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Big Philanthropy's Unrestrained Influence on Public Education: A Call for Change

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Big Philanthropy's Unrestrained Influence on Public Education: A Call for Change

Noelle Quam*

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I. Introduction

Major charitable organizations—which are referred to in this Note as “Big Philanthropy”—have a growing influence on the American public education landscape. As one of their many selected social causes, Big Philanthropy invests large sums of money and wields its political influence to promote particular education reform initiatives selected by each foundation. Many praise Big Philanthropy for its contributions and dedication to education; however, evidence is mounting that many of these reforms are not only failing, but are also having a detrimental impact on students, schools, and communities.¹ While Big Philanthropy’s participation in education reform grows amidst this negative evidence, critics have begun to question Big Philanthropy’s intentions, arguing that its involvement is for the benefit of Big Philanthropy, rather than students.²

In this Note, I lay the factual predicate for a legal response to the increasing involvement of Big Philanthropy in public education. First, I will highlight the continuing struggle for adequate education funding and how Big Philanthropy became involved in this cause.³ Next, I will utilize two education reform initiatives that are heavily funded by Big Philanthropy to illustrate the negative impacts Big Philanthropy’s increased involvement has had on the American education landscape.⁴ Finally, I will briefly address some suggested legal responses to problems articulated in this Note.⁵

Going back to the ideals articulated in *Brown v. Board of Education*,⁶ I begin my Note by laying the foundation for why public education funding

1. See *infra* Parts III–IV.

2. See *infra* Parts III–IV.

3. See *infra* Parts II–III.

4. See *infra* Part IV.

5. See *infra* Part V.

6. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (concluding “that in the field of public education ‘separate but equal’ has no place,” and holding that segregation deprives African Americans equal protection of the laws guaranteed by the Fourteenth Amendment to

is so critical and why adequate funding has been so difficult to attain.⁷ Then, I will outline how courts handled public education funding after *Brown* by showing the different legal approaches litigants have utilized in their fight to ensure all public school students have access to an adequate education.⁸ To conclude this section, I will show how a national education report in the 1980s, *A Nation at Risk*, catapulted education into the national political spotlight, eventually leading to the federal government's involvement in public education—a sphere traditionally reserved for state power.⁹ The federal legislation that arises from this evolution sets the stage for Big Philanthropy's entrance into public education reform.¹⁰

This Note next focuses on Big Philanthropy's involvement with the American public education system. After briefly chronicling Big Philanthropy's original involvement in public educational pursuits, I explain how changes in public education have altered how Big Philanthropy contributes to public education; no longer just a supplier of money, it is now becoming a vehicle for education reform.¹¹ This discussion leads to statistics of Big Philanthropy's involvement today and the role it now occupies.¹² I end this section touching on general criticisms of Big Philanthropy's involvement in public education as some educators and philanthropists begin to question the effectiveness of educational experiments led by Big Philanthropy.¹³

The Note then transitions to an analysis of two particular education reform initiatives that Big Philanthropy heavily funds and supports. I first focus on the charter school movement, which has been a part of education reform for the past two decades.¹⁴ Beginning with a definition and brief history of charter schools, I reveal the contrast between the initial intentions of charter schools and their role in education today.¹⁵ After outlining a few key distinctions between traditional public schools and charter schools, I then illustrate how charter schools give Big Philanthropy a unique,

the United States Constitution (quoting *Plessy v. Ferguson*, 163 U.S. 537 (1896))).

7. *See infra* Part II.A.

8. *See infra* Part II.B.

9. *See infra* Part II.C.

10. *See infra* Part II.C.

11. *See infra* Part III.B.

12. *See infra* Part III.C.

13. *See infra* Part III.D.

14. *See infra* Part IV.A.1.

15. *See infra* Part IV.A.1.

powerful position within public education.¹⁶ Lastly, I explain how the proliferation of charter schools impacts local schools, communities, and students.¹⁷

Second, I address a relatively new education reform initiative: parent trigger legislation. Because parent trigger laws have only been in existence for about four years, I begin the analysis with a description of this legislation, what supporters believe these laws can accomplish, and an introduction to the limited evidence supporting the effectiveness of this legislation.¹⁸ Next, I focus on how Big Philanthropy is connected to parent trigger legislation through significant funding and its close connections to one of the major organizations promoting the movement.¹⁹ After laying this foundational framework, the Note then illustrates the negative effects of parent trigger legislation.²⁰

I conclude my Note by briefly addressing some suggestions that have been made to combat the negative effects arising out of not only the initiatives Big Philanthropy promotes, but also the involvement of third parties in public education in general.²¹ The two main recommendations for change considered are increased regulation of charter schools and greater transparency in both charter schools and parent trigger legislation.²² I touch on the prescriptions for change rather briefly because, with the exception of a few scholars and journalists, Big Philanthropy's negative effects on education have received little attention.²³ Therefore, this Note demonstrates that not only is a legal response appropriate, but there is also a need for increased research on these emerging problems and how legal remedies can address them.

16. See *infra* Part IV.A.2–3.

17. See *infra* Part IV.A.4.

18. See *infra* Part IV.B.1.

19. See *infra* Part IV.B.2.

20. See *infra* Part IV.B.3.

21. See *infra* Part V.

22. See *infra* Part V.

23. See Joanne Barkan, *Got Dough? How Billionaires Rule Our Schools*, DISSENT (Winter 2011) [hereinafter *Billionaires*], available at <http://www.dissentmagazine.org/article/got-dough-how-billionaires-rule-our-schools> (noting that while reporters cover Big Philanthropy's involvement in education, there have been very few in-depth investigations, suggesting that the press handles Big Philanthropy with “kid gloves”).

II. The Bumpy Road to an Equal and Adequate Education

The modern fight for an equal and adequate education has transpired for over a half-century.²⁴ The inability of the legal system to fix this highly complex problem is unsurprising and has left the door open to new players.

A. The Importance of Proper School Funding

In its landmark decision, *Brown v. Board of Education*,²⁵ the United States Supreme Court proclaimed the importance of education in a child's life. In the unanimous decision, Chief Justice Warren wrote:

[E]ducation is perhaps the most important function of state and local governments . . . It is required in the performance of our most basic public responsibilities . . . It is the very foundation of good citizenship . . . 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.²⁶

The opinion's most well-known holding abolished the separate but equal doctrine; however, the Court also alluded to a right to an education, which the Court elaborated must "be made available to all on equal terms."²⁷ Sixty years later the ideals articulated in the Court's decision are far from realized.

Since *Brown*, public school funding has been a source of controversy in communities, courts, and throughout education circles across the country.²⁸ Historically, local revenue and taxes have been the main, if not only, source of public school funding.²⁹ This system leaves the quality of schools to the mercy of the wealth of its surrounding community, with wealthier communities being able to afford a highly funded and—most would assume—quality education system, while poorer communities struggle to adequately fund their school systems.³⁰ Although there is

24. See *infra* Part II.

25. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

26. *Id.* at 493.

27. *Id.*

28. See John Dayton & Anne Dupre, *School Funding Litigation: Who's Winning the War?*, 57 VAND. L. REV. 2351, 2352–53 (2004) (noting that "battles over school funding have been waged on many fronts nationwide").

29. See *id.* at 2355 (commenting on this traditional method of public school funding).

30. See *id.* ("Public schools were historically supported by local funding, which meant that wealthier communities could afford to fund good schools, while poorer communities

widespread support for equal access to a high quality public education and many states have adopted constitutional provisions requiring legislatures to support this notion, contentious arguments arise when attempting to make these goals a reality.³¹ Describing this inconsistency between ideals and reality, two law professors write:

[E]galitarian support for providing high quality education for all children is attractive, but it becomes problematic when it requires higher taxes or the transfer of funds from wealthier districts to poorer districts. This clash between the altruistic and egalitarian language in state constitutions and the hard truth of local self-interest created a fertile ground for funding disputes.³²

Therefore, while many people believe that all students should have access to a high quality education, these ideals clash with the reality of paying higher taxes.³³ In reaction to widespread resistance to providing equal educational opportunities via adjusting taxing schemes, alternative methods of funding have developed in the past two decades.³⁴ These alternatives have also been met with resistance, leaving the question of how to fund the equal educational opportunity ideals articulated in *Brown* unanswered.³⁵

B. The Evolution of Public School Funding Litigation

Education finance litigation after *Brown* has progressed in three waves.³⁶ From the late 1960's to 1973, plaintiffs first sought to have courts mandate that children were entitled to equal educational opportunities and equal school funding under the Equal Protection Clause of the Fourteenth Amendment.³⁷ In *Serrano v. Priest*,³⁸ a landmark decision handed down by

could afford only poor schools or no schools.”).

31. *See id.* (“The more powerful the constitutional command to support a high quality education for all children, though, the greater the contrast between the constitutional ideal and the political reality.”).

32. *Id.* at 2355–56.

33. *See id.*

34. *See infra* Part IV (discussing the rise of private funding in public education).

