike the twin movements’ assertions that CRT inappropriately casts individual blame on innocent people, CRT does not focus on personal animus as the primary driver of racial discrimination. In contrast, CRT posits that racism is constructed and adopted into the everyday workings of our cultural, legal, social, and other institutions. CRT operates as a lens to understand legal backlash and racial regression as a part of the cycle of backtracking legal advances purporting to reduce or eliminate structural racial discrimination.

CRT scholars interrogate the hegemony of White supremacy, racism, and racial subordination in our institutions. Hegemony “involves the universalizing of the dominant group’s interest as interests of society as a whole;” tropes such as colorblindness and innocence are presented as race-neutral, universal values.

Id. at 2150 (footnote citations omitted).

6. See *id.* at 2150, 2178.

7. “Delmarva” stands for Delaware, Maryland, Virginia, and is bordered by the Chesapeake Bay to the west and the Atlantic Ocean to the east.

century,⁸ after the first African slaves were brought to Point Comfort, Virginia, on the very southern end of the bay in 1619.⁹ As historian Patrick Nugent describes it, the Eastern Shore is “a crossroads of American politics, environments, and cultures that has led to a really complex history” rooted in the brutality of slavery and the fight for freedom.¹⁰ It was home to abolitionists Frederick Douglass and Harriet Tubman; and to Gloria Richardson, a leader in the civil rights movement of the 1960s, whose activism ushered in desegregation to parts of the Eastern Shore still clinging to Jim Crow.¹¹ Along the northern point of the shore sits Queen Anne’s County, a district of about 50,000 people¹² and 7,400 public school students.¹³ The county has been majority white for decades and the

8. See *Maryland at a Glance: Agriculture*, MD. STATE ARCHIVES (Sept. 11, 2023), <https://msa.maryland.gov/msa/mdmanual/01glance/html/agri.html>; Niambi Davis, *Shantytowns of Kent Narrows*, WHAT’S UP? MEDIA (Nov. 18, 2022, 10:37 AM), <https://whatsupmag.com/culture/shantytowns-of-kent-narrows/>; Cecilia Sequeira, *The Naval History of Delaware*, NAVAL HIST. & HERITAGE COMMAND (Apr. 30, 2018), <https://usnhistory.navylive.dodlive.mil/Recent/Article-View/Article/2686724/the-naval-history-of-delaware/>; *Business and Tradition in the LESMD Region*, LOWER E. SHORE MD., <https://lesmd.net/agriculture#::~:~:text=Production%20of%20soybean%2C%20corn%20for,list%20in%20crops%20per%20acre> (last visited Feb. 9, 2024).

9. See Nikole Hannah-Jones, *The 1619 Project*, N.Y. TIMES (Aug. 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>; *African Nation Founders: Africans in the Chesapeake: Time, Space & People*, NAT’L PARK SERV., <https://www.nps.gov/ethnography/aah/aaheritage/chesapeakeb.htm> (last visited Jan. 13, 2024); Lydia Woolever, *Turning Tides: After Decades of Silence, the Eastern Shore Begins to Reckon with Its Difficult History*, BALT. MAG. (Feb. 2021), <https://www.baltimoremagazine.com/section/historypolitics/eastern-shore-begins-to-reckon-with-difficult-history-racism-slavery/>.

10. Woolever, *supra* note 9; A HISTORY OF AFRICAN AMERICANS OF DELAWARE AND MARYLAND’S EASTERN SHORE 8 (Carole C. Marks ed., 2d ed. 1998), https://archivesfiles.delaware.gov/ebooks/A_History_of_African_Americans_of_Delaware_and_Marylands_Eastern_Shore.pdf (“The Eastern Shore, like Delaware, has had a troubling history in regard to its black population. Both states were part slave, part free. Both experienced a shift to grain crops which reduced the reliance on slave labor, but did not eliminate it. Both sent large numbers of soldiers to defend the Union even as slaves were held. Delaware was one of the largest stations of the Underground Railroad. Maryland, whose slavery was often described as mild in comparison with its southern neighbors, was by contrast home to some of the most famous and daring slave escapes.”) (page number from pdf file).

11. WP BrandStudio, *The Eastern Shore of Maryland Is the Birthplace of Many Black Revolutionaries. Why?*, WASH. POST (Sept. 4, 2018), <https://www.washingtonpost.com/brand-studio/wp/2018/09/04/the-eastern-shore-of-maryland-is-the-birthplace-of-many-black-revolutionaries-why/>; *Frederick Douglass*, NAT’L PARK SERV. (Aug. 12, 2023), <https://www.nps.gov/frdo/learn/historyculture/frederickdouglass.htm>; *Harriet Tubman*, NAT’L PARK SERV. (Sept. 21, 2023), <https://www.nps.gov/people/harriet-tubman.htm>; *Gloria Richardson*, SNCC DIGITAL GATEWAY, <https://snccdigital.org/people/gloria-richardson/> (last visited Dec. 20, 2023).

12. *Total Population in Queen Anne’s County, Maryland*, IS 49,874, U.S. CENSUS BUREAU, <https://data.census.gov/all?q=queen+anne%27s+county,+md> (last visited Jan. 14, 2024).

13. *Queen Anne’s County Public Schools*, U.S. NEWS, <https://www.usnews.com/education/k12/maryland/districts/queen-anne-s-county-public-schools-112207> (last visited Jan. 14, 2024).

percentage for the Black population has declined significantly.¹⁴ In 1960 the Black population was nearly 27 percent¹⁵ and by 1980, it had declined to 16 percent.¹⁶ Currently, it has dwindled to 6 percent Black.¹⁷ There are several theories that could explain this decline, including shifting industries and employment opportunities, and more white people moving to the area since the Chesapeake Bay Bridge was built in 1952.¹⁸ The bridge ended the relative isolation of the peninsula, facilitating access to cities on the western “mainland”—Annapolis, Baltimore, and Washington, DC, and luring tourists to the coast.¹⁹ At the core, however, is the region’s enduring legacy of racism.²⁰ As described by one long-time Black resident of Queen Anne’s County, “What we have pretty much taught most of our children is you do everything you can do to graduate and go elsewhere.”²¹

14. Erica L. Green, *Black Lives Matter, She Wrote. Then “Everything Just Imploded”*, N.Y. TIMES (Oct. 10, 2021), <https://www.nytimes.com/2021/10/10/us/politics/maryland-superintendent-racism-black-lives-matter.html>.

15. *Id.*

16. MD. DEP’T OF PLAN., PLAN. DATA SERVS., TABLE DP-1, PROFILE OF GENERAL DEMOGRAPHIC CHARACTERISTICS: 1980, QUEEN ANNE’S COUNTY, MARYLAND (2001), https://planning.maryland.gov/MSDC/Documents/census/historical_census/SF1_80-00/queee80-00.pdf.

17. *Queen Anne’s County, MD*, CENSUS REP. (2022), <https://censusreporter.org/profiles/05000US24035-queen-annes-county-md/>. The county population is 84 percent white, 5 percent Hispanic, and 1 percent Asian. *Id.*

18. See Lydia Woolever, *The Great Divide: Seventy Years Ago, One Stretch of Metal and Concrete Changed Maryland Forever*, BALT. MAG. (July 2022), <https://www.baltimoremagazine.com/section/businessdevelopment/how-the-chesapeake-bay-bridge-changed-maryland-forever/>; Theodore J. Davis Jr., *Socioeconomic Change: A Community in Transition*, UNIV. OF DEL. (1997), <http://www1.udel.edu/BlackHistory/socioecochange.html> (“The demographic trends suggest that a larger percentage of whites than blacks are moving into Delaware and the Eastern Shore.”).

19. See Woolever, *supra* note 9.

20. See Green, *supra* note 14; see also Rob Flaks, *Black Leaders Call for Change After Allegations of Racist Behavior at Kent Island High School Athletic Events*, 47ABC WMDT (Feb. 18, 2022), <https://www.wmdt.com/2022/02/black-leaders-call-for-change-after-allegations-of-racist-behavior-at-kent-island-high-school-athletic-events/>; Site Staff, *Queen Anne’s Co. School Officials Respond to Allegations of Athletes’ Racist Behavior*, 47ABC WMDT (Feb. 21, 2022), <https://www.wmdt.com/2022/02/queen-annes-co-school-officials-respond-to-allegations-of-athletes-racist-behavior/>; Sean Curtis, *County Schools at Odds over Racial Slurs at Basketball Game*, WBOC (Feb. 28, 2023), https://www.wboc.com/news/county-schools-at-odds-over-racial-slurs-at-basketball-game/article_90effda2-b7a6-11ed-9123-f34886773cdf.html.

21. See Green, *supra* note 14. Erica Green documents in her article: “The first time [this resident] experienced racism in the Queen Anne’s County school district was 25 years ago when he was in sixth grade. . . . He was called ‘a slave’ and told to ‘go back to Africa.’ In 2006, his parents received a death threat and found a noose in their mailbox. Ten years later, his young niece was called the N-word as she walked down the street.” *Id.*

B. Dr. Andrea Kane, Superintendent of Schools

Effective July 2017, the Queen Anne’s County Board of Education appointed Dr. Andrea Kane to be the superintendent of schools. The board recruited her heavily because of her strong credentials and extensive career working in education, including as an Associate Superintendent in Anne Arundel County Public Schools in Maryland and Richmond Public Schools in Virginia.²² She was the county’s first Black superintendent and she accepted the position because she believed her experience had prepared her to address the unique needs of children in this community.²³ Dr. Kane’s term began just two months after the former superintendent, a white man, had written to parents about a “string of what he called ‘racially motivated incidents’” between students.²⁴ Upon Dr. Kane’s arrival, Black, Latino, and Asian students and parents confided in her privately about racist taunts from other students or microaggressions from staff that school officials ignored.²⁵ A Black student, Tynay Wright, who was a high school freshman in the fall of 2017, shared that if students tried to discuss bullying or racism at school, they were reprimanded.²⁶ “Black students got into trouble for wearing Black Lives Matter t-shirts because they were ‘too political’ but white students were permitted to wear Pro-Trump and ‘All Lives Matter’ shirts.”²⁷ Dr. Kane explained: “With such small percentages of students of color here in Queen Anne’s County[,] the isolation and impact caused by racism is amplified. I know this firsthand.”²⁸ When Dr. Kane signed

22. Telephone Interview with Dr. Andrea Kane (June 20, 2023).

23. *Id.*; see also QUEEN ANNE’S CNTY. DMR (COMMUNITY) PLANNING TEAM MEMBERS & QUEEN ANNE’S CMTY. P’SHPIS FOR CHILD., AN ASSESSMENT OF DISPROPORTIONATE MINORITY YOUTH REPRESENTATION (DMR) IN QUEEN ANNE’S COUNTY, MARYLAND (2004), https://communitypartnerships.info/wp-content/uploads/2014/05/DMR_Final_Report-Version4_2.pdf.

24. Green, *supra* note 14; Interview with Dr. Kane, *supra* note 22.

25. Interview with Dr. Kane, *supra* note 22; Green, *supra* note 14; Jonathan M. Pitts, *School Chief Under Fire for Black Lives Support*, BALT. SUN, https://digealedition.baltimoresun.com/infinity/article_share.aspx?guid=cd51d4f9-cdac-4603-ba8b-daa134024fd8 (last visited Feb. 9, 2024) (“According to Kane, 55—whose resume includes a successful 22-year stint in Anne Arundel County Public Schools—it’s part of her responsibility to promote such dialogue, in part to support the many ‘Black and brown’ children who have told her in private meetings of experiencing hurtful microaggressions, deliberate or otherwise, at the hands of schoolmates and teachers.”).

26. Telephone Interview with Tynay Wright, Kent Island High School Graduate (July 11, 2023) [hereinafter Interview with Tynay Wright].

27. *Id.*

28. Kyleigh Panetta, *Queen Anne’s Co. Superintendent Voices Support for Black Lives Matter, Comments Face Scrutiny and Support*, WMDT (Aug. 7, 2020), <https://www.wmdt.com/2020/08/queen-annes-co-superintendent-voices-support-for-black-lives-matter-comments-face-scrutiny-and-support/>.

her contract, a white school-board member refused to speak with her.²⁹ Later, a previous school board president, who was white, refused to review paperwork with Dr. Kane, sending her “a profane text-message. . . .”³⁰ The same former president later acknowledged “defacing a photograph of a Black teacher of the year” that was displayed in school district offices.³¹

Dr. Kane immediately got to work. In 2018, she established contracts with cultural proficiency and equity firms, including Equal Opportunity Schools, a nationally recognized organization dedicated to increasing “access, belonging, and success in rigorous college and career-prep secondary school courses for underserved and underrepresented students so that they may thrive in their postsecondary pursuits and life goals.”³² She focused on elevating academic achievement for all students, including narrowing achievement gaps between white students and students of color, creating an African American History class—the first in the district—and addressing the overrepresentation of Black students in suspensions.³³

She also oversaw diversification of the county’s English Language Arts (ELA) novels.³⁴ A review by school district personnel of novels in high school ELA classes showed that white, male protagonists were in the overwhelming majority, and there was not a single book with an LGBTQ+ protagonist.³⁵ The protagonists for middle school ELA novels were also predominantly white.³⁶ Under Dr. Kane’s leadership, Queen Anne’s County applied for and received a \$1 million competitive federal grant, administered by the state, that included funds the district used to

29. See Green, *supra* note 14.

30. *Id.*

31. *Id.*

32. Interview with Dr. Kane, *supra* note 22; *Mission, Vision, Values*, EQUAL OPPORTUNITY SCHOOLS, <https://eoschools.org/about-us/mission-vision-values/> (last visited Feb. 25, 2024).

33. Interview with Dr. Kane, *supra* note 22; S. MATTHEW EVANS & JULIE FORBES, EDUCATIONAL EQUITY 9 (Apr. 7, 2021), [https://go.boarddocs.com/mabe/qacps/Board.nsf/files/BZUL8V554ED9/\\$file/Educational%20Equity%20Presentation%20-%20April%207%2C%202021.pdf](https://go.boarddocs.com/mabe/qacps/Board.nsf/files/BZUL8V554ED9/$file/Educational%20Equity%20Presentation%20-%20April%207%2C%202021.pdf).

34. See BRIDGET PASSYN, EXTENDED WORKS ADOPTIONS VIA STRIVING READERS COMPREHENSIVE LITERACY GRANT (ROUND 3) 11–13 (Apr. 7, 2021), [https://go.boarddocs.com/mabe/qacps/Board.nsf/files/BZEQ5K65C947/\\$file/Extended%20Works%20Round%203%20%20via%20SRCL%20Grant%20%20Presentation.pdf](https://go.boarddocs.com/mabe/qacps/Board.nsf/files/BZEQ5K65C947/$file/Extended%20Works%20Round%203%20%20via%20SRCL%20Grant%20%20Presentation.pdf).

35. *Id.* at 11–13.

36. *Id.* at 21–24.

revitalize and diversify classroom libraries.³⁷ The purpose of the grant is to “address[] the literacy concerns among all children, especially those living in poverty, English learners, children with disabilities, and others at risk for academic failure.”³⁸

In the 2018–19 school year, the second year under Dr. Kane’s leadership, students at all levels—elementary, middle, and high school—and of all races either met or improved upon state proficiency benchmarks.³⁹ Black high school students in particular demonstrated strong gains: Where only 12.5 percent were proficient in math in the 2017–18 school year, nearly 46 percent demonstrated proficiency in the 2018–19 school year.⁴⁰ Black high school students showed substantial progress in English Language Arts, from 15.6 percent proficient in 2017–18 to 51.5 percent proficient for 2018–19.⁴¹ In September 2020, a Queen Anne’s County elementary school was one out of only six schools in the state named a National Blue Ribbon school, an award given to a school based on its “overall academic performance or progress in closing achievement gaps among student subgroups.”⁴²

C. The Maryland State Equity Requirement and Students Talking About Race

In November 2019, Maryland adopted an education equity regulation that required its school districts to, among other things, “develop an educational equity policy and regulations . . . with the goal of providing

37. *Id.* at 4–5; see Queen Anne’s Cnty. Pub. Schs., *School Board Meeting*, <https://go.boarddocs.com/mabe/qacps/Board.nsf/Public> [hereinafter Queen Anne’s Cnty. School Board Meeting] (click Meetings, 2021, Apr. 7, 2021 (Wed.), click on video, navigate to 2:20–2:44 (presentation by Bridget Passyn)); *Striving Readers Comprehensive Literacy Grant Program*, Md. State Dep’t of Educ. (2024), <https://marylandpublicschools.org/programs/Pages/ELA/SRCL.aspx>.

38. Md. State Dep’t of Educ., *Maryland SRCL Grant: Year 1 Executive Summary*, <https://marylandpublicschools.org/programs/Documents/ELA/SRCLGrant/SRCLGrantYear1.pdf>.

39. The Maryland State Department of Education has published data for the 2017–18 and 2018–19 school years. Maryland resumed the practice of publishing data for 2021–22. *Queen Anne’s County, Report Card*, MD. STATE DEP’T OF EDUC., <https://reportcard.msde.maryland.gov/Graphs/#/ReportCards/ReportCardSchool/1/E/1/17/XXXX/2022> (select “2018,” “2019,” and “2022”).

40. *Id.* (select “2018,” “2019”).

41. *Id.*

42. *Six Maryland Public Schools Named National Blue Ribbon Schools*, MD. STATE DEP’T OF EDUC. (Sept. 25, 2020), <https://news.maryland.gov/msde/six-maryland-public-schools-named-national-blue-ribbon-schools/#:~:text=Bayside%20Elementary%20School%2C%20Queen%20Anne’s%20County; see also Previous NBRs Awardees, NAT’L BLUE RIBBON SCHS., https://nationalblueribbonsschools.ed.gov/awardwinners/history> (for “District,” select “Queen Anne’s County Public Schools”).

educational equity to all students.⁴³ The State Education Department also provided its districts with guidance for implementing the regulation.⁴⁴ Dr. Kane had been working to develop an equity policy for the school district since she was hired.⁴⁵ But before the policy was finalized, police officers killed George Floyd in Minneapolis on May 25, 2020, launching communities across the country into a renewed period of racial reckoning.⁴⁶ Dr. Kane wrestled with the implications for students in Queen Anne's County. She knew that Black families already felt threatened and silenced in the district, and she felt compelled to address the issue.⁴⁷ On June 5, 2020, just before the end of the 2019–20 school year, Dr. Kane emailed a letter to all parents in the school district that included discussion of student recognition, graduation ceremonies, and reopening schools in 2020 with the ongoing pandemic.⁴⁸ She also wrote:

Despite all the business of closing out one school year and preparing for the next, I must stop and acknowledge what is happening in our country and across the world right now. The deaths of Breonna Taylor, Ahmaud Arbery, and George Floyd have spun our country into what has been called “a national outrage”. There is no denying that police brutality and racism exist in our country. There is no denying that in many communities, racism and biased behavior are the norms. Racism is learned at an early age and can be passed on from one generation to the next. Trayvon Martin, Micha[e]l Brown, Eric Garner, Freddie Gray, Sandra Bland, and countless other Black people have been victims of systemic racism. Racism is alive in our country, our state, in Queen Anne's County, and our schools.

It's encouraging to see Black and White people coming together in nonviolent protests against the mistreatment of and discrimination against Black people and people of color. More than ever, I hope

43. MD. CODE REGS. 13A.01.06.04(B).

44. MD. STATE DEP'T OF EDUC., EQUITY AND EXCELLENCE: A GUIDE TO EDUCATIONAL EQUITY IN MARYLAND, <https://marylandpublicschools.org/programs/Documents/EEE/MSDEEquityGuidebook.pdf>.

45. Interview with Dr. Kane, *supra* note 22; *see* Green, *supra* note 14.

46. *See* Evan Hill et al., *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

47. *See* Interview with Dr. Kane, *supra* note 22.

48. *See* Letter from Andrea M. Kane, Ph.D., Superintendent of Schs., Queen Anne's Cnty. Pub. Schs., to Parents and Caregivers (June 5, 2020) (on file with author) [hereinafter Letter from Dr. Kane]; *Schifanelli v. Jourdak*, No. 1041, 2023 WL 4838105, at *2 (Md. App. Ct. July 28, 2023).

that we can listen more and pass judgment less; be slow to anger and extend grace to one another generously. As a Black woman with two Black sons (whom I worry about in ways that only a mother of Black sons in America can understand), when I say “Black Lives Matter” it is not meant to disparage any other race. It is an acknowledgment of the disparate brutality and overt racism [that is] only experienced by Black people in America[,] including me. For the record, I value all lives and do not want to be misunderstood so I will share an analogy that a friend explained earlier this week. If a house was on fire and the fire department came to put out the fire, would it make sense if firefighters sprayed water on every house on that street or just the one on fire? All of the houses have value but only one is in danger of being destroyed.

The marginalization of Black people and dehumanizing images that our children are exposed to require conversation[,] but where do we start? Tyrone Howard, an expert in the study of black males and professor at UCLA suggests that we refrain from diluting the issue, name anti-Black racism for what it is; believe Black students when they say they’ve been subjected to racism and discrimination; stop challenging Black Lives Matter, it only exacerbates the marginalization; and identify and speak about Black excellence to stop the narrative about the inferiority of Black people. The Reverend Dr. Martin Luther King, Jr. said, “We must learn to live together as brothers or perish together as fools.”⁴⁹

Ms. Wright, then a junior in high school, was encouraged by Dr. Kane’s letter, and she started organizing an off-campus event to raise awareness about the systemic issues that “led to the killing of Breonna Taylor, and so many other Black people. There was already so much injustice before George Floyd.”⁵⁰ She emailed Queen Anne’s County school district administrators and the leadership at her high school to ask for their support. Dr. Kane was the only person who replied to Ms. Wright.⁵¹ She attended Ms. Wright’s event but did not speak.⁵² Ms. Wright was heartened

49. Letter from Dr. Kane, *supra* note 48; *Schifanelli*, 2023 WL 4838105, at *2.

50. *See* Interview with Tynay Wright, *supra* note 26.

51. *Id.*

52. *See* Green *supra* note 14; Doug Bishop, *Local Teens Host Protest Rally Against Injustice*, BAY TIMES & RECORD OBSERVER (July 3, 2020), https://www.myeasternshoremmd.com/qa/community/news/local-teens-host-protest-rally-against-injustice/article_34776ff1-fa6a-5a34-ad60-1ca0fcc2146.html.

by Dr. Kane's presence and asked for her permission to hold voluntary discussions about race relations with students from neighboring counties, who had formed an organization called Students Talking About Race, or STAR.⁵³ Dr. Kane granted the request.⁵⁴ In July 2020, the Queen Anne's County Public Schools messenger system sent an electronic message inviting its middle and high school students and students in neighboring Kent, Dorchester, Talbot, and Caroline counties to have a STAR-facilitated "informal discussion to learn how to open dialogue and self reflection around racism in our schools and community."⁵⁵ In Ms. Wright's words, "I have always tried to be an activist. Even in middle school. Why did we only learn about European history and not Black history? I asked Dr. Kane. And in the year before I graduated from high school, she said, 'there is now a Black History class you can take in the fall.' Dr. Kane's leadership said to me, to all of us: 'I hear what you are saying. As someone in power, I hear you and I care.'"⁵⁶

D. The "Parents' Rights" Backlash

Attorneys Gordana Schifanelli and Marc Schifanelli, whose children attended schools in the county, received Dr. Kane's June 5 letter.⁵⁷ Ms. Schifanelli took to Facebook to voice her anger: "What are Queen Anne's County Commissioner[]s doing when a [County School] Superintendent sends this kind of letter to parents? I am furious over this."⁵⁸ She created a Facebook group called the Kent Island Patriots (Patriots), where other like-minded individuals could strategize since, in her view, the county was "unwilling[]" to address what Ms. Schifanelli characterized as bringing politics into education.⁵⁹

53. Green, *supra* note 14.

54. *Id.*

55. Schifanelli v. Jourdak, No. 1041, 2023 WL 4838105, at *3 (Md. App. Ct. July 28, 2023).

56. See Interview with Tynay Wright, *supra* note 26; see also Green, *supra* note 14 (stating that under Dr. Kane's leadership, the district created a new African American Studies course). Unbeknownst to Ms. Wright, when Dr. Kane first arrived in QAC and saw that there was no African American History class, she immediately took steps to establish one during her first year as superintendent. Interview with Dr. Kane, *supra* note 22.

57. Interview with Dr. Kane, *supra* note 22; see Schifanelli, 2023 WL 4838105, at *3; Green, *supra* note 14.

58. Schifanelli, 2023 WL 4838105, at *3.

59. See Schifanelli v. Queen Anne's Cnty. Bd. of Comm'rs, No. GLR-20-2906, 2021 WL 3681157, at *1, 8 (Aug. 18, 2021); see also Schifanelli, 2023 WL 4838105, at *16–17. Kent Island is an island that sits between the western shore of the Chesapeake Bay and the Eastern Shore and is part of Queen Anne's County.

Ms. Schifanelli also complained on the Patriots’ Facebook page about receiving the July STAR invitation from the school district.⁶⁰ “Call your School Board Commissioners and send them what your children received and what you received. I attached one copy on this post and information about the person behind this []training of our kids on race! Absurd.”⁶¹ Ms. Schifanelli encouraged members of the group—about 2,000 people⁶²—to call for Dr. Kane’s termination because, among other things, “WE DO NOT HAVE RACISM IN OUR COUNTY OR MARYLAND EASTERN SHORE. PERIOD.”⁶³ A Queen Anne’s County resident, Mary Ella Jourdak, who was a member of a community group, the Sunday Supper Committee,⁶⁴ posted separately to counteract Ms. Schifanelli’s statements:

Honestly, the hateful reaction to a voluntary program discussing racism in our community really highlights why we so truly need it. We have ALWAYS had these issues, whether y’all want to purposefully ignore the voices of your Black and Brown neighbors or not. As a lifelong [Queen Anne’s County] resident who went through [the county’s school system], these discussions are long overdue and of vital importance if we want to make our community a kinder, smarter, safer place for everyone.

Talking about race may be uncomfortable or scary for you, so try to extend your empathy to the people who live it every day of their lives.⁶⁵

Ms. Schifanelli replied:

Mary Ella Jourdak fake news. No one has ever had any issues in [Kent Island] or anywhere regarding their race. This Marxist organization has no place in our community. You will get nowhere trying to divide people based on race. Segregation is over. All lives matter. No one has ever filed a law suit[] claiming they were denied ANYTHING in this County because of their race!!!! No[t]

60. *Schifanelli*, 2023 WL 4838105, at *3.

61. *Id.*

62. *See* Green, *supra* note 14.

63. *Schifanelli*, 2023 WL 4838105, at *3.