35. *See* Dayton & Dupre, *supra* note 28, at 2358 (“As a result, civil rights advocates began to press for judicial mandates for school funding equity, focusing on the critical issue left unaddressed in *Brown*: inequities in public school funding.”).

36. *See* Carlee Poston Escue, William E. Thro & R. Craig Wood, *Some Perspectives on Recent School Finance Litigation*, 268 EDUC. L. REP. 601, 601–03 (2011) (describing these three waves).

37. *See id.* at 602 (“[T]he plaintiffs asserted that all children were entitled to have the same amount of money spent on their education and/or that children were entitled to equal

the Supreme Court of California, plaintiffs successfully challenged the funding of California public schools on the grounds that wide disparities resulting from the dependence on local property taxes violated the Equal Protection Clause.³⁹ This case presented issues such as whether education was a fundamental right and whether strict scrutiny applied to funding questions.⁴⁰ These questions became key considerations as other states considered the question of how to fairly finance public education in accordance with the Equal Protection Clause.⁴¹

In 1973 the United States Supreme Court finally considered the issue of whether education was a fundamental right guaranteed by the Equal Protection Clause after several other states followed California's lead.⁴² In *San Antonio School District v. Rodriguez*,⁴³ the Court held that education was not a fundamental right because it was not explicitly or implicitly guaranteed by the Constitution.⁴⁴ Accordingly, the Court concluded strict scrutiny could not be applied to challenges concerning state laws regulating school funding.⁴⁵ The Court reasoned that despite the undeniable importance of education, it could not impede on states' social and economic legislation when education was not protected by the Constitution.⁴⁶ In

educational opportunities ('equity suit').")

38. *Serrano v. Priest*, 487 P.2d 1241, 1258 (Cal. 1971) (holding that there is a fundamental interest in public education).

39. *See id.* at 1244 (stating that "this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. . . the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth . . .").

40. *See id.*

41. *See Dayton & Dupre, supra* note 28, at 2359 (noting that another key issue brought up by this decision was "whether the state's goal of promoting local control constituted a sufficient justification for the challenged funding system under the court's standard of review").

42. *See id.* at 2360 (noting that Minnesota, New Jersey, and Michigan all "struck down school finance laws on similar grounds").

43. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37 (1973) (holding that education is not a fundamental right that must be afforded strict scrutiny).

44. *See id.* at 35 ("Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.").

45. *See id.* at 37 ("In one further respect we find this a particularly inappropriate case in which to subject state action to strict judicial scrutiny.").

46. *See id.* at 35 (noting that "the undisputed importance of education will not alone cause this Court to depart from the usual standard of reviewing a State's social and economic legislation" and that the argument connecting education to the success of the First and Fourteenth Amendments was unpersuasive).

addition to impinging on states' powers, the Court was also concerned with judicial activism, noting that a decision in favor of a fundamental right would greatly expand the power of the judiciary in an area the legislature is better suited to handle.⁴⁷

Once the Court declared that education was not a fundamental right protected by the United States Constitution, plaintiffs shifted their focus to state courts.⁴⁸ Similar to their assertions under the Fourteenth Amendment, plaintiffs in this second wave of education finance litigation focused on "equal guarantee" clauses in state constitutions.⁴⁹ *Robinson v. Cahill*⁵⁰ was the first case in which plaintiffs utilized this strategy.⁵¹ After delaying its opinion in anticipation of *Rodriguez*, the New Jersey Supreme Court ultimately found the state's tax-based system of funding was unconstitutional.⁵² However, the court refused to hold that education was a fundamental right protected by the state's guarantee of substantive due process and, rather, held that the state failed to fulfill its educational mandate provided in the state constitution.⁵³

In the wake of *Robinson*, states diverged on declaring education a fundamental right. Some courts ruled that education was a fundamental right derived from the state's equal guarantee clause.⁵⁴ For instance, in

47. See Dayton & Dupre, *supra* note 28, at 2363 (listing the concerns the Court raised which also included criticism over plaintiff's statistical evidence and the importance of judicial deference in areas of social and economic legislation).

48. See 2 CRAIG DUCAT, CONSTITUTIONAL INTERPRETATION: RIGHTS OF THE INDIVIDUAL 1279 (9th ed. 2013) ("... [P]laintiffs abandoned their reliance upon state equal protection clauses as a source of rights and shifted their focus to education contained in state constitutions.").

49. See Escue, Thro & Wood, *supra* note 36, at 603 n.6 (commenting that many states do not have equal protection clauses and that equal guarantee clauses are often interpreted as having the same effect as the Equal Protection Clause of the Fourteenth Amendment).

50. *Robinson v. Cahill*, 303 A.2d 273, 294 (N.J. 1973) (holding that the state's system of funding public education was unconstitutional under the state's education article).

51. See Escue, Thro & Wood, *supra* note 36, at 602 (stating that *Robinson* was the beginning of the second wave of public school funding litigation).

52. See Dayton & Dupre, *supra* note 28, at 2365 (noting that the court waited for the Supreme Court's decision in *Rodriguez* to be released before releasing its own opinion).

53. See *Robinson*, 303 A.2d at 295 (agreeing with the trial court that the constitutional demand which requires the state "to afford all pupils that level of instructional opportunity which is comprehended by a thorough and efficient system of education" was not met).

54. See *Pauley v. Kelly*, 255 S.E.2d 859, 878 (W.Va. 1979) ("Certainly, the mandatory requirement of 'a thorough and efficient system of free schools,' found in Article XII, Section 1 of our Constitution, demonstrates that education is a fundamental right in this State."); see also *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 215 (Ky. 1989) ("[T]he premise of this opinion is that education is a basic, fundamental constitutional right that is

Pauley v. Kelly,⁵⁵ the West Virginia Supreme Court was particularly explicit in stating that this constitutional right derived from both the state's education mandate and equal protection clause.⁵⁶ Unlike the federal judiciary, West Virginia courts believed there to be a natural fundamental right to education.⁵⁷ Conversely, in *Board of Education v. Nyquist*,⁵⁸ the plaintiffs altogether failed to convince the court that New York's public school funding violated any aspect of the state constitution even though it resulted in disparities in financial support to schools.⁵⁹ The court reasoned that the State's constitutional education provision only required that a sound, basic education be provided and that in this case the state had met its burden.⁶⁰ Following the lead of *Nyquist*, other states followed suit, leading to a string of losses for plaintiffs fighting for funding equality.⁶¹

Finally, after the mixed results of the school funding challenges on state equal guarantee grounds, plaintiffs have since focused on challenges to state constitutional and statutory educational requirements, similar to the successes exemplified in *Robinson* and *Pauley*.⁶² However, this has made little difference in the rate of plaintiffs' successes. Despite a more centralized method of attack, plentiful case law, and significant academic commentary, "courts continue to struggle with issues concerning justiciability, the appropriate constitutional standards, and remedial issues."⁶³ In addition to judicial incongruity in approaches to school

available to all children within this Commonwealth.”).

55. See *Pauley*, 255 S.E.2d at 878 (holding that the state's system of education funding violated the state's equal protection clause and education mandate).

56. See *id.* at 871 n.25 (explaining this constitutional right in the State's education mandate and its constitution).

57. See *id.* at 863 (criticizing the Supreme Court's holding in *Rodriguez*).

58. Bd. of Educ. v. *Nyquist*, 439 N.E.2d 359, 363–64 (N.Y. 1982) (holding that the state's school funding policies do not violate either the Federal or State Constitution).

59. See *id.* at 366 (recognizing that while education is a critical government concern which is manifested by the attention it gets from the state legislature and its relevant provision in the state constitution, such government concern does not automatically afford education decisions a stricter standard of review).

60. See *id.* at 369 (“Interpreting the term education, as we do, to connote a sound basic education, we have no difficulty in determining that the constitutional requirement is being met in this state . . .”).

61. See *Dayton & Dupre*, *supra* note 28, at 2369 (demonstrating this effect by citing cases from Maryland, Oklahoma, South Carolina, and Wisconsin).

62. See *Escue, Thro & Wood*, *supra* note 36, at 603 (arguing that “the finance system is unconstitutional because some schools lack the money to meet minimum standards of quality”).

63. *Id.* at 604; see also *Dayton & Dupre*, *supra* note 28, at 2378 (explaining that some

funding, recent federal legislation has ushered in new methods of school funding, further complicating the question of how to properly fund schools so as to afford an equal educational opportunity to all students.⁶⁴

C. A Nation at Risk: The Legislation that Launched the Education Reform Movement

While the fight for equal educational opportunities was a seemingly continuous battle in courts across the country, public education was not an issue at the forefront of the American political agenda.⁶⁵ That changed in 1983 with the publication of *A Nation at Risk*, a report written by the National Commission on Excellence in Education.⁶⁶ The report was viewed as a “scathing indictment” on the declining state of American public education.⁶⁷ Along with an abundance of statistical data concerning illiteracy, lowering test scores, and waning writing abilities,⁶⁸ the report highlighted the mediocre quality of America’s education system and the significant detrimental impact that it could have on the country’s position as an industrial and world power.⁶⁹ Diane Ravitch, a renowned education expert, argues that this report was responsible for shifting the blame for the deteriorating state of the Nation from “shortsighted corporate leadership to

courts have refused jurisdiction to school funding challenges because they consider it to be a political question).