64. *See* Green, *supra* note 14. The Sunday Supper Committee is “[a] quasi-governmental community group” made up mostly of white residents “that had been holding conversations about racism and equity since 2016. . . .” *Id.*

65. *Schifanelli*, 2023 WL 4838105, at *4.

one person! So you have zero facts to support this division and it's political and we will not allow you to Target our children!⁶⁶

Ms. Schifanelli continued her campaign against Dr. Kane, painting the STAR conversations as “Marxist” and “brainwashing” children.⁶⁷ The Patriots’ Facebook group grew, and the comments became increasingly frightening to Dr. Kane and the community members who supported her.⁶⁸ The comments included the N-word and mocked Black people and slavery.⁶⁹ A petition demanded that the school board fire Dr. Kane.⁷⁰ In July 2020, fearing that Dr. Kane’s position was in jeopardy, the Sunday Supper Committee made a public appeal to the County Board of Commissioners to support Dr. Kane.⁷¹ The group also drafted a letter to the Board of Education explaining why they agreed with Dr. Kane’s efforts to work with students who wanted to address race relations in the county. The letter received 6,641 signatures.⁷² In August 2020, a youth justice group, Millennials Demanding Change,⁷³ organized a caravan in support of Dr. Kane, stopping in nearby counties and concluding at the Board of Education in Queen Anne’s County to “stand in support of Dr. Andrea Kane.”⁷⁴

In that same month, Ms. Schifanelli filed a defamation lawsuit against Ms. Jourdak, the Sunday Supper Committee participant who challenged

66. *Id.*

67. *Id.* at *4, *6.

68. See Green, *supra* note 14; Interview with Dr. Kane, *supra* note 22.

69. See Green, *supra* note 14; Interview with Dr. Kane, *supra* note 22.

70. See Green, *supra* note 14.

71. See Queen Anne’s Cnty. Bd. of Comm’rs, No. GLR-20-2906, 2021 WL 3681157, at *2 (D. Md. Aug. 18, 2021); Sunday Supper Comm. of Queen Anne’s Cnty., *A Letter to Our Board of Education* (July 27, 2020), <https://www.change.org/p/stephen-wilson-support-dr-andrea-kane-and-the-board-of-education-addressing-racism-in-queen-anne-s-co/u/27389323>; see also Sunday Supper Cmty., FACEBOOK, <https://www.facebook.com/SundaySupperQAC/> (last accessed Feb. 11, 2024); Zachary Parnes, *Queen Anne’s Superintendent Criticized for Supporting Black Lives Matter Movement*, WBOC (Oct. 21, 2021), https://www.wboc.com/news/education/queen-annes-superintendent-criticized-for-supporting-black-lives-matter-movement/article_b6b7e1a1-5e36-55e0-876c-603e1b858386.html.

72. See Sunday Supper Comm. of Queen Anne’s Cnty., *supra* note 71 (last visited Feb. 25, 2024).

73. Millennials Demanding Change, FACEBOOK, <https://www.facebook.com/MillennialsDemandingChange/> (last accessed Feb. 13, 2024).

74. Kyleigh Panetta, *Queen Anne’s Co. Superintendent Voices Support for Black Lives Matter, Comments Face Scrutiny and Support*, 47ABC WMDT (Aug. 7, 2020), <https://www.wmdt.com/2020/08/queen-annes-co-superintendent-voices-support-for-black-lives-matter-comments-face-scrutiny-and-support/>.

Ms. Schifanelli on Facebook.⁷⁵ Then, in October 2020, Ms. Schifanelli filed a second lawsuit against the Queen Anne’s County Board of Commissioners, again alleging defamation, and “conspiracy to interfere with civil rights” and violations of her First and Fourteenth Amendment rights.⁷⁶ She sought compensatory and punitive damages, but lost both cases.⁷⁷ By then, Facebook had suspended Ms. Schifanelli’s personal account, but she and the Patriots developed a plan to undermine Dr. Kane’s work.⁷⁸

The Schifanellis and the Patriots organized to take over the Queen Anne’s County Board of Education.⁷⁹ In a September 2020 campaign post, entitled “What About Our Boyz? [sic],” Mr. Schifanelli lamented the school board’s approval of five books with female protagonists.⁸⁰

... I thought of the six novels that the current Board of Education had approved for purchase this past spring for our 8th thru 12th graders (See my blog “Political Indoc”). Five books had protagonists that were girls (one girl’s stand against police brutality; another young girl’s stand against gentrification in her city neighborhood; a third little girl’s story of crossing the U.S.-Mexico border; a fourth young girl’s experience growing up with a “tyrannical Christian” father; and the fifth young girl’s experience growing up in Georgia). No boy protagonists in this \$21k worth of books the County purchased.

Putting myself in my middle schooler’s (boys’) shoes, I can only imagine how much discipline it would take to read just 15 pages of these “novels,” much less write 1500 words about them. Wonder why the boys are becoming disinterested in reading and writing?

75. Schifanelli v. Jourdak, No. 1041, 2023 WL 4838105, at *8 (Md. App. Ct. July 28, 2023).

76. See Schifanelli v. Queen Anne’s Cnty. Bd. of Comm’rs, No. GLR-20-2906, 2021 WL 3681157, at *2 (Aug. 18, 2021). Ms. Schifanelli alleged that another member of the Sunday Supper Committee, who directed the county’s Local Management Board, “[f]ell ‘under the [a]dministration of the [County] Board of Commissioners,’” and that the Sunday Supper Committee was “an officially organized, funded and administered sub-committee of the County Local Management Board. . . .” *Id.* The Queen Anne’s County Board of Commissioners performs both the legislative and executive functions of local government. *Id.*; see *Board of County Commissioners, Origin & Functions*, MD. STATE ARCHIVES, <https://msa.maryland.gov/msa/mdmanual/36loc/qa/html/functions/qalegislativ.html#board> (last accessed Feb. 11, 2024).

77. Schifanelli, 2023 WL 4838105, at *9, 18–19; Schifanelli, 2021 WL 3681157, at *3, 9.

78. See Green, *supra* note 14; Interview with Dr. Kane, *supra* note 22.

79. See Green, *supra* note 14.

80. *What About Our Boyz?*, MARC SCHIFANELLI, ESQ. (Sept. 27, 2020), <https://schif.net/blog/f/what-about-our-boyz>.

Why they're 20 percentage points behind the girls? This could be one reason.

[...]

If I am elected to the Board of Education, I won't be sitting around just looking at the budget. I will take an active part in helping our teachers, supervisors, the public sector and parents identify the problem and work on solutions to raise both our boys' AND girls' language arts abilities. As adults, they may have the best ideas imaginable, but if they cannot effectively communicate them to others then we will all suffer.

Write in "SCHIF" for Board of Education District Four. No matter where you live in the County, you can vote for me in District Four and my friend and fellow veteran, Helen Bennett, for District Three.⁸¹

In November 2020, Mr. Schifanelli and two other Patriot-supported candidates were elected to the five-member board.⁸² By spring 2021, Dr. Kane had announced that she would not seek reappointment at the end of her term in June 2021.⁸³ Ms. Wright shared, "Dr. Kane left Queen Anne's County because she was getting harassed in the school system and out in public. . . . People came to her house, and mine. . . . In our area, you don't see people stand out. It is sad because she did so much that was good for the community but the only thing that gets written about is why she had to leave."⁸⁴

E. The Patriots Dilute the Equity Policy

Dr. Kane committed to fighting for equity until her last day in the district. She continued to work with school leaders to finalize the equity policy and bring it to the board for adoption. The proposed policy included definitions of "Educational Equity," "Cultural Responsiveness," "Implicit Bias," and

81. *Id.* (bold in original).

82. Green, *supra* note 14. Mr. Richard Smith, an incumbent appointed by former Governor Larry Hogan to fill a previously vacant seat, ran for re-election and won with the Patriots' support. *Id.*; see *Official 2020 Presidential General Election Results for Queen Anne's County*, MD. STATE BD. OF ELECTIONS (Dec. 4, 2020, 12:44 PM), https://elections.maryland.gov/elections/2020/results/general/gen_results_2020_4_by_county_180.html.

83. See Interview with Dr. Kane, *supra* note 22; Green, *supra* note 14; Parnes, *supra* note 71.

84. Interview with Tynay Wright, *supra* note 26.

“Social Identifiers.”⁸⁵ On March 3, 2021, Matthew Evans, Supervisor of Student Services, brought the proposed policy before the board for a first review and noted that the policy was modeled after a sample policy provided by the Maryland Association of Boards of Education (MABE).⁸⁶ Per the required notice and comment period, the board would review it again in conjunction with any public comments or board edits at the next meeting in April.⁸⁷ The proposal received 123 public comments, with a seemingly even split between those in favor and those against the proposed language.⁸⁸ Some comments stated that an equity policy was important, in particular to address racism, a lack of teacher diversity, and inequity in Queen Anne’s County, while others disliked the “social identifiers” language and/or claimed the policy was “divisive” and would “indoctrinat[e]” students.⁸⁹

At the next meeting in April, teachers and district-wide leaders presented information relevant to the board’s adoption of the equity policy. This included how the pandemic impacted the poverty rate, especially for Black and Hispanic families.⁹⁰ The Title I Family Engagement Specialist, Ms. Amanda Ensor, described the spike in food insecurity in the county during the pandemic and the impact of poverty, hunger, and trauma on a child’s developing brain.⁹¹ She also explained that “part of equity is being able to see yourself . . . in [school materials]” and how novels with protagonist students can relate to can provide children with hope.⁹² Ms. Bridget Passyn, the RELA/ELA/English Supervisor for grades 3–12, together with

85. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, Mar. 3, 2021, click Agenda, click Information Items 9.02, Policies for 1st Public Review, then Policy #648 Educational Equity).

86. *Id.* (click on video, navigate to 1:59–2:00); see *Educational Equity*, MD. ASS’N OF BDS. OF EDUC., <https://www.mabe.org/about/equity-initiatives/> (last visited Mar. 3, 2024); MABE Sample Policy, Educational Equity (2019), [https://www.boarddocs.com/mabe/mcpsmd/Board.nsf/files/BBPT8Z69C86B/\\$file/MABE-Educational-Equity-Sample-Policy-Jan.-2019.pdf](https://www.boarddocs.com/mabe/mcpsmd/Board.nsf/files/BBPT8Z69C86B/$file/MABE-Educational-Equity-Sample-Policy-Jan.-2019.pdf).

87. See QUEEN ANNE’S CNTY. PUB. SCHS., QUEEN ANNE’S COUNTY BOARD OF EDUCATION HANDBOOK 7 (2019), <https://www.qacps.org/wp-content/uploads/2022/02/Queen-Annes-County-Board-of-Education-Handbook-REVISION-JUNE-2019.pdf> (“Formal adoption of new policies and/or revision or repeal of existing policies are solely within the province of the Board and will occur only after the proposed policy has been out for public comment for a minimum of two regularly-scheduled Board meetings.”).

88. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, Apr. 7, 2021 (Wed.), click on video, navigate to 3:50–3:53). Mr. Evans noted that a majority of comments is different from a majority of people who commented. Mr. Evans organized the comments by theme, so one person could have contributed more than one comment at a time. *Id.*

89. *Id.*

90. *Id.* at 1:49–1:52

91. *Id.* at 1:44–1:55.

92. *Id.* at 2:15–2:16.

Ms. Ensor, presented on ELA and math proficiency achievement gaps for lower-income students⁹³ and how equity practices, including enhanced choice in reading materials as well as other areas of the curriculum, can help students access education and empower them to learn in the face of adversity.⁹⁴

Mr. Evans and Ms. Julie Forbes, the Supervisor of Accountability, Assessment and Data Management, presented data regarding significant achievement gaps between students.⁹⁵ For example, for high school students in the 2018–19 school year, 63.9 percent of white students were proficient in math, and 75.4 percent were proficient in English Language Arts. However, 45.7 percent of Black students and 27.3 percent of Latino students were proficient in Math; and 51.5 percent of Black students, 45.5 percent of Latino students, and 8.3 percent of English Language Learner (ELL) students were proficient in English Language Arts.⁹⁶ In the 2020–21 school year, white students were overrepresented in Advanced Placement and Honors Course Enrollment, and Black and Latino students were underrepresented in those classes.⁹⁷ (Ms. Wright's experience illustrates the data: "I was the only Black student in my honors classes.")⁹⁸ The disciplinary data from the 2019–20 school year was also striking: Black students were suspended at a rate of 7.07 percent, whereas white students were suspended at a rate of 1.81 percent. Black students' suspension rate was nearly four times that of white students.⁹⁹ Mr. Schifanelli asked Mr. Evans why the suspension rate for African American students was so much higher, and Mr. Evans explained that this was "the point of the equity policy": to identify trends and find solutions in order "to help prevent . . . the actual discipline infraction that would lead to a suspension."¹⁰⁰ Overall the public school population for all grades in the district in the 2019–20 school year was 78.1% white, 9.4% Latino, 5.7% Black, 5.5% two or more races, and 1.1% Asian.¹⁰¹

93. *Id.* at 1:38–1:40.

94. *Id.* at 1:36–1:37, 2:02–2:19.

95. *Id.* at 34:00–1:15:20.

96. S. MATTHEW EVANS & JULIE FORBES, EDUCATIONAL EQUITY 7–8 (Apr. 7, 2021), [https://go.boarddocs.com/mabe/qacps/Board.nsf/files/BZUL8V554ED9/\\$file/Educational%20Equity%20Presentation%20-%20April%207%2C%202021.pdf](https://go.boarddocs.com/mabe/qacps/Board.nsf/files/BZUL8V554ED9/$file/Educational%20Equity%20Presentation%20-%20April%207%2C%202021.pdf). There was no Math ELL data for high school students. *Id.*

97. *Id.*

98. Interview with Tynay Wright, *supra* note 26.

99. EVANS & FORBES, *supra* note 96, at 9.

100. Queen Anne's Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, April 7 2021, click on video, at 1:03:33–1:04:17).

101. EVANS & FORBES, *supra* note 96, at 4.

At the close of the discussion regarding the policy, it came to light that the board’s counsel submitted some edits during the board meeting, and Mr. Schifanelli mentioned that he had made some comments to the proposed policy as well.¹⁰² The board voted for the policy to go back to the policy committee to consider the public comments and proposed revisions.¹⁰³ Both Dr. Kane and Mr. Evans noted that Queen Anne’s County was the last district in the state of Maryland to implement an equity policy.¹⁰⁴ Mr. Schifanelli replied, “Well, we’ve got to take our time.”¹⁰⁵

At the following board meeting on May 5, 2021, the policy was considered again.¹⁰⁶ But Mr. Schifanelli had some last-minute changes that he emailed to the board and Dr. Kane during this meeting. He then made a motion to change the proposed policy to his version.¹⁰⁷ The board’s counsel encouraged Mr. Schifanelli to explain his changes on the record.¹⁰⁸ Mr. Schifanelli argued that the “central purpose of having an equity policy, aside from conforming with the Maryland state . . . regulations . . . is to help shrink the . . . achievement gaps in the schools” and that the equity policy should not go beyond the state’s minimum requirements.¹⁰⁹ He rewrote sections concerning the Purpose of the policy and a Statement about the policy, including deleting text about “recognizing and removing institutional barriers,” and removing the terms and definitions for “cultural responsiveness,” “implicit bias,” and “social identifiers.”¹¹⁰ This language had been taken from the MABE model policy.¹¹¹ He also changed the definition of Educational Equity from:

102. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, April 7 2021, click on video, at 3:53).

103. *Id.* at 3:57–3:58.

104. *Id.* at 3:58.

105. *Id.*

106. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, May 5, 2021).

107. *Id.* (click on video, navigate to 48:07–50:30).

108. *Id.* at 50:40–51:50.

109. *Id.* at 51:52–53:45.

110. *Id.* at 52:30–53:45; compare Queen Anne’s Cnty. Pub. Schs., Policy No. 648 (proposed), Educational Equity, <https://go.boarddocs.com/mabe/qacps/Board.nsf/Public> (click Meetings, 2021, Mar. 3, 2021, click Agenda, click Information Items 9.02, Policies for 1st Public Review, then Policy #648 Educational Equity) [hereinafter Policy No. 648, version considered Mar. 3, 2021], with Queen Anne’s Cnty. Pub. Schs., Policy No. 648, Educational Equity, <https://go.boarddocs.com/mabe/qacps/Board.nsf/Public> (click Meetings, 2021, Aug. 4, 2021, click Agenda, click Information Items 7.05, Third and Final Reading of Policy 648, Educational Equity) [hereinafter Policy No. 648, version considered Aug. 4, 2021].

111. See MABE Sample Policy, Educational Equity, *supra* note 86.

Providing access to essential academic, social, emotional, and economic resources, supports, and opportunities in order to engage each student, throughout their educational career. Educational Equity also maximizes academic success for each student through rigorous instruction, with appropriate educational resources, to achieve their highest potential, their social/emotional well being, and to ensure that their social identifiers are valued as an asset.¹¹²

to:

Educational Equity means that every student has access to the opportunities, resources, and educational rigor they need throughout their educational career to maximize academic success and social/emotional well-being and to view each student's individual characteristics as valuable.¹¹³

Mr. Schifanelli's Educational Equity statement parrots the Maryland regulation verbatim.¹¹⁴

At the recommendation of the board's counsel, and on the motion of another board member, the board voted again to extend the time to review the policy in order to consider Mr. Schifanelli's changes.¹¹⁵ One board member indicated she had not seen the proposed changes previously and was visibly frustrated.¹¹⁶ Dr. Kane also clarified for the record that:

[T]he only purpose for the educational equity policy is not to eliminate achievement gaps. It is also to ensure access to programming, ensure that we are . . . giving [all of our children] an equal opportunity for accessing all programs, and ensure that we are leveling the playing field for those who are disadvantaged. So it is a bit deeper than the achievement gap. . . . [W]hile it shall conform with [the state regulations] that does not mean that it only has to say exactly what is in [the state law].¹¹⁷

112. Policy No. 648, version considered Mar. 3, 2021, *supra* note 110.

113. Policy No. 648, version considered Aug. 4, 2021, *supra* note 110.

114. *See* MD. CODE REGS. 13A.01.06.03(B)(2).

115. Queen Anne's Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, May 5, 2021, click on video, navigate to 53:00).

116. *Id.* at 49:30–49:44.

117. *Id.* at 53:59–54:45.

The language of the law, the MABE model policy, and Maryland’s State Education Department’s guidance for implementing the regulation at the district level support Dr. Kane’s point. The originally proposed policy Dr. Kane had been working on with the policy committee was almost an exact replica of the model recommended by MABE.¹¹⁸ The state guidance further clarifies:

[B]ased on our history and current societal dynamics, we have a responsibility to work often outside of our comfort zones to ensure that all students have access to a quality education and feel safe and included in their school environments. Part of that work is to ensure that all students, particularly students of color, students with disabilities, and students who have been traditionally underrepresented and not afforded equal opportunities, have access to effective, diverse, and supportive teachers and leaders throughout their school experiences.¹¹⁹

Nevertheless, the board later adopted Mr. Schifanelli’s version of the policy on August 4, 2021, after Dr. Kane had left the county.¹²⁰ In Dr. Kane’s view, Queen Anne’s County would not have an equity policy but for the state requirement. The last-minute changes, delays, and regurgitated language showed the board’s resistance to actually addressing racism in the community and creating more equitable outcomes for Queen Anne’s most disadvantaged students.¹²¹

F. The School Board Bans a Book Approved by the ELA Curriculum Committee

At the April 7, 2021, board meeting, the English Language Arts (ELA) Curriculum and Instruction Supervisor for grades 3 through 12, Ms. Bridget Passyn, showed the board how the curriculum committee’s selection of proposed books both satisfied the Maryland equity requirements and comported with the state’s guidance on addressing racial

118. See MABE Sample Policy, Educational Equity, *supra* note 86.

119. MD. STATE DEP’T OF EDUC., EQUITY AND EXCELLENCE, *supra* note 44, at 10.

120. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, Aug. 4, 2021, click video, navigate to 51:00); see also Policy No. 648, version considered Aug. 4, 2021, *supra* note 110.

121. Interview with Dr. Kane, *supra* note 22.

and gender achievement gaps in ELA.¹²² She highlighted the importance of offering students “choice” novels in classroom libraries that both reflect and broaden their experiences, in part to encourage reluctant students to read.¹²³ A review of available novels prior to the most recent adoptions showed that the vast majority of protagonists for high school ELA texts were white and male.¹²⁴ Across the entire district, of the 27 high school novels, 23 had male protagonists and four had female protagonists. There were 19 white protagonists compared to five Black, two Hispanic, and one Asian protagonist.¹²⁵ She explained that the new novels would help create a library more reflective of the student population in Queen Anne’s County and that both the review of older novels and the proposal for new ones followed the state’s guidance on assessing the curriculum “for bias [and an] inadequate examination of perspectives, e.g. social justice standards or anti-bias framework.”¹²⁶ Mr. Schifanelli questioned this focus, stating, “[t]here’s no mention of social justice in the educational equity part of the [Maryland regulation], correct?”¹²⁷ Ms. Passyn explained that the state guidance was to help school districts implement the law and that showing how the books correlated with the state’s guidance had helped in securing funding from a federally competitive grant to purchase novels; also, in her experience with the district, “[t]here’s never been money [to buy novels] until we got the grant.”¹²⁸ Dr. Kane thanked Ms. Passyn for her presentation and emphasized the importance of children seeing themselves in the novels they read from the school.¹²⁹

122. See PASSYN, EXTENDED WORKS ADOPTIONS, *supra* note 34; see also Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, April 7, 2021, click on Agenda Item 6.04, then click on PDF link on the right). The proposed books were part of a “choice” curriculum where students could choose from a number of different novels to satisfy ELA course requirements and were not required reading. See *id.* (click Meetings, 2021, Apr. 7, 2021 (Wed.), click on video, navigate to 2:20–2:44).

123. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, Apr. 7, 2021 (Wed.), click on video, navigate to 2:01:45, 2:20–2:45). Mr. Schifanelli ran on a platform to close the achievement gap between boys and girls in English Language Arts, where boys lag behind girls. See *What About Our Boyz?*, *supra* note 80. Ms. Passyn’s presentation seemed aimed in part to target this concern. See Queen Anne’s Cnty. School Board Meeting, *supra* (navigate to 2:25–2:32).

124. PASSYN, EXTENDED WORKS ADOPTIONS, *supra* note 34, at 11, 13.

125. *Id.*

126. *Id.* at 6.

127. See Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, Apr. 7, 2021 (Wed.), click on video, navigate to 2:47–2:50).

128. *Id.* at 2:44–2:47.

129. *Id.* at 2:57.

After the proposed books had been posted for 30 days, Ms. Passyn returned to ask for the board’s approval of the novels at the May 5, 2021, meeting.¹³⁰ She was again met with resistance from Mr. Schifanelli.¹³¹ He objected to offering *Harbor Me* in seventh-grade classroom libraries.¹³² The book is about six 5th and 6th grade students who are struggling in a public school in Brooklyn.¹³³ The novel follows each of their personal challenges, including, among others, a parent returning from prison, a mother and son facing racism, and a son whose father has been detained by immigration officials in Florida.¹³⁴

Mr. Schifanelli, who is an immigration lawyer and who “worked on the border with border patrol for several years,” said that the book offered an “emotional” portrait of deportation that was one-sided and inappropriate for children in middle school.¹³⁵ He also shared that he was concerned about ensuring “unbiased teaching.”¹³⁶ Ms. Passyn replied that Queen Anne’s County children are already dealing with the themes raised by this novel:

[W]e tend to have those concerns in the northern part of our county. . . . We have kids afraid to come to school, or parents afraid to pick up their . . . children. . . . [T]hey’re already talking about it. They already know [what’s] happening. The things our middle schoolers are dealing with and seeing on the news and hearing at home. . . . [T]his just puts it in a safe context. . . . It’s already out there in the news, and in their lives. As an educator, [this book] is a . . . [I]t’s just a beautiful way to show how all these kids are resilient and they’re going through real-time, current struggles. . . .¹³⁷

Mr. Schifanelli recommended that Ms. Passyn instead add what he considered to be a more uplifting autobiography by former Republican

130. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, May 5, 2021, click on video, navigate to 1:04:20).

131. *Id.* at 1:06.

132. *Id.* at 1:06:16.

133. JAQUELINE WOODSON, *HARBOR ME* (2018); Emily Eakin, “*I Grew Up in a Southern Family—There Was a Lot of Talking*”: *Jacqueline Woodson on Her Two New Best Sellers*, N.Y. TIMES (Sept. 7, 2018), <https://www.nytimes.com/2018/09/07/books/review/jacqueline-woodson-day-you-begin-harbor-me.html>.

134. WOODSON, *supra* note 133.

135. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, May 5, 2021, click on video, navigate to 1:06–1:13).

136. *Id.* at 1:12–1:13.

137. *Id.* at 1:09–1:10.

candidate for president Dr. Ben Carson.¹³⁸ Mr. Schifanelli and the Patriot-supported majority voted against including *Harbor Me* in the curriculum.¹³⁹ Because the book was not approved by the Board, teachers were also prevented from keeping donated copies of the book in their classroom libraries.¹⁴⁰

G. Fodder for Politics

On October 15, 2021, Gordana Schifanelli entered the Maryland Lieutenant Governor's race as a Republican "education activist" who had successfully added "parents' rights" members to the school board and publicly opposed a superintendent who promoted "cultural disunity by political elites."¹⁴¹ She and gubernatorial candidate Dan Cox were endorsed by former President Trump.¹⁴² They lost to Wes Moore—the first Black governor of the state of Maryland and the third Black governor elected in the country¹⁴³—and Aruna Miller, "the first woman of color and immigrant elected to statewide office in Maryland."¹⁴⁴ The race was not close, with Miller and Moore gaining 65 percent of the vote, and Cox and

138. *Id.* at 1:10–1:11.

139. *Id.* at 1:17:00–1:18; see Green, *supra* note 14.

140. Staff Reports, *QACPS to Form Committee to Review Book Policy*, BAY TIMES & RECORD OBSERVER (Apr. 20, 2023), https://www.myeasternshoremd.com/qa/community/news/qacps-to-form-committee-to-review-book-policy/article_44d87311-8428-5781-aad1-ced49784e98c.html.

141. See Tom Hall et al., *Gordana Schifanelli, Republican Nominee for Lt. Governor of MD*, WYPR (Oct. 27, 2022), <https://www.wypr.org/show/midday/2022-10-27/gordana-schifanelli-republican-nominee-for-lt-governor-of-md> (see photo caption describing Ms. Schifanelli as an "education activist"); Jenna Portnoy, *Candidates for Md. Lieutenant Governor Emphasize Their Immigrant Pasts*, WASH. POST (Oct. 27, 2022), <https://www.washingtonpost.com/dc-md-va/2022/10/27/maryland-election-miller-schifanelli-lieutenant-governor/>; Dan Cox for Congress, *Gordana Schifanelli Enters Race for Lieutenant #Governor*, YOUTUBE (Oct. 16, 2021), <https://www.youtube.com/watch?v=-9secz3FBzA> (see captioning by the campaign describing Ms. Schifanelli as running against "cultural disunity by political elites").

142. Bruce DePuyt, *With Trump's Backing, Dan Cox's Gubernatorial Bid Gains National Exposure*, MD. MATTERS (Nov. 22, 2021), <https://www.marylandmatters.org/2021/11/22/with-trumps-backing-dan-coxs-gubernatorial-bid-gains-national-exposure/>.

143. *Governor Wes Moore*, OFF. OF GOV. WES MOORE, Maryland.gov, <https://governor.maryland.gov/leadership/Pages/governor.aspx> (last visited Feb. 25, 2024).