64. See *infra* Part II.C.

65. See Beatrice Birman, *Three Decades of Education Reform: Are We Still “A Nation at Risk?”*, AM. INST. FOR RESEARCH (Oct. 30, 2013), <http://www.air.org/resource/three-decades-education-reform-are-we-still-nation-risk> (explaining that early in her career, during the early 1980s, the author considered changing careers away from the Department of Education because President Reagan campaigned on abolishing the Department on the grounds that it constitutes a federal intrusion on state powers).

66. See Edward Graham, *‘A Nation at Risk’ Turns 30: Where Did It Take Us?*, NAT’L EDUC. ASS’N (Apr. 25, 2013), <http://neatoday.org/2013/04/25/a-nation-at-risk-turns-30-where-did-it-take-us/> (quoting Mary Hatwood Futrell, a graduate professor of education and former president of the NEA, as saying that the report “catapulted the issue of education onto the national agenda” and describing its prominence in national news coverage).

67. See *id.* (describing the public’s reaction to the report).

68. See *id.* (outlining the statistical evidence provided in the report).

69. See DIANE RAVITCH, *REIGN OF ERROR: THE HOAX OF THE PRIVATIZATION MOVEMENT AND THE DANGER TO AMERICA’S PUBLIC SCHOOLS* 10 (2014) (“Its basic claim was that the American standard of living was threatened by the loss of major manufacturing industries . . . to other nations, which the commission attributed to the mediocre quality of our public educational system . . .”).

the public schools.”⁷⁰ In addition to bringing education to the national spotlight, *A Nation at Risk* also set the stage for future federal legislation⁷¹ and the education reform movement.⁷²

The federal government was largely absent from education until the No Child Left Behind Act (“NCLB”).⁷³ NCLB was an education reform act signed into law by George W. Bush in 2002 intended to target many of the problems featured in *A Nation at Risk*.⁷⁴ The law called for increased school accountability by mandating nationwide proficiency in reading and mathematics by 2014.⁷⁵ Under the law, states are required to monitor every school and penalize those that fail to meet their required target by labeling them as failing or conducting a state take-over of the school.⁷⁶ Due to the impossibly ambitious goal of one hundred percent proficiency and the spike in federal funding, NCLB encouraged entrepreneurial opportunities⁷⁷ and the expansion of charter schools.⁷⁸

Following the previous administration’s lead, the Obama administration also developed its own set of federal initiatives aimed at combating the failures of the education system. In its “Race to the Top”

70. *Id.*

71. *See id.* (noting that since the report’s publication, “federal and state policy makers have searched for policy levers with which to raise academic performance”).

72. *See* Graham, *supra* note 66 (“NEA President Dennis Van Roekel credits *A Nation At Risk* with moving public education to the top of the national agenda, but adds that the report also became a catalyst for today’s so-called ‘reform’ movement.”).

73. *See* RAVITCH, *supra* note 69, at 10 (describing George H.W. Bush’s aversion to an “expanded federal role in education” and the Republican Congress that blocked the Clinton’s Administration’s interest in national education standards).

74. *See* Margaret Spellings, *25 Years After A Nation at Risk*, U.S. DEP’T OF EDUC. (May 2, 2008), <http://www2.ed.gov/rschstat/research/pubs/risk25.html> (quoting the then-Secretary of the Department of Education’s abstract of a report stating, “*A Nation at Risk* inspired some state-level pioneers to think about standards and accountability in education, and put them into practice. This, in turn, led to the landmark No Child Left Behind Act”).

75. *See* DEP’T OF EDUC., *The No Child Left Behind Act of 2001*, 1 (Jan. 7, 2002), <https://www2.ed.gov/nclb/overview/intro/execsumm.pdf> (providing an overview of the law).

76. *See id.* (detailing the repercussions schools face when they fail to meet adequate yearly progress).

77. *See* RAVITCH, *supra* note 69, at 12 (pointing out two particular industries that emerged overnight because of the federal funding and new mandates: after-school tutoring programs and consulting groups that advised schools on how to meet the NCLB standards).

78. *See id.* at 12–13 (noting that the law encouraged charter schools as a remedy for low-performing schools); *see also id.* at 199 (“The demands of NCLB provided grist for advocates of the parent trigger. In communities with high numbers of students who had limited English skills or were impoverished, many schools were not on track to meet NCLB’s impossible target . . . [t]hus, large numbers of schools were ripe for a parent revolution.”).

program, the federal government created a national competition in which states competed for a piece of a five billion dollar fund.⁷⁹ This program departed from the equality-driven ideals in education—exemplified by the decades of battles in the judicial system—towards a competition for money, which benefitted the rich.⁸⁰ Previous administrations focused on granting federal funding to poorer communities to combat the wealth disparities; now, federal funding is awarded to districts and states that can write the best grant.⁸¹ Not only does this policy provide advantages to school districts that can hire professional grant writers, but Diane Ravitch also notes that this, similar to NCLB, has prompted more private investment in public education.⁸² Ravitch writes, “In many cases, the Bill and Melinda Gates Foundation gave grants to hire professionals to develop applications for specific states, which tilted the field toward the applicants favored by Gates.”⁸³ Both the tumultuous road to education equality and recent federal legislation has led to an increase in private investors and education reformers, exasperating the fear that the United States is moving further away from the ideals articulated in *Brown*.⁸⁴

79. Race to the Top is a program implemented by the Department of Education as part of the American Recovery and Reinvestment Act of 2009. U.S. DEP’T OF EDUC., *Race to the Top Fund* (June 7, 2013), <http://www2.ed.gov/programs/racetothetop/index.html>. The program seeks to award grants to states that meet certain criteria outlined by the federal government, such as implementing teacher performance reviews, allowing greater availability for the creation of charter schools, and implementing the Common Core standards. *Id.* The Department of Education states the program’s mission to be, “Race to the Top winners will help trail-blaze effective reforms and provide examples for States and local school districts throughout the country to follow as they too are hard at work on reforms that can transform our schools for decades to come.” *Id.*

80. *See* RAVITCH, *supra* note 69, at 15 (describing the change in focus of federal education policy).

81. *See id.* (“By picking a few winners, the Race to the Top competition abandoned the traditional idea of equality of educational opportunity, where federal aid favored districts and schools that enrolled students with the highest needs.”).

82. *See id.* (“[A]nd indeed the investment opportunities seemed to grow by leaps and bounds after the Obama administration launched its Race to the Top.”).

83. *Id.* at 15.

84. *See infra* Part III.B

III. Big Philanthropy's Involvement with Public Education Financing

A. The Rise of Big Philanthropy

Following the Civil War, the number of American millionaires significantly increased.⁸⁵ In an effort to not only dispense of their vast wealth and avoid thousands of individual pleas for charitable donations, but also to affect a positive change in society, some wealthy donors teamed up with reformers—individuals and organizations who help philanthropists realize their philanthropic goals—to create philanthropic foundations.⁸⁶ By the turn of the twentieth century, Big Philanthropy was blossoming in the American social and political landscape.⁸⁷ Philanthropies distinguished themselves from traditional charities in many ways.⁸⁸ The new philanthropy movement was ambitious and national in scope, while charities had been traditionally focused on local needs.⁸⁹ Additionally unlike traditional charities, Big Philanthropy had access to enormous financial resources and was given many benefits of the law so long as the assets of the foundations were to be used for the “good of mankind.”⁹⁰

From the beginning, however, Big Philanthropy faced sharp criticism due to its vast power to influence many aspects of American society without any form of accountability.⁹¹ Even the reformers resented

85. See OLIVIER ZUNZ, *PHILANTHROPY IN AMERICA: A HISTORY* 8 (2011) (noting that recorded millionaires in the United States jumped from 100 in the 1870s to 4,047 in 1892 to over 40,000 by 1916).

86. See *id.* at 8–21 (describing reasons why big philanthropic foundations came into existence).

87. See *id.* at 22 (“The general-purpose foundation was a genuine American invention, a direct outcome of the greater range of options the new rich and associated reformers could rely on for adapting philanthropy to society’s changing needs and contributing to public policy. Twenty-seven foundations were in operation by 1915.”).

88. See *id.* at 10 (“Charity had been for the needy; philanthropy was to be for mankind.”).

89. See *id.* (noting that philanthropies aimed to play a key role “in promoting national unification in Reconstruction and beyond”).

90. See *id.* at 15–17 (discussing New York’s Tilden Act and similar statutes in other states, which expanded the laws of charitable trusts making it easier for philanthropies to exist so long as their funds be used for the “good of mankind”); Joanne Barkan, *Plutocrats at Work: How Big Philanthropy Undermines Democracy*, *DISSSENT: A Q. OF POL. AND CULTURE* (Fall 2013), available at <http://www.dissentmagazine.org/article/plutocrats-at-work-how-big-philanthropy-undermines-democracy> (“They were launched, in essence, as immense tax-exempt private corporations dealing in good works.”).