144. *Biography*, OFF. OF LT. GOV. ARUNA MILLER, Maryland.gov, <https://governor.maryland.gov/leadership/ltgovernor/Pages/biography.aspx> (last visited Feb. 2024).

Schifanelli at 32 percent.¹⁴⁵ Ms. Schifanelli then attempted to run for GOP chair in Maryland but missed the filing deadline by one hour.¹⁴⁶

II. “Parents’ Rights” Nationwide

Queen Anne’s County is one example of what has been happening in school districts across the country.¹⁴⁷ *CRT Forward*, an initiative from the University of California School of Law Critical Race Studies program, has found that from September 2020 through the end of 2023, “244 local, state, and federal government entities . . . have introduced 783 anti-Critical Race Theory bills, resolutions, executive orders, opinion letters, statements, and other measures.”¹⁴⁸ These efforts are a culmination of the conservative backlash to nationwide developments over the last several years, including the creation of the 1619 Project in the *New York Times*, which centers slavery in America’s founding; the COVID-19 pandemic and virtual learning, which thrust parents into their children’s classrooms on a daily basis; and protests against police brutality following George Floyd’s murder.¹⁴⁹ In response, former president Donald Trump signed an Executive Order designed to squash conversations about race and racism. The order prohibited in federal agencies training about “divisive concepts,” or concepts that could induce feelings of guilt, paving the way for state and local governments to follow suit.¹⁵⁰ School districts quickly

145. *Wes Moore (D) Won the Race for Maryland Governor*, POLITICO (Feb. 2, 2023, 3:27 PM), <https://www.politico.com/2022-election/results/maryland/statewide-offices/>.

146. *See* Bruce DePuyt, *Schifanelli Bows out of GOP Chair Race After Filing Documents Missed Deadline by an Hour*, MD. MATTERS (Nov. 22, 2022), <https://www.marylandmatters.org/2022/11/22/schifanelli-bows-out-of-gop-chair-race-after-filing-documents-missed-deadline-by-an-hour/>; Jeff Barker, *Former Maryland Lt. Gov. Candidate Gordana Schifanelli’s Bid for GOP State Chair Is Rebuffed in Flare-up over Filing Deadline*, BALTIMORE SUN (Nov. 23, 2022), <https://www.baltimoresun.com/politics/bs-md-pol-republican-state-chair-dispute-20221123-q2osw73snfhn5pkno7nbjny43q-story.html>.

147. *See* ALEXANDER ET AL., *supra* note 1.

148. CRT FORWARD, <https://crtforward.law.ucla.edu> (last visited Feb. 15, 2024). In addition, as of February 2024, the ACLU had tracked 174 anti-LGBTQ school-related bills in the 2024 legislative session. *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024*, ACLU, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024?impact=> (last visited Feb. 21, 2024).

149. *See* Sacha M. Coupet & Kai Scott, *The Ontological Expansiveness of “Parental Rights” Rhetoric in K–12 Public Schools*, 57 FAM. L.Q. 115, 131 (2024); ALEXANDER ET AL., *supra* note 1, at 4–6.

150. Exec. Order No. 13,950, Combating Race and Sex Stereotyping, 85 Fed. Reg. 60,683 (Sept. 22, 2020), *revoked by* Exec. Order No. 13,985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, § 10, 86 Fed. Reg. 7,009, 7,012 (Jan. 20, 2021); *see* ALEXANDER ET AL., *supra* note 1, at 4–6; Coupet & Scott, *supra* note 149, at 133–35.

became targets of similar bans. As Professor Clark notes, “[S]chools have long been foundational sites of racial contestations, and curriculum wars are not new.”¹⁵¹ However, importantly, the resulting “parents’ rights” initiatives are not because of “a sea change in public opinion about curriculum. . . .”¹⁵² They are instead due to “participation by a very vocal minority” and low voter turnout, especially at the local level, which makes it easier to promote a particular agenda.¹⁵³ As Dr. Kane shared, “What the [‘parents’ rights’ group] relies on is not being challenged—they liked to spew their hate without listening. [In my district,] it was not even a group of parents—it was one woman.”¹⁵⁴

Nationally, “parents’ rights” groups have had little impact on actual parents’ satisfaction with their children’s K–12 education.¹⁵⁵ Polling data from September 2022 show that nationwide, 80% of parents were satisfied with their oldest child’s education, even following the challenges of the COVID-19 pandemic.¹⁵⁶ This was an increase from 73% in the year before, and from the yearly average of 76% since 2001, when Gallup first started reporting these data.¹⁵⁷ Tellingly, it is Republican *adults*—as distinct from parents—whose satisfaction has declined, from 46% in 2020 to 30% in 2022.¹⁵⁸

But in communities where “parents’ rights” have taken over, the impact on students is significant.¹⁵⁹ So far, “over 22 million public school children[—]almost half of the country’s 50.8 million public school students”—have been affected by anti-CRT policies.¹⁶⁰ While all students are disadvantaged by these initiatives, Black and Latino students, and lesbian, gay, and transgender students, are at a higher risk of psychological

151. See Clark, *supra* note 4.

152. Penn GSE News, *supra* note 4; see also Valant, *supra* note 4.

153. See Penn GSE News, *supra* note 4.

154. See Interview with Dr. Kane, *supra* note 22.

155. Lydia Saad, *American’s Satisfaction with K–12 Education on Low Side*, GALLUP (Sept. 1, 2022), <https://news.gallup.com/poll/399731/americans-satisfaction-education-low-side.aspx>.

156. *Id.*

157. *Id.*

158. *Id.*

159. See ALEXANDER ET AL., *supra* note 1.

160. *Id.* at 6.

harm because of the chilling effects of these content restrictions in schools and corresponding lack of support from their school communities.¹⁶¹

The fight in Florida over whether to offer African American Studies as an Advanced Placement course is illustrative, and underscores Professor Clark’s point about protecting whiteness: Banning this history “sends Floridians the message that African American history is ‘other.’ It tells them that learning about the experiences of millions of Black people who helped build this country is more dangerous than learning a history that romanticizes the deeds of the [white] colonizers and secessionists who continue to be celebrated in the curriculum and with monuments.”¹⁶² As a result, Black children will feel “othered” and disconnected from learning.¹⁶³ This is why it was particularly powerful when Dr. Kane informed Ms. Wright that an African American History course would be offered at her high school.¹⁶⁴

Similarly, and again in Florida, when Governor DeSantis enacted the “Parental Rights in Education Law,” which restricted discussion of sexual orientation in K–12th grade, there was tremendous opposition,

161. Cady Stanton, *As “Don’t Say Gay” and Similar Bills Take Hold, LGBTQ Youths Feel They’re “Getting Crushed”*, USA TODAY (May 9, 2022), <https://www.usatoday.com/story/news/education/2022/05/09/dont-say-gay-lgbtq-youth-reaction/7398468001/>; Dana Goldstein, *Little Rock Will Offer A.P. African American Studies Despite State Objections*, N.Y. TIMES (Aug. 17, 2023), https://www.nytimes.com/2023/08/17/us/little-rock-ap-african-american-studies.html?action=click&pgtype=Article&state=default&module=style-us-schools&variant=show®ion=MAIN_CONTENT_1&block=storyline_top_links_recirc; Blair Wriston, *Learning Honest History Isn’t Criminal—It’s What Students Deserve to Know*, EDUC. TRUST (Feb. 8, 2022), <https://edtrust.org/the-equity-line/learning-honest-history-isnt-criminal-its-what-students-deserve-to-know/>; *Educational Intimidation*, PEN AM. (Aug. 23, 2023), <https://pen.org/report/educational-intimidation/>; Frank, *supra* note 1; ADL Education, *Anti-LGBTQ+ Bills That Are Impacting Children, Families and Schools* (Apr. 27, 2023), [https://www.edweek.org/leadership/parents-rights-groups-have-mobilized-what-does-it-mean-for-students/2023/08](https://www.adl.org/resources/tools-and-strategies/anti-lgbtq-bills-are-impacting-children-families-and-schools?gclid=Cj0KCQjw2qKmBhCfARIsAFy8buLeN6tGHkT3ZuBheWu0554irsrTCuAJnHBLWeo2sJXXOakE_ODiHfwaAgrJREALw_wcB; ALEXANDER ET AL., supra note 1; Libby Stanford, <i>Parents’ Rights Groups Have Mobilized. What Does It Mean for Students?</i>, EDUC. WEEK (Aug. 31, 2023), <a href=).

162. Monica Washington, *What the Rejection of African American History Means for Students*, EDUC. WEEK (Feb. 21, 2023), <https://www.edweek.org/teaching-learning/opinion-what-the-rejection-of-african-american-history-means-for-students/2023/02>.

163. *See id.*; Joe Heim & Lori Rozsa, *African Americans Say the Teaching of Black History Is Under Threat*, WASH. POST (Feb. 23, 2022), <https://www.washingtonpost.com/education/2022/02/23/schools-black-history-month-crt/>.

164. Interview with Tynay Wright, *supra* note 26.

and concern for the impact on LGBTQ+ children.¹⁶⁵ “[W]hen lawmakers treat LGBTQ+ topics as taboo . . . it only adds to the existing stigma and discrimination” LGBTQ+ students face, which puts them “at greater risk for bullying, depression, and suicide.”¹⁶⁶ These laws are dangerous because LGBTQ+ youth are already at an increased risk of self-harm—not because of their sexual orientation but because of how society abuses them.¹⁶⁷ These policies have the effect of sanctioning that abuse, turning schools that are supposed to be diverse and welcoming communities into unsafe spaces for students and the educators who wish to support them.¹⁶⁸ One 10th-grade student in Queen Anne’s County shared with the Board of Education in June 2022 that there have been “‘countless’ stories of bullying against [LGBTQ+] community members”: “‘This isn’t about whether you agree with my community or not. . . . [T]his is about our right to simply exist without living in fear because of who we are and something we can’t control.’”¹⁶⁹

These initiatives have been organized under the term “parents’ rights,” which suggests that parents have the authority to dictate what can and cannot be discussed or taught in schools. This is a much more capacious

165. Meredith Johnson, *The Dangerous Consequences of Florida’s “Don’t Say Gay” Bill on LGBTQ+ Youth in Florida*, GEO. J. GENDER & L. (2020), <https://www.law.georgetown.edu/gender-journal/online/volume-xxiii-online/the-dangerous-consequences-of-floridas-dont-say-gay-bill-on-lgbtq-youth-in-florida/>.

166. *Id.* (quoting the CEO of the Trevor Project).

167. *Facts About Suicide Among LGBTQ+ Young People*, THE TREVOR PROJECT (Dec. 15, 2021), <https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/>.

168. See Johnson, *supra* note 165. Both anti-CRT and anti-LGBTQ+ legislation compound what has already been a particularly challenging period for students who suffered substantial learning loss from the pandemic, see Tom Kane & Sean Reardon, *Parents Don’t Understand How Far Behind Their Kids Are in School*, N.Y. TIMES (May 11, 2023), <https://www.nytimes.com/interactive/2023/05/11/opinion/pandemic-learning-losses-steep-but-not-permanent.html>, and for students who experienced increased rates of bullying and fear during and after Donald Trump’s 2016 presidential campaign, see JOHN SHATTUK & MATHIAS RISSE, CARR CTR. FOR HUM. RTS. POL’Y, HARV. KENNEDY SCH., REIMAGINING RIGHTS & RESPONSIBILITIES IN THE U.S.: HATE CRIMES 2, 9 (2021), https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf; Hannah Natanson et al., *Trump’s Words, Bullied Kids, Scarred Schools*, WASH. POST (Feb. 13, 2020), <https://www.washingtonpost.com/graphics/2020/local/school-bullying-trump-words/>; Valerie Strauss & Clare Lombardo, *Virginia Study Finds Increased School Bullying in Areas That Voted for Trump*, NPR (Jan. 9, 2019), <https://www.npr.org/2019/01/09/683177489/virginia-study-finds-increased-school-bullying-in-areas-that-voted-for-trump>; Francisco Vara-Orta, *New Research Finds Link Between Districts That Voted Trump and Racist Bullying Post-election*, CHALKBEAT (Jan. 9, 2019), <https://www.chalkbeat.org/2019/1/9/21106480/new-research-finds-link-between-districts-that-voted-trump-and-racist-bullying-post-election>.

169. Luke Parker, *KI High Student Condemns Homophobic Behavior*, STAR DEMOCRAT (June 12, 2022), https://www.stardem.com/news/local_news/ki-high-student-condemns-homophobic-behavior/article_312f616e-0170-53db-8ca0-31425e7ee32e.html (quoting QACPS Kent Island High School sophomore Ariana Barrett).

understanding of parents’ actual rights and is why the movement has gained traction. In Dr. Kane’s words, “once you start talking about people’s children, you have their attention.”¹⁷⁰

Parents do have the right to be involved in their children’s education, but their rights are limited to their own children.¹⁷¹ In 1923, in *Meyer v. Nebraska*, the Court wrote: “[I]t is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the states, including Nebraska, enforce this obligation by compulsory laws.”¹⁷² Here, the Court held a student’s right to learn in the same regard as a parent’s right to make decisions about their child’s education: The Nebraska statute at issue “interfere[d] with . . . the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own [children].”¹⁷³ Two years later, in *Pierce v. Society of Sisters*, the Supreme Court reaffirmed *Meyer*, holding that states could not require parents to send their children to public schools, as opposed to private schools, because it “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.”¹⁷⁴ All 50 states permit parents to home-school their children.¹⁷⁵ In sum, while parents retain rights with regard to their own children’s education, there is no authority for parents to dictate school

170. Interview with Dr. Kane, *supra* note 22. For example, in Florida, Governor Ron DeSantis signed the “Parental Rights in Education” law, which bans discussion of sexual orientation or gender identity from pre-kindergarten through 12th grade, with limited exceptions. The law has nothing to do with parent’s rights. See Alfonseca, *supra* note 1; Frank, *supra* note 1.