91. See Barkan, *supra* note 90 (“But they would do good according to their own lights, and they would intervene in public life with no accountability . . . [t]o their many detractors,

philanthropists because of their role in the creation of social issues that afflicted the country.⁹² Discussing the effects of Big Philanthropy's experimentation of new theories and ideas in today's society, Joanne Barkan writes, "Because they are mostly free to do what they want, mega-foundations threaten democratic governance and civil society . . . [w]hen a foundation project fails . . . the subjects of the experiment suffer, as does the general public. Yet the do-gooders can simply move on to their next project."⁹³ While the number of foundations has only increased since the late nineteenth century and there has been a boom of growth in the last decade,⁹⁴ it is unclear whether these efforts ultimately help or hinder the "good of mankind."⁹⁵

B. The Evolution of Big Philanthropy's Involvement with Public Education

Education reform has been a main focus of Big Philanthropy since its emergence in American culture.⁹⁶ From the creation of prestigious universities,⁹⁷ to bolstering the public education system—especially improving the quantity and quality of African Americans' education⁹⁸—to educating the population about diseases and farming techniques,⁹⁹ many early philanthropic foundations had education as one of their primary focuses.¹⁰⁰ From their inception during Reconstruction to the mid-1950s,

they looked like centers of plutocratic power that threatened democratic governance.”).

92. See ZUNZ, *supra* note 85, at 49 (“The philanthropists were the titans of industry who caused the very afflictions that reformers sought to undo.”).

93. Barkan, *supra* note 90.

94. *Id.*

95. See ZUNZ, *supra* note 85, at 15–17 (noting that the laws that enabled philanthropies to become more easily funded had a requirement that the philanthropies serve the “good of mankind”).

96. See *id.* at 26–43 (describing the various academic initiatives many of the first big philanthropists supported); HELMUT K. ANHEIER & DAVID C. HAMMACK, AMERICAN FOUNDATIONS: ROLES AND CONTRIBUTIONS 32 (2010) (stating that Big Philanthropy has been involved in public education since 1867).

97. See ZUNZ, *supra* note 85, at 26–30 (discussing big philanthropy's role in the creation of the University of Chicago).

98. See *id.* at 30–39 (illustrating many philanthropists who led initiatives to improve African American education between the late nineteenth century through the early twentieth century).

99. See *id.* at 41–42 (“The Rockefellers hoped to make their agenda of public health and farm productivity a pattern for the world.”).

100. See ANHEIER & HAMMACK, *supra* note 96, at 47 (“The development of public

Big Philanthropy generally employed three main strategies to influence education policy: infiltrating the State by placing contingencies on funds, using their power to influence state policymakers, and introducing their own ideas through the national market.¹⁰¹ In the past half-century, however, Big Philanthropy has been forced to adjust to the changing nature of public education.¹⁰²

Over the past sixty years, public education has gone through a massive transformation affecting Big Philanthropy's strategies and projects.¹⁰³ Some of the most influential changes to the character of public education have been an increase in education laws and mandates, vast expansion of public spending on education, and federal intervention into the traditionally state and locally-run public education system.¹⁰⁴ Increased public education spending had a profound effect on the way Big Philanthropy spent its money because it decreased "the financial leverage afforded by even the most generous of foundation grants."¹⁰⁵ Instead of contributing most of their money to established programs, Big Philanthropy switched to developing their own educational goals and began providing grants to institutions who would further their initiatives.¹⁰⁶ Another major transformation has been the foundations themselves. Old names in philanthropy—such as Carnegie and Rockefeller—have been replaced with newer names such as: the Gates Foundation, the Walton Family Foundation, and the Broad Foundation.¹⁰⁷ With new foundations have come new agendas and the new inclination towards social engineering has supplanted former goals of building monuments and public institutions.¹⁰⁸

education in the United States, and state policy concerning access, curriculum, and funding, especially in the South, cannot be understood apart from the role played by early American foundations.”).

101. *See id.* at 32–33 (introducing the three strategies employed by foundations to influence public education from 1867–1950).

102. *See id.* at 52–72 (detailing the adjustments Big Philanthropy has made in light of public education's evolution).

103. *See id.* at 51–53 (describing the change in public education's focus after World War II).

104. *See id.* at 52 (writing that Big Philanthropy “now confront[s] an elaborate set of legal constraints . . . greatly expanded public spending . . . [and an] increase in federal intervention . . .”).

105. *Id.* at 52.

106. *See id.* (“By midcentury, grants began to shift from support of established programs (libraries, arts education) to investment in instructional innovation.”).

107. *See id.* (noting the correlation between the evolution of education and the transition of foundations involved in public education funding).

108. *See id.* at 57–58 (“At the same time, newly prominent foundations—notably, the

C. Today's Big Philanthropy and Public Education

Together, philanthropies across the United States have contributed almost four billion dollars to primary and secondary education reform.¹⁰⁹ While four billion dollars may seem like an insignificant portion of the over 525 billion dollars spent on public education each year,¹¹⁰ this money has a powerful influence.¹¹¹ Unlike taxpayer money aimed at school operations, the money spent by Big Philanthropy “is where policy is shaped and changed,” notes Joanne Barkan.¹¹² Barkan argues that in the past decade Big Philanthropy has been able to steer the national education debate and determine education policy at all levels of government based on donors’ vision of reform.¹¹³

Big Philanthropy is open about its commitment to implementing its own theories of educational change. For example, the Walton Family Foundation—one of the largest philanthropic foundations involved in education reform—has specified particular initiatives funded by the 158 million dollars the foundation spent on education reform in 2012.¹¹⁴ These initiatives included investments in charter schools, teacher effectiveness, and replacement of low-performing schools.¹¹⁵ The Gates Foundation—perhaps the largest philanthropic contributor to education reform—states that its focus is primarily on teacher effectiveness, implementation of the Common Core,¹¹⁶ and technological innovation in

Gates and Walton Family foundations—were engaging with new educational issues with growing intensity and generosity. These newer participants brought not only new funds but new theories of change.”)

109. *Billionaires*, *supra* note 23.

110. See NAT’L CTR. FOR EDUC. STATISTICS, REVENUES AND EXPENDITURES FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOL DISTRICTS: SCHOOL YEAR 2010–11 (FISCAL YEAR 2011) (Sept. 2013) (categorizing the expenditures of public elementary and secondary school systems by state).

111. See *Billionaires*, *supra* note 23 (describing the influence of this money).

112. See Barkan, *supra* note 90.

113. See *Billionaires*, *supra* note 21 (“A few billion dollars in private foundation money, strategically invested every year for a decade, has sufficed to define the national debate on education; sustain a crusade for a set of mostly ill-conceived reforms; and determine public policy at the local, state, and national levels.”).

114. See THE WALTON FAMILY FOUND., *Education Reform*, <http://www.waltonfamilyfoundation.org/educationreform> (last visited Feb. 10, 2015) (specifying the investment strategies and particular initiatives that the Foundation employs).

115. *Id.*

116. The Common Core is an initiative to set nationwide standards and assessments for education. See Common Core State Standards Initiative, *Implementing the Common Core State Standards*, <http://www.corestandards.org> (last visited Feb. 10, 2015). “The standards

the classroom.¹¹⁷ Many, however, are critical of the new direction Big Philanthropy has taken.¹¹⁸

D. Criticism of Big Philanthropy's Involvement in Public Education

Critics note that today's philanthropies seek to infuse their own ideas into education in an effort to make systemic changes they prefer and are "more interested in disrupting the status quo" than previous generations of philanthropists.¹¹⁹ While these foundations use objective, even inspired language to describe their initiatives, critics view this as a veil over what Big Philanthropy is really promoting: charter schools, standardized testing, teacher evaluations based on standardized test scores, and putting CEOs in school leadership positions.¹²⁰ Describing the nature of Big Philanthropy's involvement in public education, Kenneth Saltman, a professor who specializes in the privatization of education, writes:

Venture philanthropy treats schooling as a private consumable service and promotes business remedies, reforms, and assumptions with regard to public schooling . . . the public and civic roles of public schooling have become nearly overtaken by the economic neoliberal perspective that views public schooling as principally a matter of producing workers and consumer for the economy and for global economic competition.¹²¹

are designed to be robust and relevant to the real world, reflecting the knowledge and skills that our young people need for success in college and careers and prepare students to be successful in a global economy." *Id.*

117. See BILL & MELINDA GATES FOUND., *What We Do: College Ready Education Strategy Overview*, <http://www.gatesfoundation.org/What-We-Do/US-Program/College-Ready-Education> (last visited Feb. 11, 2015) (describing the Foundation's priorities).

118. See *infra* Part III.D.

119. See JACK SCHNEIDER, EXCELLENCE FOR ALL: HOW A BREED OF REFORMERS IS TRANSFORMING AMERICA'S PUBLIC SCHOOLS 37 (2011) ("[W]hereas earlier philanthropically funded efforts had been characterized by an 'emphasis on piecemeal accomplishments,' these deep-pocketed benefactors were more focused on 'systematic impact and replicable models'—much as they had been in their work in the private sector.").

120. See Jonathan Peltó, *Funding "Education Reform": The Big Three Foundations, PUBLIC SCHOOL SHAKEDOWN* (Oct. 2, 2013), <http://www.publicschoolshakedown.org/funding-education-reform> (discussing the initiatives of the big three foundations in education reform: The Gates Foundation, The Walton Foundation, and the Eli Broad Foundation).

121. Kenneth Saltman, *The Rise of Venture Philanthropy and the Ongoing Neoliberal Assault on Public Education: The Case of the Eli and Edythe Broad Foundation*, 16 WORKPLACE 53, 53–54 (2009); see also Peter Buffet, *The Charitable-Industrial Complex*, N.Y. TIMES (July 26, 2013), http://www.nytimes.com/2013/07/27/opinion/the-charitable-industrial-complex.html?_r=0 ("And with more business-minded folks getting into the act,

While it appears that a sharp divide exists between those on the inside and those on the outside concerning what these foundations are actually doing, even some on the inside question the impact of Big Philanthropy. Peter Buffet, son of Warren Buffet—one of the wealthiest men in the world—sheds light on what he calls “Philanthropic Colonialism.”¹²² Buffet explains that after his father gave him a foundation to run he quickly realized a critical flaw in these foundations’ methods: they cultivate solutions to major social issues in a vacuum and then try to transplant the result without “regard for culture, geography or societal norms.”¹²³ In addition, Buffet argues that not only do philanthropic acts have unintended, detrimental side effects, but more worrisome is that these foundations exist as a system for “conscience laundering” for the wealthy rather than for a genuine interest in human welfare.¹²⁴

Aside from critical denunciations, evidence shows—and foundations have admitted—that some of these initiatives cultivated in a vacuum have indeed failed.¹²⁵ At the beginning of the twenty-first century, the small school initiative gained momentum when the Gates Foundation endorsed this initiative as one of its principal sources of education reform.¹²⁶ Proclaiming the American public education system broken, the Gates Foundation spent over two billion dollars convincing high schools to replace their larger failing schools with smaller, more focused schools.¹²⁷ The goal was to provide students with more individual attention;¹²⁸ however, these schools were unable to provide a balanced curriculum.¹²⁹

business principles are trumpeted as an important element to add to the philanthropic sector. I now hear people ask, ‘what’s the R.O.I.?’ when it comes to alleviating human suffering, as if return on investment were the only measure of success.”)

122. See Buffet, *supra* note 121 (describing his experiences after his father gave him his own foundation to run).

123. *Id.*

124. *Id.*

125. See *Bill Gates Admits That Small Schools are Not the Answer*, SCHARGEL CONSULTING GRP. BLOG (Jan. 27, 2009) [hereinafter *Gates Admits*], <http://www.schargel.com/2009/01/27/bill-gates-admits-that-small-schools-are-not-the-answer/> (illustrating the Gates’ Foundation’s failure with the small school initiative).

126. See SCHNEIDER, *supra* note 119, at 56 (noting that the small school initiative was endorsed by the Gates Foundation and federal government at the beginning of the 21st century).

127. See RAVITCH, *supra* note 69, at 40 (discussing the money spent by the Gates Foundation).

128. See *Billionaires*, *supra* note 23 (describing the desired goals behind the small school movement).

129. See RAVITCH, *supra* note 69, at 40 (noting the failures of the initiative).

After eight years of promoting and funneling money into this movement, the Gates Foundation admitted that it had failed.¹³⁰ Reflecting upon the small school movement in the past decade, Deborah Meier, who is considered the founder of this particular reform, is embarrassed about the direction Big Philanthropy took the movement.¹³¹ Rather than promoting the democratic leadership model that she had envisioned in order to give teachers more power, Meier notes that the movement has only been successful in making school administrators more powerful, further splintering the relationship between the school and its teachers and students.¹³²

The small school initiative is one of many experiments in education reform promoted by Big Philanthropy. Two current initiatives—the charter school movement and parent trigger legislation—demonstrate Big Philanthropy's overwhelming power and the effects of its failed educational experiments. By analyzing these two current movements, it becomes evident that while Big Philanthropy wields considerable influence over the direction of education in the United States, there are not enough legal mechanisms to control the negative aspects of this educational reform model.¹³³ While their money may be purposefully spent based on research and advice from prominent think tanks, unintended detrimental consequences are emerging from these solutions created in a vacuum.¹³⁴

130. See *Gates Admits*, *supra* note 125 (containing quotes from a Bill Gates speech indicating that the small school initiative had failed); *Billionaires*, *supra* note 23 (noting the announcement the Gates Foundation made indicating that this movement hadn't produced strong results).

131. See Mike Klonsky, *An Interview With Deborah Meier on the Small-School Movement*, HUFFINGTON POST, (May 11, 2011), http://www.huffingtonpost.com/michael-klonsky-phd/deborah-meier-small-schools_b_859362.html (“I’m embarrassed about the people who have been touting small schools in the last 10 years . . . [they] are now using it to privatize public schools . . . [i]t is painful to watch.”).

132. See *id.* (“Those at the top now have more power to intimidate. ‘Reform’ does not now mean increasing the power of parents or kids or teachers.”).

133. See *infra* Part IV.

134. See ANHEIER & HAMMACK, *supra* note 96, at 61 (“Even the clearest and most specific design, however, has little chance of success if it is at cross purposes with the interests of those responsible for its implementation.”).

IV: Two Case Studies on the Effect of Big Philanthropy's Financing of Public Education

A. Charter Schools

1. The Purpose and Growth of Charter Schools

The charter school movement is one of the most well-known areas in which Big Philanthropy seeks to influence the public education landscape. One of myriad definitions describes charter schools as “public schools that are granted a specific amount of autonomy, determined by state law and/or the specific charter, to make decisions concerning the organizational structure, curriculum, and educational emphasis of their school.”¹³⁵ Similar to traditional public schools, charter schools receive funding from local, state, and federal governments.¹³⁶ Additionally, while charter schools often require potential students to go through admission processes, according to the law they cannot charge tuition and any admission process must “fair and open.”¹³⁷ If applicants exceed available slots, the charter school must then implement a lottery.¹³⁸

Over the last two decades, the growth of charter schools has erupted, with over forty states passing legislation that encourages this reform.¹³⁹ Originally conceived by a former principal, the idea of charter schools began as a method for teachers to explore alternative methods of education.¹⁴⁰ The early backers of charter schools envisioned a small grassroots movement in which a limited number of schools would serve as contained hubs of educational experimentation where new initiatives and ideas could be tested before being utilized in the mainstream public school

135. Joseph Murphy & Catherine Dunn Shiffman, *Understanding and Assessing the Charter School Movement* 4 (2002).

136. *See Charter Schools 101: The Most Frequently Asked Questions*, Nat'l Alliance for Pub. Charter Schs., <http://www.publiccharters.org/About-Charter-Schools/Frequently-Asked-Questions.aspx> (last visited Jan. 8, 2014) (describing the basic mechanics of charter schools).

137. *See Closing the Achievement Gap: Charter School FAQ*, PBS, <http://www.pbs.org/closingtheachievementgap/faq.html> (last visited Feb. 11, 2015) (describing the charter school process).

138. *Id.*

139. *See* Christopher A. Lubienski & Peter C. Weitzel, *Two Decades of Charter Schools*, in *The Charter School Experiment: Expectations, Evidence, and Implications* 1, 1 (Christopher A. Lubienski & Peter C. Weitzel eds., 2010) (illustrating the growth of charter schools in the last twenty years).

140. *See id.* at 4–5 (detailing the initial idea of charter schools and its original aims).

system.¹⁴¹ This, however, is far from the reality of charter schools today.¹⁴² Today, charter schools serve about two million children and counting.¹⁴³ In a radical departure from its grassroots beginnings, charter schools are now seen as challengers to public schools, have strong political ties to Capitol Hill, and are viewed as a “market-oriented” approach to education.¹⁴⁴ The dramatic growth and shifting of expectations has opened the door for private donors to wield their influence in spite of the growing evidence of the detrimental effects charter schools have on schools and students.¹⁴⁵

2. Differentiating Between Charter Schools and Traditional Public Schools

A key difference between public and charter schools is charter schools’ reliance on private funding.¹⁴⁶ Charter school funding is often not equal to funding of similarly situated traditional schools.¹⁴⁷ On average, charter schools receive sixty-one percent of the government funding that their district counterparts receive.¹⁴⁸ This results in charter schools being underfunded and, therefore, needing to focus some of their energy on obtaining funds elsewhere in order to adequately meet their students’ needs.¹⁴⁹ One solution charter schools continually turn to, and have come to

141. *See id.* at 5 (“Charter advocates at the time envisioned small-scale, autonomous schools run by independent mom-and-pop operators who would be best positioned to respond to local community needs.”).

142. *See id.* (contrasting the idealistic goals of early charter school advocates with the realities of today).