171. Emily Buss, *Restating the Law Governing Children’s Education*, 57 *FAM. L.Q.* 93 (2024).

172. 262 U.S. 390, 400 (1923).

173. *Id.* at 401 (emphasis added).

174. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925). Fifty years later, the Supreme Court held in *Wisconsin v. Yoder* that the unique approach of the Amish community in raising and educating their children allowed Amish parents to withdraw their children from a traditional school setting after the 8th grade because “[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” 406 U.S. 205, 233 (1972) (quoting *Pierce*, 268 U.S. at 535).

175. See *Homeschool Laws by State*, HOME SCH. LEGAL DEF. ASS’N, <https://hsllda.org/legal> (last visited Feb. 12, 2024); *Homeschooling*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/nhes/homeschooling.asp> (last visited Feb. 12, 2024); Peter Jamison et al., *Home Schooling’s Rise from Fringe to Fastest-Growing Form of Education*, WASH. POST (Oct. 31, 2023), <https://www.washingtonpost.com/education/interactive/2023/homeschooling-growth-data-by-district/>.

curricula for all students.¹⁷⁶ On the other hand, students have important rights that protect their ability to access public education.

III. Students' Rights to an Education, "Made Available to All on Equal Terms"

This section examines children's right to an education in this country and its role in both creating and maintaining a democracy. This history provides important context for the right's resistance to accurate and comprehensive curricula and highlights different laws that can be used to protect students' access to education.

Beginning with *Brown v. Board of Education* in 1954, the Supreme Court has consistently emphasized the important connection between education and the maintenance of a democratic political system, particularly in the context of combating racial discrimination.¹⁷⁷

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹⁷⁸

176. Joshua Weishart, *What the Law Says About Parents' Rights over Schooling*, EDUC. WEEK (Nov. 29, 2021), <https://www.edweek.org/policy-politics/opinion-what-the-law-says-about-parents-rights-over-schooling/2021/11>; see Buss, *supra* note 171, at 105.

177. See 347 U.S. 483, 493 (1954); see also *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) ("[A]s . . . pointed out early in our history . . . some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence."); *Ambach v. Norwick*, 441 U.S. 68, 77 (1979) ("[P]erceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists.").

178. *Brown*, 347 U.S. at 493.

Despite this powerful language, 20 years later, the Supreme Court declined to recognize education as a fundamental right in *San Antonio Independent School District v. Rodriguez*, where low-income Mexican American parents of students in a Texas school district sued the Texas Board of Education and others for implementing an inequitable funding scheme for public schools.¹⁷⁹ Justices William Brennan and Thurgood Marshall issued strong dissents, arguing that the close “nexus” between education and other fundamental rights, including the enumerated rights to free speech and to vote in federal elections, make education a fundamental right,¹⁸⁰ and that the remedy for such discrimination under the Equal Protection Clause should not be left to the “vagaries of the political process.”¹⁸¹

It is no accident that the majority in *Brown* tied education to civic participation and that Justices Marshall and Brennan made explicit connections between the right to an education and the enumerated, fundamental right to vote. As Constitutional Law Professor Derek Black has written:

Southern states, in particular, had made the education of African Americans a crime, and only afforded poor whites limited access to school. This led to high illiteracy and low voter turnout in the South. The broader effect was to exclude vast numbers of citizens from any realistic opportunity to participate in the democratic process. This allowed Southern elites to dominate government and eventually sparked the Civil War.¹⁸²

In his article *The Fundamental Right to Education*, Professor Black shows the connections between ratification of the 14th Amendment, the inclusion of education clauses in state constitutions in southern states, and these states’ readmission to the Union.¹⁸³ State constitutional conventions

179. See 411 U.S. 1, 4 (1973) (stating that “[t]he importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause”).

180. *Id.* at 62–63 (Brennan, J., dissenting); *id.* at 110–16 (Marshall, J., dissenting, joined by Douglas, J.). Justice Byron White also dissented. *Id.* at 63 (White, J., dissenting, joined by Douglas, J. & Brennan, J.).

181. *Id.* at 71 (Marshall, J., dissenting, joined by Douglas, J.).

182. Derek W. Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV. 1059, 1065–66 (2019).

183. *Id.* at 1067–68, 1071, 1088–94.

committed to including education in their state constitutions because “education was necessary for a republican form of government.”¹⁸⁴

Students' right to access their education is otherwise federally protected under the First¹⁸⁵ and Fourth¹⁸⁶ Amendments to the Constitution, the Due Process Clause of the Fourteenth Amendment,¹⁸⁷ Title VI of the Civil Rights Act of 1964,¹⁸⁸ Title IX of the Education Amendments of 1972,¹⁸⁹ the Americans with Disabilities Act (ADA),¹⁹⁰ the Individuals with Disabilities Education Act (IDEA),¹⁹¹ and other federal antidiscrimination laws.¹⁹² Finally, all 50 states require that public elementary and secondary education be provided for children in their state.¹⁹³ As Professor Areto A. Imoukhuede shows, these federal and state protections, and our country's history and tradition, suggest that education is a fundamental right, in spite of *Rodriguez*.¹⁹⁴

This section focuses on the First Amendment, Title VI of the Civil Rights Act, and Title IX of the Education Amendments of 1972 because the “parents' rights” agenda most directly implicates these laws.

Students generally retain a First Amendment right to free speech in schools, provided that the speech does not “materially and substantially

184. *Id.* at 1091. Nine years after deciding *Rodriguez*, in *Plyler v. Doe*, the Supreme Court, in upholding the right of undocumented children to attend public schools, hinted at the possibility of a fundamental right to an education to prevent the creation of a “subclass of illiterates.” 457 U.S. 202, 230 (1982). “The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” *Id.* at 223.

185. U.S. CONST. amend. I; see *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); Buss, *supra* note 171, at 109.

186. U.S. CONST. amend. IV; see *New Jersey v. T.L.O.*, 469 U.S. 325 (1985); Buss, *supra* note 171, at 109.

187. U.S. CONST. amend. XIV, § 1; see *Goss v. Lopez*, 419 U.S. 565 (1975).

188. 42 U.S.C. § 2000d.

189. 20 U.S.C. § 1681.

190. 42 U.S.C. §§ 12101–03, 12131–34.

191. 20 U.S.C. §§ 1400–19.

192. See *Types of Educational Opportunities Discrimination*, CIV. RTS. DIV., U.S. DEP'T OF JUST. (updated Mar. 25, 2021), <https://www.justice.gov/crt/types-educational-opportunities-discrimination>.

193. See EMILY PARKER, EDUC. COMM'N OF THE STATES, 50-STATE REVIEW, CONSTITUTIONAL OBLIGATIONS FOR PUBLIC EDUCATION (2016), <https://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf>.

194. See Areto A. Imoukhuede, *The Right to Public Education and the School to Prison Pipeline*, 12 ALB. GOV'T L. REV. 52, 55–64 (2018).

disrupt” education or interfere with “the rights of others.”¹⁹⁵ Student speech restrictions like those described by Ms. Wright, where some students could wear “All Lives Matter” t-shirts but others could not wear “Black Lives Matter” t-shirts, would likely not be protected under the First Amendment.¹⁹⁶

The First Amendment also protects students’ right to receive information and ideas in schools.¹⁹⁷ School officials may not remove or ban library books in a “narrowly partisan or political manner,”¹⁹⁸ and “the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge.”¹⁹⁹ When evaluating book removals from schools, the Supreme Court has considered whether a school district maintains a process for approving or eliminating books, and whether that process was followed.²⁰⁰ In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, in finding that the school district may have violated the First Amendment by removing nine books from school libraries, a plurality of the justices cited evidence that the school board “ignored ‘the advice of literary experts,’ the views of ‘librarians and teachers within the [school] system,’ the advice of the Superintendent of Schools, and the guidance of publications that rate books for junior and senior high school students.”²⁰¹ In Queen Anne’s County, Mr. Schifanelli and the majority of the Board of Education likewise ignored the professional judgment of the curriculum committee, the superintendent, Ms. Passyn, and age-level guidance from publications when they rejected *Harbor Me*.²⁰²

OCR enforces Title VI and IX protections by investigating school districts and directing them to implement reforms and engage in training

195. See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969). School officials may also regulate student speech if the speech is offensive or lewd, *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986); promotes illegal drug use, *Morse v. Frederick*, 551 U.S. 393, 397 (2007); or is “school-sponsored” or “reasonably perceive[d] to bear the imprimatur of the school” and the school officials’ response is “reasonably related to legitimate pedagogical concerns,” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271, 273 (1988).

196. See *Tinker*, 393 U.S. at 511 (“Clearly, the prohibition of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.”).

197. See *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 866 (1982); see also *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (unconstitutional state education law “interfere[d] with . . . the opportunities of pupils to acquire knowledge”).

198. *Pico*, 457 U.S. at 870.

199. *Id.* at 866 (quoting *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965)).

200. *Id.* at 874–75.

201. *Id.* at 858, 869–72, 874–75.

202. See *supra* Part I.F; Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2021, May 5, 2021, click on video, navigate to 1:06:19–1:18:15).

and professional development to prevent recurrence.²⁰³ Under Title VI of the Civil Rights Act of 1964, students are protected from discrimination based on race and national origin and are broadly entitled to equal educational opportunities.²⁰⁴ School districts must not discriminate with respect to “academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading,” or other aspects of education.²⁰⁵ Title VI includes the right to file complaints with the Office for Civil Rights of the U.S. Department of Education (OCR)²⁰⁶ or in court, but only an intentional discrimination claim is possible for a Title VI complaint filed in court.²⁰⁷ In the 2022 fiscal year, OCR received 3,329 Title VI complaints.²⁰⁸ An example from Victor Valley Union High School District illustrates how OCR would help to remedy disproportionate disciplinary practices, similar to what the data showed in Queen Anne’s County:

In August 2022, OCR found that [the Victor Valley High School District] violated Title VI by disciplining Black students more frequently and more harshly than similarly situated white students.

...

To remedy these violations, the district committed to: examine the causes of racial disparities in the district’s student discipline practices and to develop and implement a corresponding corrective action plan; establish a stakeholder equity committee to inform the district’s implementation of the plan and agreement; revise its discipline policies and procedures, including regarding law enforcement involvement in student discipline; ... provide training for staff on the revised discipline policies, practices, and record-keeping; conduct student and parent information sessions regarding

203. See U.S. DEP’T OF EDUC., OFF. FOR CIV. RTS., REPORT TO THE PRESIDENT AND SECRETARY OF EDUCATION UNDER SECTION 203(B)(1) OF THE DEPARTMENT OF EDUCATION ORGANIZATION ACT, FY 2022, at 13–25 (2023) [hereinafter OCR FY 2022 REPORT], <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2022.pdf>.

204. 42 U.S.C. § 2000d (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”); see OCR FY 2022 REPORT, *supra* note 203, at 6–8, 13.

205. *Education and Title VI*, OFF. FOR CIV. RTS., U.S. DEP’T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html>; see 34 C.F.R. § 100.3.

206. See 34 C.F.R. § 100.7(b); OCR FY 2022 REPORT, *supra* note 203, at 6–8.

207. See *Alexander v. Sandoval*, 532 U.S. 275 (2001).

208. See OCR FY 2022 REPORT, *supra* note 203, at 13.

student discipline policies; publicly report disaggregated discipline data; . . . and provide compensatory education to students subjected to discriminatory discipline policies and practices.²⁰⁹

Title IX generally requires school districts to ensure that “[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in” a public school.²¹⁰ In the 2022 fiscal year, OCR received 9,498 Title IX complaints.²¹¹ In May 2023, OCR resolved a complaint concerning “sexually explicit or pornographic” book removals in the Forsyth County School District in Georgia.²¹² OCR determined that the district was on notice that the book screening process may have created a hostile environment for students because “public comments at board meetings also mentioned gender identity, sexual orientation and diversity, leaving the impression that those qualities were included in the district’s screening.”²¹³ To address OCR’s concerns, the district agreed to:

- Issue a statement to students in the district explaining the library book removal process and offer supportive measures to students who may have been impacted by that process;
- Administer a climate survey of the student bodies at each of the district’s middle and high schools to assess whether additional steps need to be taken; and
- Implement ongoing monitoring until OCR is satisfied that the federal laws at issue are satisfied.²¹⁴

209. *Id.* at 16–17.

210. 20 U.S.C. § 1681(a) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . .”).

211. See OCR FY 2022 REPORT, *supra* note 203, at 20.

212. See Ayana Archie & Bill Chappell, *A Georgia School District’s Book Bans May Have Caused a Hostile Environment, Feds Say*, NPR (May 23, 2023), <https://www.npr.org/2023/05/23/1177636289/georgia-school-book-bans-may-hostile-environment>; Press Release, U.S. Dep’t of Educ., U.S. Department of Education’s Office for Civil Rights Resolves Investigation of the Removal of Library Books in Forsyth County Schools in Georgia (May 19, 2023), <https://www.ed.gov/news/press-releases/us-department-educations-office-civil-rights-resolves-investigation-removal-library-books-forsyth-county-schools-georgia> [hereinafter May 19, 2023, USDOE press release].