143. Ravitch, *supra* note 69, at 158.

144. *See* Lubienski & Weitzel, *supra* note 139, at 4–5 (explaining the charter school movement’s transition from grassroots ideals to political powerhouse).

145. *See infra* Part 4.A.4.

146. *See* Terence Chea, *Charter Schools Expand with Public, Private Money*, Huffington Post (Jan. 21, 2011), http://www.huffingtonpost.com/2011/01/21/charter-schools-expand_n_812183.html (discussing the expansion of charter schools across the country with the help of wealthy private donors).

147. *See Closing the Achievement Gap*, *supra* note 137 (noting that in a number of states, including Minnesota, New Jersey, and Colorado, charter schools do not receive the full equivalent of funding that their public counterparts receive); Jeanette M. Curtis, Note, *A Fighting Chance: Inequalities in Charter School Funding and Strategies for Achieving Equal Access to Public School Funds*, 55 *How. L.J.* 1057, 1067–69 (2012) (discussing the inequality of funding between charter schools and traditional schools).

148. *Just the FAQs—Charter Schools*, The Ctr. For Educ. Reform (Mar. 15, 2012), <http://www.edreform.com/2012/03/just-the-faqs-charter-schools/> (basing this conclusion on nationwide averages that demonstrate charter schools receive \$7,612 per pupil and traditional public schools receive \$10,441 per pupil).

149. *See* Curtis, *supra* note 147, at 1070–71 (discussing how schools handle being

rely on, is Big Philanthropy.¹⁵⁰ In fact, the recent growth of charter schools nationwide has been driven by charter school organizations that are funded by Big Philanthropy.¹⁵¹ Critics see Big Philanthropy's funding as a part of a corporate reform movement, which seeks to privatize public education.¹⁵² Describing her cynical view of Big Philanthropy's intentions, Ravitch writes that its underlying goal is to "replace public education with a system in which public funds are withdrawn from public oversight to subsidize privately managed charter schools, voucher schools, online academies, for-profit schools, and other private vendors."¹⁵³ Yet others, including the philanthropists themselves, see Big Philanthropy's involvement as a beneficial bolster to the failing public education system.¹⁵⁴ While the debate concerning the effectiveness continues, it is helpful to look at the impact the proliferation of charter schools has had on the public education system.

3. *The Unique Opportunities Charter Schools Afford Big Philanthropy*

First, charter schools give Big Philanthropy an opportunity to have uncommon power over public education through their exemption from various regulations to which traditional public schools are bound.¹⁵⁵ Charter schools were designed to have the freedom and autonomy to meet the goals of their unique charter mission.¹⁵⁶ To accomplish this, many

underfunded).

150. See Ravitch, *supra* note 69, at 158 (noting that many major foundations, such as the Bill and Melinda Gates Foundation, The Broad Foundation, the Michael and Susan Dell Foundation, and more have "lavished funding on the expansion of charter schools and charter school chains").

151. See Curtis, *supra* note 147, at 1070–71. ("Much of the growth is being driven by charter management organizations that have received multimillion-dollar grants from the Obama administration and foundations funded by philanthropists such as Gates, Charles Schwab, Eli Broad and Reed Hastings.")

152. See Ravitch, *supra* note 69, at 19–31 (arguing that corporate reformers, including wealthy philanthropists, aim to privatize education).

153. *Id.* at 31.

154. See *Who We Are*, Bill & Melinda Gates Found., <http://www.gatesfoundation.org/who-we-are> (last visited Feb. 11, 2015) (explaining the foundation's goal of changing public education to meet current demands of society).

155. See Murphy & Shiffman, *supra* note 135, at 4 (evidencing charter schools as exceptions to the rules in a definition describing them as "freed from rules but accountable for results"); Ravitch, *supra* note 69, at 159 ("Charter schools are deregulated and free from most state laws other than those governing health and safety.")

156. See Gary Miron, *Performance of Charter Schools and Implications for Policy*

charter schools are exempt from most state and local education regulations in exchange for different forms of accountability.¹⁵⁷ For instance, charter schools are free to construct their own disciplinary policies and admission requirements, avoid financial oversight traditionally imposed on public schools, and have different standards for teacher certification.¹⁵⁸ Without these legislative and regulatory boundaries, Big Philanthropy has been able to more readily assert its educational goals.¹⁵⁹

Some critics believe that Big Philanthropy and major corporations¹⁶⁰ view education as a market ripe for exploitation.¹⁶¹ Because of the deregulation surrounding charter schools and their need for outside funding, Big Philanthropy is taking advantage of charter schools' vulnerable position.¹⁶² Critics note, "their interest was not philanthropy but making money on real estate deals and educational services, taking advantage of federal tax credits and a steady flow of no-risk public funding."¹⁶³ Sometimes referred to as venture philanthropists, these more aggressive philanthropies focus on return on investment, rather than traditional altruistic interests in school funding.¹⁶⁴ To increase profits and notoriety via expansion of charter schools, donors are suggested to donate not only to the charter schools themselves, but also to help fund studies that prove the effectiveness of charters and support politicians who favor the charter

Makers, in *The Charter School Experiment: Expectations, Evidence, and Implications* 173–74 (Christopher A. Lubienski & Peter C. Weitzel eds., 2010) (explaining why charter schools have different forms of accountability).

157. See *id.* (stating three alternative methods of accountability and how they are applied in the charter school context).

158. See RAVITCH, *supra* note 69, at 159 (illustrating the effects of deregulation).

159. See Barkan, *supra* note 90 (noting that lack of limits on political activity has crippled oversight).

160. Corporate America is considered another culprit of this practice, but will not be discussed in this Note. See RAVITCH, *supra* note 69, at 160–61 (discussing big corporations' involvement in exploiting charter schools).

161. See RAVITCH, *supra* note 69, at 161 ("Other financiers saw public education as a potentially lucrative opportunity. They looked at the hundreds of billions of taxpayers dollars spent each year on schools and saw a market waiting to be exploited.").

162. See *Billionaires*, *supra* note 23 (detailing the desperate measures some states took in order to find adequate funding for charter schools).

163. RAVITCH, *supra* note 69, at 161.

164. See Janelle T. Scott & Catherine C. DiMartino, *Hybridized, Franchised, Duplicated, and Replicated: Charter Schools and Management Organizations*, in *THE CHARTER SCHOOL EXPERIMENT: EXPECTATIONS, EVIDENCE, AND IMPLICATIONS* 187 (Christopher A. Lubienski & Peter C. Weitzel eds., 2010) (describing the correlation of these more "aggressive" philanthropists with the increase in charter schools around the country).

school movement.¹⁶⁵ With the focus shifting from educational outcomes to profit-driven success models, charter schools often see themselves in competition, rather than cooperation, with public schools.¹⁶⁶

Furthermore, charter schools exist in a state of legal ambiguity. It is unclear whether charter schools are considered state or private actors due to their autonomy from traditional school regulation. Because charter schools teeter on the line between public and private, courts and legislatures struggle with how to establish and regulate them in order to ensure charter schools are held accountable for providing a proper education.¹⁶⁷ This uncertainty has resulted in increased litigation.¹⁶⁸ For example, due to unclear legislation concerning charters' legal statuses, courts must spend time determining whether laws that are traditionally applied to public schools are equally applicable to charter schools.¹⁶⁹ Complicating the public and private dilemma is the rise of Big Philanthropy's role in education.¹⁷⁰ With an increase in private funding to charter schools, the line between public and private has further blurred, making it more difficult for courts to interpret how laws and regulations apply to charter schools.¹⁷¹

4. *The Effects of Charter Schools on Communities and Students*

Some believe charter schools only exacerbate lingering social and educational problems.¹⁷² Evidence has accumulated demonstrating that

165. *See id.* (discussing the suggestions of The Philanthropy Roundtable, which is a group that supports school choice).

166. *See* RAVITCH, *supra* note 69, at 178 (discussing this change in focus).

167. *See* Julia L. Davis, Contracts, Control and Charter Schools: The Success of Charter Schools Depends on Stronger Nonprofit Board Oversight to Preserve Independence and Prevent Domination by For-Profit Management Companies, 2011 BYU EDUC. & L.J. 1, 8 ("From a legal perspective, charter schools occupy a shadowy terrain between purely 'public' and 'private' education, forcing state legislatures and the courts to develop rules to ensure the accountability that the public expects of public education . . .").

168. *See* Ralph D. Mawdsley, Charter Schools and Charter School Officials: Have States Adequately Defined the Status and Responsibilities of These Schools, 269 EDUC. LAW REP. 443, 445–47 (Sept. 15, 2011) ("[T]he failure of state legislatures to define the extent to which charter schools have the same status and liability as public school districts invites unnecessary litigation.").

169. *See id.* (illustrating this problem with examples including how courts differ on whether charter schools qualify for qualified immunity).

170. *See* Davis, *supra* note 167, at 8 (referencing the increase in non-profit and for-profit organizations involvement in education).

171. *See supra* Part IV.A.3.

172. *See e.g.*, Chea, *supra* note 146 (skimming the surface of some of the social issues

charter schools specifically exclude students with disabilities, harm the effectiveness of local public schools, and foster racial resegregation.¹⁷³ While evidence of these failures amass, Big Philanthropy continues to pump money and resources into the charter school movement.¹⁷⁴

Charter schools see two problems with students with disabilities: they are expensive and often have lower test scores.¹⁷⁵ While eleven percent of the national student population has a disability, on average, only eight percent of the charter school student population has a disability.¹⁷⁶ This number may be even more skewed when it is considered that most charter schools are in urban areas where the percentage of students with disabilities is greater.¹⁷⁷ Because of deregulation, charter schools are able to refuse to admit students with disabilities; and they do.¹⁷⁸

Charter schools can also impact the success of traditional schools.¹⁷⁹ An example best illustrates the negative effects charter schools have on local public schools. The Inglewood School District, located southwest of Los Angeles, was once touted as an exemplar school system, receiving national notoriety.¹⁸⁰ Claiming to employ basic tactics such as phonics and a no-nonsense discipline policy, Inglewood—despite its high poverty level and limited financial resources—posted high test scores.¹⁸¹ However, after the introduction of charter schools funded by Big Philanthropy in 2000, this

critics claim are a result of charter school growth).

173. *See id.* (“[B]ut critics say charters siphon students and resources away from traditional public schools, result in greater racial segregation, block access to certain groups of students and operate without proper oversight.”).

174. *See* THE WALTON FAMILY FOUND., 2013 GRANT REPORT, <http://www.waltonfamilyfoundation.org/about/2013-grant-report> (last visited Feb. 11, 2015) (stating that in 2013 the Walton Family Foundation contributed over 164 million dollars to education reform, much of that money going to advance one of their primary initiatives: charter schools).

175. *See* RAVITCH, *supra* note 69, at 175 (“These students are expensive to educate and, depending on their disability, may lower a school’s test scores.”).

176. *Id.*

177. *See id.* (suggesting that the disparity between the national population of students with disabilities and the charter school population of students with disabilities is actually a lot greater than what the numbers reveal).

178. *See id.* (“Most charters refuse students with severe disabilities . . .”).

179. *See id.* at 177 (“The charter issue cannot be fully assessed without taking into account the impact of charters on the local public schools.”).

180. *See id.* (noting that some described the school district as the “Inglewood Miracle” and that George W. Bush visited the school after one of the district’s elementary schools was named among the nation’s best).

181. *See id.* (“Inglewood, California, was once an iconic district for conservatives, who warmly praised its high test scores despite its high poverty.”).

picture drastically changed.¹⁸² Over the past decade, enrollment in the local public schools plunged from eighteen thousand to twelve thousand and charter schools are to blame.¹⁸³ The six thousand students Inglewood public schools lost have gone to local charter schools.¹⁸⁴

This dramatic decrease in student population has had a devastating impact on the Inglewood public school system. Lost enrollment to charter schools—which correspondingly causes lost revenue¹⁸⁵—brought about the firing of teachers, reductions in staff, and increased class sizes.¹⁸⁶ The school began to under-perform and test scores plummeted and, in reaction, community members called for more charter schools.¹⁸⁷ As more charter schools opened, more high-achieving students left the public schools, further crippling test scores and school performance.¹⁸⁸ Not only does this vicious cycle drain public schools of many of their most motivated students who have the ability to lift up a classroom discussion or be a positive role model to others, it has also left Inglewood facing bankruptcy, takeover by the state, and further cuts in spending.¹⁸⁹ Most concerning is that Inglewood is not a unique situation.¹⁹⁰

182. See *Our School at a Glance*, AMINO LEADERSHIP CHARTER HIGH SCH., <http://www.greendot.org/page.cfm?p=3910> (last visited Feb. 11, 2015) (stating that the school opened in 2000 and is a Green Dot Public School); see also GREEN DOT PUBLIC SCHOOLS, *Our Supporters*, <http://www.greendot.org/page.cfm?p=4137> (last visited Feb. 11, 2015) (establishing that the foundations who have donated over one million dollars to Green Dot include: The Broad Foundation, The Bill and Melinda Gates Foundation, and the Walton Family Foundation).

183. See Rob Kuznia, *Inglewood Unified School District at Risk of Being ‘Vaporized,’ Administrators Say*, DAILY BREEZE NEWS (May 28, 2013, 6:00 PM), <http://www.dailybreeze.com/general-news/20130529/inglewood-unified-school-district-at-risk-of-being-vaporized-administrators-say>.

184. See RAVITCH, *supra* note 69, at 177 (“But from 2003 to 2011, the district lost one-third of its eighteen thousand pupils to charter schools . . .”).

185. When a student leaves a traditional public school to go to a charter school, the public school must pay that charter school on a per pupil basis. See *Closing the Achievement Gap*, *supra* note 137 (“When a child leaves for a charter school the money follows that child.”).

186. See RAVITCH, *supra* note 69, at 177 (“Because of the lost enrollment and lost revenue, the district was forced to lay off teachers and custodians and increase class sizes.”).

187. See Kuznia, *supra* note 183 (describing the effects of decreased enrollment).

188. See *id.* (“The schools under-perform, creating fertile ground for charter schools, which tend to take high-achieving students, which takes a further toll on test scores . . .”).

189. See RAVITCH, *supra* note 69, at 177 (“At the end of 2012, the state took over the Inglewood District, appropriated an emergency loan of \$55 million to stave off bankruptcy, and installed an interim administrator to take control of the schools and make deep cuts in spending.”).

190. See *id.* at 177–78 (describing the similar issue which has plagued Pennsylvania,

Additionally, there is a fear that the growth in charter schools has led to the resegregation of many school districts. Charter schools are prone to higher levels of segregation and racial disparities than traditional public schools.¹⁹¹ Social scientists found that seventy percent of African American charter school students attended highly segregated minority schools while only thirty-four percent of African American public school students attended highly segregated schools.¹⁹² Additionally, African American students in charter schools are twice as likely as African American students in traditional public schools to be in a school with less than ten percent white students.¹⁹³ The authors of the study conclude, “Although these schools have the potential to transcend high residential segregation created by neighborhood assignment and school district boundary lines, in many cases they are even more segregated than regular public schools.”¹⁹⁴

The Osseo Area Schools in the suburbs of Minneapolis exemplify this resegregation. The school district’s student body has experienced a drastic change in racial composition over the last decade.¹⁹⁵ One factor causing this change is the presence of charter schools.¹⁹⁶ The public school district noted that almost one-third of the student population lost was to charter schools.¹⁹⁷ More importantly the school found “that a larger proportion of students of color than white students were opting out of the district for

Ravitch writes, “The public schools in the district have lost so much funding as a result that they are near bankruptcy and may eventually be forced to close, with their remaining students handed over to private charter corporations”).

191. See Erica Frankenberg, Genevieve Siegel-Hawley & Jia Wang, *Choice Without Equity: Charter School Segregation and the Need for Civil Rights Standards*, CIVIL RIGHTS PROJECT 80 (Jan. 2010) [hereinafter *Choice Without Equity*], <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/choice-without-equity-2009-report/frankenber-choices-without-equity-2010.pdf> (“This analysis of recent data finds that charter schools are more racially isolated than traditional public schools in virtually every state and large metropolitan area in the nation.”).

192. *Id.* at 37.

193. *Id.*

194. See Erica Frankenberg & Chungmei Lee, *Charter Schools and Race: A Lost Opportunity for Integrated Education*, EDUC. POL’Y ANALYSIS ARCHIVES 36 (Sept. 5, 2003) [hereinafter *A Lost Opportunity*], available at <http://epaa.asu.edu/ojs/article/view/260/386> (conducting a study on segregation patterns in charter schools).

195. See Baris Gumus-Dawes, Myron Orfield & Thomas Luce, *Dividing Lines: East Versus West in Minneapolis Suburbs*, in THE RESEGREGATION OF SUBURBAN SCHOOLS 114–18 (Erica Frankenberg & Gary Orfield eds., 2012) (detailing that changes observed in this school district towards resegregation).

196. *Id.*

197. *Id.*

charter schools, perhaps because of the presence of ethnically themed charter schools.”¹⁹⁸ Despite these concerns, the number of charter schools continues to rapidly increase without hesitation.¹⁹⁹ As one scholar concludes, “The charter school movement has been a major political success, but it has been a civil rights failure.”²⁰⁰

Many reasons are offered to account for racial disparities. One reason for the intensified segregation for African Americans in charter schools is the location of these schools.²⁰¹ Many charter schools are located in neighborhoods that are already highly segregated.²⁰² Additionally, some argue that because people do not understand their growing impact, charter schools are not challenged when they do not comply with federal civil rights statutes.²⁰³ Another argument blames charter school authorizers—those who sponsor the creation and operation of a charter school—for not using their discretion to avoid civil rights issues; suggesting that the authorizers have the power and discretion to stop the perpetuation of segregation.²⁰⁴ Other legislative decisions also affect charter school diversity: location of the school, transportation, and funding.²⁰⁵

A growing number of states have reacted to segregation in charter schools by enacting racial balancing provisions in their authorizing

198. *Id.* at 118.