213. Archie & Chappell, *supra* note 212.

214. May 19, 2023, USDOE press release, *supra* note 212.

IV. Fighting the “[E]ngines of [I]njustice”²¹⁵

There is a conundrum here: Even though “parents’ rights” in education are limited, and notwithstanding constitutional and statutory protections for students’ rights, it has been difficult to fight discrimination and protect the right to an education in court. As education law expert Professor Kimberly Jenkins Robinson notes, the anti-racism protections in federal education law are incomplete, and state laws do not “effectively protect education as a civil right.”²¹⁶ The “‘twin’ movements of anti-CRT and parents’ rights”²¹⁷ test precedent in new ways; and teachers and administrators are fearful of retaliation, and in some cases for their own safety, like Dr. Kane.²¹⁸ In addition, it is extremely challenging to bring Title VI racial discrimination claims to court. The right to sue exists only when the plaintiff can prove intentional racial discrimination.²¹⁹ In sum, while lawsuits and federal civil rights complaints are important safeguards, they are not enough. This section focuses on three other strategies to protect students from the “vagaries of the political process”²²⁰ that ushered in “parents’ rights” to begin with: protect public education as a federal, civil right; reform school board structures to be inclusive and representative; and increase awareness and advocacy to hold elected officials accountable and empower the next generation of students and educators.

A. Make Education a Federal, Civil Right

The most important step to protecting our democracy in the face of budding autocracy is to make education an explicitly protected civil right.²²¹ The “parents’ rights” movement has exposed significant problems with local control in education, which grew out of federalist principles: States were in a better position to experiment with new approaches to teaching and instruction; and local education officials—not judges sitting in courthouses far away—knew the needs of their communities best.²²²

215. Kimberly Jenkins Robinson, *Designing the Legal Architecture to Protect Education as a Civil Right*, 96 IND. L.J. 51, 53 (2020).

216. *Id.* at 67–88 (quote at 78).

217. See Clark, *supra* note 4, at 2147.

218. Green, *supra* note 14; Interview with Dr. Kane, *supra* note 22; Interview with Tynay Wright, *supra* note 26.

219. *Alexander v. Sandoval*, 532 U.S. 275 (2001).

220. See *supra* note 181 & accompanying text.

221. See Robinson, *Designing the Legal Architecture to Protect Education as a Civil Right*, *supra* note 215, at 63.

222. See Kimberly Jenkins Robinson, *Disrupting Education Federalism*, 92 WASH. U. L. REV. 959, 968–76 (2015).

But the reality today is that this de-centralized and disconnected structure has led to an inefficient and vastly inequitable education system, with disparate outcomes based on race, wealth, and socioeconomic status.²²³

A federal right to a public education could help to increase students' academic achievement, close opportunity gaps, and improve equity and post-secondary outcomes, including with employment, and in comparison to students from other countries who regularly outperform the United States on international academic assessments.²²⁴ Professor Robinson has written extensively about the mechanics of how to make public education a civil right in the United States.²²⁵ These processes are beyond the scope of this article, but, in sum, Professor Robinson emphasizes two key points: the development of an affirmative, robust civil *right* to education and deliberate coordination and cooperation between local, state, and federal agencies to protect and enforce this right.²²⁶

As Professor Robinson argues:

Rights remain central to this analysis because “[r]ights give us a moral vocabulary with which to express our aspirations for education for democratic citizenship, and by extension, for a more just society. They also empower individuals to lay claim to the education they deserve here and now.” Programs and practices lack the legal, political, and persuasive heft of rights.²²⁷

223. *Id.* at 972–83; see Peter Cunningham, *Commentary: The Failed Promise of Local Control*, U.S. NEWS (Mar. 23, 2018), <https://www.usnews.com/news/the-report/articles/2018-03-23/commentary-the-failed-promise-of-local-control-of-schools>; Kogan et al., *Who Governs Our Public Schools?*, *supra* note 4; Kogan, *Locally Elected School Boards Are Failing*, *supra* note 4, at 8, 10.

224. Drew DeSilver, *U.S. Students' Academic Achievement Still Lags That of Their Peers in Many Other Countries*, PEW RSCH. CTR. (Feb. 15, 2017), <https://www.pewresearch.org/short-reads/2017/02/15/u-s-students-internationally-math-science/>.

225. See, e.g., Robinson, *Designing the Legal Architecture to Protect Education as a Civil Right*, *supra* note 215; Kimberly Jenkins Robinson, *Disrupting Education Federalism*, 92 WASH. U. L. REV. 959 (2015); Kimberly Jenkins Robinson, *The Past, Present, and Future of Equal Educational Opportunity: A Call for a New Theory of Education Federalism*, 79 U. CHI. L. REV. 427 (2012); Kimberly Jenkins Robinson, *The Case for a Collaborative Enforcement Model for a Federal Right to Education*, 40 U.C. DAVIS L. REV. 1653 (2007).

226. See Robinson, *Designing the Legal Architecture to Protect Education as a Civil Right*, *supra* note 215, at 63, 89–103.

227. See *id.* at 89 (citation omitted); cf. Andrew Scherer, *WHY A RIGHT: The Right to Counsel and the Ecology of Housing Justice*, in IMPACT: COLLECTED ESSAYS ON EXPANDING ACCESS TO JUSTICE 11, 15–19 (2016).

If education becomes a civil right, the federal government would have the “persuasive heft” to establish an apparatus that supports states and school districts in meeting the anti-discriminatory objectives of the law. Professor Robinson argues this could be accomplished through amendments to Title VI:

Congress should offer support for remedying disparate impact discrimination by providing both technical and financial assistance to states and districts to empower and support their efforts to remedy it. . . . As was the case in the 1960s, those who face disparate impact discrimination today will need the assistance of the federal government to transform a prohibition of disparate impact discrimination into an educational culture in which superintendents, administrators, and teachers routinely examine their educational practices to ensure that they are not imposing an avoidable disparate impact on the basis of race, color, or national origin.²²⁸

Professor Robinson recommends that Title VI also include an individual right to sue based on disparate impact discrimination.²²⁹ Administration of facially neutral policies, like policies concerning equal access to classes or suspension from school, can have a disproportionately adverse effect on a particular racial group. For example, the data in Queen Anne’s County show racial disparities in academic achievement and student suspensions.²³⁰ Allowing disparate impact claims in court would encourage school districts to be more conscious of how different students are educated and disciplined.²³¹ And with a coordinated mechanism in place, federal and state agencies could better provide school districts like Queen Anne’s County with resources to identify the origins of inequitable disciplinary and academic outcomes and support schools in making appropriate tweaks to improve learning.

As was intended with the ratification of the 14th Amendment, making education a federal, civil right would protect students who have

228. Robinson, *Designing the Legal Architecture to Protect Education as a Civil Right*, *supra* note 215, at 92.

229. *See id.* at 90.

230. *See supra* notes 99–100 & accompanying text.

231. *See* Robinson, *Designing the Legal Architecture to Protect Education as a Civil Right*, *supra* note 215, at 56, 63, 90–92. In the same vein, Professor Robinson also calls for increased funding to the U.S. Department of Education Office for Civil Rights, *id.* at 93, echoing the most recent report from the agency that it resolved more cases with fewer employees in fiscal year 2022. *See* OCR FY 2022 REPORT, *supra* note 203, at 5.

“important individual interests with constitutional implications” and who are “particularly disadvantaged or powerless” in places like Queen Anne’s County.²³² It would elevate education to the high standard it is so frequently claimed to occupy in our democracy. It would empower families like the Black, Asian, and Latino families in Queen Anne’s County to speak out about the racism they encountered; it would discourage people like the Schifanellis from using students in their political games; and it would have allowed Dr. Kane’s letter to serve its intended purpose: to “acknowledge[] . . . the disparate brutality and overt racism [that is] only experienced by Black people in America . . .” and to encourage the community to “listen more and pass judgment less; be slow to anger and extend grace to one another generously.”²³³

B. Reform School Boards

Research shows the importance of school board diversity for promoting educational equity for students.²³⁴ However, many school boards remain largely homogenous. The National School Boards Association (NSBA) surveyed school board members across the country in 2017–18 and found that survey respondents were overwhelmingly white at 78%, followed by 10% Black, 3% Latino, and 1% Native American.²³⁵ The median age was 59 years old and school board members were 52% male.²³⁶ Based on a comparison to the results from a similar NSBA survey from 2010, Black school board membership declined from 12.3% in 2010 to 10% in 2018.²³⁷

232. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 109 (1973) (Marshall, J., dissenting).

233. Andrea M. Kane, Letter to Parents June 5, 2020 (2020) (on file with author).

234. See ETHAN ASHLEY & CARRIE DOUGLASS, *SCH. BD. PARTNERS, EMPTY SEATS AT POWERFUL TABLES: THE STATE OF SCHOOL BOARDS IN AMERICA* 16, 24 (2022), https://issuu.com/schoolboardpartners/docs/sbp_emptyseats_digital; Mike Bland, *School Boards' Diversity Problem Goes Deeper Than You Realize*, *EDUC. WEEK* (Apr. 29, 2022), <https://www.edweek.org/leadership/opinion-school-boards-diversity-problem-goes-deeper-than-you-realize/2022/04>; Kenneth J. Meier & Robert E. England, *Black Representation and Educational Policy: Are They Related?*, 78 *AM. POL. SCI. REV.* 392 (1984), <https://www.jstor.org/stable/1963371>; Kara Irby, *Researchers Find School Board Diversity Reduces School Suspensions*, *Phys.org* (Aug. 24, 2017), <https://phys.org/news/2017-08-school-board-diversity-suspensions.html>.

235. *NAT'L SCH. BDS. ASS'N, TODAY'S SCHOOL BOARDS & THEIR PRIORITIES FOR TOMORROW* 1, 4 (2018), https://cdn-files.nsba.org/s3fs-public/reports/K12_National_Survey.pdf.

236. *Id.* at 3.

237. *Id.* at 4.

These demographics are not reflective of our increasingly diverse school populations.²³⁸

This is in part due to the ways in which school boards generally operate: School board membership is voluntary, with nominal compensation;²³⁹ meetings take place at night; and childcare is not offered.²⁴⁰ It is not surprising that 40% of members from the NSBA survey were retired and only 32% had children attending school.²⁴¹ This structure and the time demands of school board positions make it difficult for parents to be involved, especially working parents with young children—and who are most directly and significantly impacted by school board decisions.²⁴²

School Board Partners, a nonprofit organization dedicated to improving the role and function of school boards, takes an explicitly antiracist and equity-based approach.²⁴³ They recommend recruiting diverse, antiracist candidates; providing resources to candidates of color; reviewing policies and governance through an equity lens; hiring antiracist superintendents; ensuring data transparency; raising compensation; funding training and staff positions; and demanding accountability through voting.²⁴⁴ These changes would expand opportunities to those who have been traditionally unable to participate in school boards and result in a membership that more closely reflects the community. In Dr. Kane's words, these approaches would help with "training up the next generation of leaders"²⁴⁵ and result in a more equitable and accessible education system for all students.

C. Empower the Next Generation of Students and Educators

Accurate data and documentation are vital for education, accountability, and organizing. For example, the powerful feature on Dr. Kane in the *New*

238. The U.S. Department of Education estimated that in 2017, students entering pre-kindergarten through grade 12 were 48% white, 16% Black, 27% Latino, and less than 1% each Asian/Pacific Islander and American Indian/Alaska Native, with nearly 3% identifying as two or more races. *Id.*

239. For example, under Maryland law, compensation for school board members in Queen Anne's County is \$3,500 per year for members and \$4,000 per year for the board president. MD. CODE ANN., EDUC. § 3-10A-04(a); see QUEEN ANNE'S COUNTY BOARD OF EDUCATION HANDBOOK, *supra* note 87, at 12.

240. Stephen Sawchuk, *Building Better School Boards: 3 Strategies for District Leaders*, EDUC. WEEK 11 (Nov. 17, 2020), <https://www.edweek.org/leadership/building-better-school-boards-3-strategies-for-district-leaders/2020/11>; Douglass, *supra* note 4.

241. See NAT'L SCH. BDS. ASS'N, *supra* note 235, at 7.

242. See Douglass, *supra* note 4.

243. See ASHLEY & DOUGLASS, SCH. BD. PARTNERS, *supra* note 234.

244. See *id.* at 35–41.

245. Interview with Dr. Kane, *supra* note 22.

York Times, which has been cited throughout this article, put a spotlight on the school district’s challenges with becoming a more equitable and inclusive county for all students.²⁴⁶ Articles like this one help to expose the impact of “parents’ rights” initiatives and can help communities understand and undo Patriot-like efforts to erode public education and silence teachers and students.

National groups like STOP Moms for “Liberty” and Defense of Democracy have harnessed the power of data and grass-roots organizing to turn out the vote against “parents’ rights” candidates.²⁴⁷ Across the country, in 2023 school board elections, Patriot-like candidates lost overwhelmingly to democratic candidates, in part due to the advocacy of teachers’ unions and a “basic decency left in the electorate that recognizes that every kid deserves a safe, inclusive space to learn.”²⁴⁸

In Queen Anne’s County, the Sunday Supper Committee continues to educate its members, holding informal dinners and promoting events on the history of African Americans in the Eastern Shore.²⁴⁹ The Committee still hosts discussions on equality and censorship in public schools, and it openly supports LGBTQ+ students.²⁵⁰ In addition, the African American History class that Ms. Wright sought out and that Dr. Kane established continues to be offered in Queen Anne’s County high schools.²⁵¹

Most significant—students themselves are leading movements across the country to oppose discriminatory practices and restrictions on teaching

246. Green, *supra* note 14.

247. See DEFENSE OF DEMOCRACY, <https://defenseofdemocracy.org/> (last visited Feb. 17, 2024); Will Solomon, *The Moms Fighting Against Moms for Liberty*, *THE RIVER* (Jan. 26, 2023), <https://www.chronogram.com/river-newsroom/the-moms-fighting-against-moms-for-liberty-18194689> (discussing the work of Defense of Democracy); STOP MOMS FOR “LIBERTY”, <https://www.stopmomsforliberty.com/> (last visited Feb. 13, 2024).

248. Katrina vanden Heuvel, *The Moms for Liberty Platform Is Extreme—and Most Voters Are Loudly Rejecting It*, *THE GUARDIAN* (Nov. 21, 2023), <https://www.theguardian.com/commentisfree/2023/nov/21/moms-for-liberty-school-board-elections> (quoting Keenan Crow of One Iowa Action); see also Valerie Strauss, *Voters Drub Moms for Liberty “Parental Rights” Candidates at the Ballot*, *WASH. POST* (Nov. 10, 2023), <https://www.washingtonpost.com/education/2023/11/10/voters-reject-moms-for-liberty/>; Jennifer C. Berkshire, *How to Fight the Right’s Moral Panic over Parental Rights*, *THE NATION* (May 23, 2023).

249. Sunday Supper Cmty., *supra* note 71 (see posts on June 20, 2022; Sept. 12, 2022; Oct. 24, 2022; Mar. 9, 2023); Davis, *supra* note 8.

250. Sunday Supper Cmty., *supra* note 71 (see posts on June 20, 2022; Sept. 12, 2022; Oct. 24, 2022; Mar. 9, 2023).

251. See QUEEN ANNE’S CNTY PUB. SCHS., HIGH SCHOOL PROGRAM OF STUDY 2023–2024 at 68 (2023), https://www.qacps.org/wp-content/uploads/2023/03/QACPS-Program-of-Study_-2023-2024-FINAL-03.15.23.pdf; QUEEN ANNE’S CNTY. PUB. SCHS., 2024–2025 HIGH SCHOOL PROGRAM OF STUDY 70 (2024) <https://www.qacps.org/wp-content/uploads/2024/02/FINAL-Program-of-Study-2024-2025-24-02-07.pdf>.

U.S. History.²⁵² As Ms. Passyn, the ELA Supervisor, explained during the May 5 Queen Anne's County School Board meeting, young people are perceptive: They are already engaging with the issues these lawmakers are desperately trying to suppress.²⁵³ Students know that a school's curriculum is not "just a curriculum"²⁵⁴; they know that a quality education is how they become autonomous individuals who can change the world. Ms. Wright's advocacy in bringing the STAR conversations to a place that was as unreceptive as Queen Anne's County is perhaps the apex of education and democracy in action.²⁵⁵

Conclusion: "Stand Up for What You Believe in . . . It's the Only Way Change Will Happen"

Dr. Kane and Ms. Wright's leadership forged a new path in Queen Anne's County, and state and local leaders have been paying attention. In November 2021, then-Maryland Governor Larry Hogan, a Republican, appointed Shannon Bent, a Black woman whose daughter attended schools in Queen Anne's County, to fill a vacancy on the school board.²⁵⁶ During school board elections the following year, Ms. Bent ran for and won the seat she had been appointed to by Gov. Hogan.²⁵⁷ She explained that she wanted to bring the focus back to the students.²⁵⁸ She further stated: "My concern is that teachers have a safe environment to teach an approved

252. See, e.g., *supra* notes 50–56 & accompanying text (STAR); Parker, *KI High Student Condemns Homophobic Behavior*, *supra* note 169; Emily Bloch, "History Is LGBTQ+ History": Jacksonville Students Speak out Against "Don't Say Gay" Bill, *FLA. TIMES-UNION* (Mar. 8, 2022), <https://www.jacksonville.com/story/news/education/2022/03/08/jacksonville-students-decry-dont-say-gay-bill-becoming-law/9424133002/>; Alia Wong & Nirvi Shah, *The Fight for African American Studies in Schools Isn't Getting Easier, Even After 50 Years*, *USA TODAY* (Feb. 17, 2023), <https://www.usatoday.com/story/news/education/2023/02/17/desantis-college-board-battle-over-ethnic-studies/11229921002/>.

253. See *supra* note 137 & accompanying text.

254. Vicky Santos, *The Importance of Teaching Black History During Tumultuous Times*, *UBNOW* (May 15, 2023), <https://www.buffalo.edu/ubnow/stories/2023/05/king-teaching-black-history.html> (quoting LaGarrett King, founder and Director, University at Buffalo Center for K–12 Black History and Racial Literacy Education, Graduate School of Education).

255. Bishop, *supra* note 52.

256. Luke Parker, *QACPS Welcomes New Board of Education Member Shannon Bent*, *KENT CNTY. NEWS* (Nov. 22, 2021), https://www.myeasternshoremd.com/kent_county_news/news/regional/qacps-welcomes-new-board-of-education-member-shannon-bent/article_3a18f306-681f-574b-8f2e-0b9b884227b5.html.

257. *Official 2022 Gubernatorial General Election Results for Queen Anne's County*, MD. STATE BD. OF ELECTIONS (Dec. 7, 2022), https://elections.maryland.gov/elections/2022/general_results/gen_results_2022_by_county_18.html; see *Shannon Long Bent*, *CAPITAL NEWS SERV.* (Oct. 14, 2022), <https://cnsmaryland.org/2022/10/14/shannon-long-bent/>.

258. See *Shannon Long Bent*, *supra* note 257.

curriculum without the fear of political issues making their job harder or fear of retribution by parents that do not agree with the coursework.”²⁵⁹

The new superintendent, Dr. Patricia Saelens,²⁶⁰ seems to share this perspective. In a February 2022 board meeting, Mr. Schifanelli proposed two resolutions that would prohibit “critical race theory” and restrict “social justice” from being taught in schools.²⁶¹ The discussion revolved in part around the objective of the resolutions and whether they were necessary since critical race theory was not a part of the K–12 curriculum in Queen Anne’s County.²⁶² After Mr. Schifanelli presented the resolution concerning “social justice” and Mr. Smith, the board president, invited Dr. Saelens to share her thoughts, she explained that every decision educators make must be evidence-based and viewed through an equity lens, per Maryland law.²⁶³ For example, she stated that she did not see any supporting references to a so-called “freedom continuum” in the proposed resolution and had never heard of the term before.²⁶⁴ She challenged the assumption in the resolution that the “community” was committed to some of the claims in the document and noted that actually engaging with the community and getting input from stakeholders on what they value is an important first step that was not taken here.²⁶⁵ She concluded that the resolution was “not in the best interest of our students nor our community”²⁶⁶ and that “[a]rbitrarily making a decision for your community about what they value, I think, is a dangerous step for the board. I really do.”²⁶⁷ Ms. Bent, who was visibly affected by the conversation, noted that the resolution

259. *Id.*

260. Dr. Saelens’s term as Queen Anne’s County superintendent started on July 1, 2021. See Hannah Combs, *Saelens Named as Superintendent of Queen Anne’s Schools*, MY E. SHORE MD (June 4, 2021), https://www.myeasternshorem.com/kent_county_news/news/regional/saelens-named-superintendent-of-queen-annes-schools/article_6bbf44aa-6f9b-594a-bfbc-9c24f573419e.html.

261. Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2022, Feb. 2, 2022, click on video, navigate to 1:57–2:40 (“social justice” resolution), 2:41–3:11 (“critical race theory” resolution)).

262. See Luke Parker, *Resolutions Against Critical Race Theory Dismissed as Political, Irrelevant*, STAR DEMOCRAT (Feb. 20, 2022), https://www.stardem.com/news/local_news/resolutions-against-critical-race-theory-dismissed-as-political-irrelevant/article_9176e528-39bb-520a-89ae-bf517aa68a4f.html.

263. See Queen Anne’s Cnty. School Board Meeting, *supra* note 37 (click Meetings, 2022, Feb. 2, 2022, click on video, navigate to 2:28–2:31).

264. *Id.* at 2:29.

265. *Id.*

266. *Id.* at 2:32.

267. *Id.* at 2:29.

was “very political” and stated that it was “wrong.”²⁶⁸ She challenged the assumption that everyone has “the same opportunities.”²⁶⁹ She stated that she joined the board in order to “make [opportunities] the same” and that the board’s job “is to take care of the children of Queen Anne’s County. This [resolution] does not do it.”²⁷⁰ The board rejected both resolutions in a three to two vote. Mr. Smith, one of the November 2020 Patriot-supported board members, voted with the majority.²⁷¹

At a board meeting in April 2023, Dr. Saelens announced that the district would form a committee to review the county’s selection procedures for approving instructional reading material, research other districts’ policies, and make recommendations.²⁷² Dr. Saelens explained that the impetus was partly because, under the existing policy, teachers were prevented from including donated copies of *Harbor Me* in their classroom libraries following the book’s ban in May 2021.²⁷³ Before this announcement, during the public comment period at a school board meeting in April 2023, parents shared that all students should not be “punish[ed] . . . because of one concern,” that multicultural education and intersectionality are important components of an education, and that politics should not influence a library’s contents. One parent stated, “I trust my children’s teachers to have good judgment and to offer age appropriate reading materials.”²⁷⁴ The committee was comprised of nine educators from across the district, including teachers, principals, instructional leaders, and two parents.²⁷⁵

On September 6, 2023, Dr. Saelens approved the new procedures.²⁷⁶ They included some of the original text-selection criteria, such as choosing materials that are “representative of the pluralistic nature and diversity of a global society”²⁷⁷ and some new requirements, specifically for classroom libraries, where students can choose what books to read. The new regulation states, “[c]lassroom libraries should contain board approved materials, but

268. *Id.* at 2:22 (addressing Mr. Schifanelli: “While you say [this] is trying to keep politics out of our schools, this is a very political resolution.”), 2:25.

269. *Id.* at 2:22 (“[E]verybody does not have the same opportunities.”).

270. *Id.* at 2:24–2:25.

271. *Id.* at 2:40–2:41, 3:10–3:11.

272. Staff Reports, *QACPS to Form Committee*, *supra* note 140.

273. *Id.*

274. *Id.*

275. DR. MARCIA A. SPRANKLE, POLICY 620 AND REGULATION 620.1 RECOMMENDATIONS 7 (July 12, 2023), [https://go.boarddocs.com/mabe/qacps/Board.nsf/files/CTGN4W5C2F5D/\\$file/Policy%20and%20Regulation%20620%20Recommendations%20071223.pdf](https://go.boarddocs.com/mabe/qacps/Board.nsf/files/CTGN4W5C2F5D/$file/Policy%20and%20Regulation%20620%20Recommendations%20071223.pdf).

276. QUEEN ANNE’S CNTY. PUB. SCH., REGULATION FOR MATERIALS OF INSTRUCTION POLICY 620 (Sept. 2023), <https://www.qacps.org/wp-content/uploads/2023/09/23-05-24-MOI-Regulation-Final-Format.pdf>.

277. *Id.* § I(B)(1)(d).

may also include teacher selected texts.”²⁷⁸ There is also an option for parents to “opt-out of their child reading a non-board approved text, from the classroom library.”²⁷⁹ However, if the board “votes against a specific text, the text may not be added to a classroom library.”²⁸⁰ This language suggests that teachers may choose books for their classroom libraries that have not been approved by the board. But if the board explicitly prohibits a particular text, that text may not be included in the library.²⁸¹

The board meetings in Queen Anne’s County displayed in microcosm the national fight between so-called “parents’ rights” and students’ right to learn. But they also captured something else more enduring: The brave and impactful efforts of students like Tynay Wright and educators like Dr. Kane, Ms. Passyn, Ms. Ensor, and Mr. Evans to protect public education. Their work—which has been showcased in unprecedented and sometimes hostile circumstances—is a vital reminder of the unsung but formidable role educators and young people play in safeguarding our democracy.

Dr. Kane is now a Professor of Practice at the Graduate School of Education at the University of Pennsylvania.²⁸² She teaches in the Mid-Career Doctoral Program in Educational Leadership for practicing superintendents, principals, and heads of public, private, and charter schools, and in Education, Culture, and Society, a Master’s level program. All of her courses center on issues related to educational equity and educational leadership.²⁸³ In addition, she supports doctoral students in their research and dissertations and holds a monthly meeting called WEE: Women Executive Educators. The goal is to support women in a “space that is predominantly male-oriented.” Dr. Kane strongly believes in the power of connection and conversation. She encourages her students to focus on hearing and listening to people: “Don’t be afraid to have the conversation respectfully.”²⁸⁴

Tynay Wright is now a senior on a full scholarship at Lincoln University,²⁸⁵ the same university Justice Thurgood Marshall attended.²⁸⁶

278. *Id.* § 1(C)(1).

279. *Id.* § 1(C)(1)(c).

280. *Id.* § 1(C)(1)(d).

281. *Id.* § 1(C)(1).

282. *Andrea M. Kane*, PENN GRADUATE SCH. OF EDUC., <https://www.gse.upenn.edu/academics/faculty-directory/kane> (last visited Dec. 21, 2023).

283. *See id.*; Interview with Dr. Kane, *supra* note 22.

284. Interview with Dr. Kane, *supra* note 22.

285. Interview with Tynay Wright, *supra* note 26.

286. *See Justice Thurgood Marshall Profile—Brown v. Board of Education Re-enactment*, U.S. CTS., <https://www.uscourts.gov/educational-resources/educational-activities/justice-thurgood-marshall-profile-brown-v-board> (last accessed Feb. 13, 2024).

She is on the Dean's List, is a student Attorney General at the school, and is a double major in History and Africana Studies. Her goal is to become a college professor.²⁸⁷ Thinking of Queen Anne's County's current students, Ms. Wright shared, "I'm sorry for what you have to endure . . . but get comfortable being uncomfortable. Stand up for what you believe in because your impact will have a bigger effect than you think. It is the only way change will happen."²⁸⁸

287. Interview with Tynay Wright, *supra* note 26.

288. *Id.*