199. *See Choice Without Equity*, *supra* note 191, at 80 (noting the continued growth of charter schools).

200. *Id.* at 1.

201. *See A Lost Opportunity*, *supra* note 194, at 36 (noting that one of the possible reasons for the study’s conclusion is that many charter schools are located in segregated neighborhoods).

202. *See id.*

203. *See* Joy Resmovits, *Charter School Segregation Target of New Report*, HUFFINGTON POST (Feb. 22, 2012), http://www.huffingtonpost.com/2012/02/22/charter-school-education-segregation-equity-race-legislation_n_1295043.html (quoting an argument made by Myron Orfield, a professor at University of Minnesota who studies charter school segregation at a local level); *see also Choice Without Equity*, *supra* note 191, at 81 (“States often have weak civil rights and equity policies regarding charter school establishment and enrollment . . .”).

204. *See* Julie F. Mead & Preston C. Green III, *Chartering Equity: Using Charter School Legislation and Policy to Advance Equal Educational Opportunity*, NAT’L EDUC. POL’Y CTR. 11–12 (Feb. 2012), http://nepc.colorado.edu/files/PB-CharterEquity_0.pdf (suggesting what charter school authorizers should do to avoid continued segregation in charter schools).

205. *See* Genevieve Siegel-Hawley & Erica Frankberg, *Does Law Influence Charter School Diversity? An Analysis of Federal and State Legislation*, 16 MICH. J. RACE & L. 321, 347–51 (2011) (discussing these seemingly race-neutral decisions’ effects on charter school diversity).

statutes.²⁰⁶ Generally, these provisions are designed to prevent racial segregation and states vary in their approach to achieving this goal.²⁰⁷ Some provisions require findings that racial balance will be achieved before the school is authorized,²⁰⁸ while others require racial balance to be a factor when considering the effect of establishing a charter school.²⁰⁹ However, the constitutionality of these provisions has been questioned,²¹⁰ following the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*.²¹¹ In a plurality opinion, the Court declared there to be two compelling purposes that enable a public school district to use racial classifications: remedying the effects of past discrimination and diversity in higher education.²¹² The Court specifically stated that racial balancing was not a compelling interest.²¹³ However, in Justice Kennedy's concurrence, which provided the majority's key swing vote, he recognized a third compelling interest: diversity in elementary and secondary education.²¹⁴

It is unclear how *Parents Involved* applies to charter school provisions. Two scholars suggest that based on principles articulated in the decision, hortatory racial balancing provisions would be considered constitutional, but mandatory racial balancing provisions could encounter constitutional challenges.²¹⁵ Unlike mandatory racial balancing provisions, hortatory

206. See Joseph O. Oluwole & Preston C. Green, III, *Charter Schools: Racial Balancing Provisions and Parents Involved*, 61 ARK. L. REV. 1, 22 (2008) (citing fourteen states that have enacted such provisions).

207. See *id.* at 22–33 (outlining the differences in the implementation of racial balancing provisions among the fourteen different states that have enacted such provisions).

208. CAL. EDUC. CODE § 47605 (2014).

209. CONN. GEN. STAT. ANN. § 10-226h (West 2014).

210. See generally Oluwole & Green, *supra* note 206 (discussing the impact of *Parents Involved* has on charter school racial balancing provisions).

211. *Parents Involved v. Seattle Sch. Dist.*, 551 U.S. 701, 747 (2007) (holding that racial classification employed by public schools violated the Equal Protection Clause of the Fourteenth Amendment because no compelling interests were presented).

212. See *id.* at 702–03 (describing the two compelling interests available to public schools when using racial classifications).

213. See *id.* at 730 (“*Grutter* itself reiterated that ‘outright racial balancing’ is ‘patently unconstitutional.’”).

214. See *id.* at 788 (Kennedy, J., concurring) (“In the administration of public schools by the state and local authorities it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition.”).

215. See Oluwole & Green, *supra* note 206, at 52 (stating their conclusion).

provisions merely encourage racial balancing.²¹⁶ The hortatory provisions aim to achieve this balance by finding methods that result in a more racially balanced student body.²¹⁷ Due to the “ostensible latitude” provided by state laws that reflect hortatory provisions, these scholars argue that the Court will be more likely to accept these provisions because they do not reflect the required racial quotas at issue in *Parents Involved*.²¹⁸ Mandatory provisions, however, will likely not survive the strict scrutiny test of judicial review because of their similarity to the racial quotas in *Parents Involved*, which were held to have violated the Equal Protection Clause.²¹⁹ Yet, because of charter schools’ hazy legal status, it is unclear how directly *Parents Involved* will apply to charter school racial balancing provisions.

Educators are worried about the effect this continued segregation has on students. The perpetuation of the achievement gap has been partially blamed on continued segregation.²²⁰ Additionally, segregation is also linked to high dropout rates, the school-to-prison pipeline, high teacher turnover, and inadequate access to a challenging curriculum, technology, and educational and employment opportunities.²²¹ While charter schools only serve a small percentage of students nationwide, they are often located in urban communities that have traditionally low-performing schools and high-risk students.²²²

Charter schools give Big Philanthropy a unique and powerful way to affect change in the public education landscape.²²³ Instead of being bound by traditional rules and regulations, Big Philanthropy is able to effectuate its goals and even exploit the public school system with little oversight from government bodies.²²⁴ The state of legal ambiguity in which charter schools exist only further enables Big Philanthropy to wield its muscles.²²⁵

216. *See id.* at 33 (describing the two classifications of racial balancing).

217. *See id.* (noting the difference between mandatory and hortatory racial balance provisions).

218. *See id.* at 46 (describing the relationship between hortatory provisions and the *Parents Involved* decision).

219. *See id.* at 46–52 (describing the relationship between mandatory provisions and *Parents Involved*).

220. *See* Siegel-Hawley & Frankberg, *supra* note 205, at 325–29 (detailing the harms of racial isolation and the benefits of diverse schools).

221. *See* Mead & Green, *supra* note 204, at 5 (examining issues associated with racial segregation).

222. *See id.* (noting that mandatory provisions would face constitutional challenges).

223. *See supra* Part IV.A.

224. *See supra* notes 155–159 and accompanying text.

225. *See supra* notes 167–170 and accompanying text.

Due in part to Big Philanthropy's influence, charter school growth has exploded with little attention being paid to the negative consequences of the charter school model.²²⁶ Public schools left in disarray, blatant exclusion of students with disabilities, and racial resegregation are among some of the most devastating impacts of the rise of charter schools.²²⁷ As people continue to get on the charter school bandwagon, the need for regulatory control and transparency only becomes more important.

B. Parent Trigger Legislation

1. Parent Trigger Laws in General

The effects of Big Philanthropy—good and bad—have been felt within schools for well over a decade; but the deep entanglement between Big Philanthropy and education legislation is just beginning to surface.²²⁸ One of the newest education reform movements is the parent trigger movement.²²⁹ This movement involves legislation intended to empower parents to implement certain remedial measures if their child's school is underperforming.²³⁰ Parent trigger legislation adopted in California—the first state to adopt such legislation—states that if more than half of parents at an under-performing school sign a petition, the parents may take control of the school.²³¹ The law gives parents the ability to control the budget, fire staff, and, at its most extreme, turn the school over to a charter school organization.²³² Over twenty-five states have considered these laws and

226. See *supra* Part IV.A.4.

227. See *id.*

228. See Barkan, *supra* note 90 (noting that the American Legislative Exchange Council (ALEC)—which is credited with the rapid popularity of parent trigger legislation—received a \$376,635 grant from The Bill and Melinda Gates Foundation to further its education reforms); see also Gary Cohn, *Public Schools, Private Agendas: Parent Revolution*, CAPITAL & MAIN (Apr. 2, 2013), <http://capitalandmain.com/public-schools-private-agendas-parent-revolution/> (chronicling the rise of the parent-trigger movement and its relation to philanthropic foundations).

229. See Cohn, *supra* note 228.

230. See *Parent Trigger Laws in the States*, NATIONAL CONFERENCE OF STATE LEGISLATURES (2014), <http://www.ncsl.org/research/education/state-parent-trigger-laws.aspx> (explaining parent trigger laws and how they are implemented in certain states).

231. See RAVITCH, *supra* note 69, at 199 (describing the legislation adopted by California in 2010).

232. See *id.* (describing the power this legislation affords parents).

seven states have adopted them.²³³ The remedial options available to aggrieved parents vary from state to state.²³⁴

Supporters of the parent-trigger movement argue that these laws promote greater parent involvement in the education system while holding schools to a higher standard of accountability.²³⁵ They contend that these laws allow parents to bypass the traditionally slow and political methods of turning around a low-performing school and are more student-focused.²³⁶ Additionally, there seems to be national support for the movement. A 2012 Gallop poll indicated widespread support for legislation that gives parents power to remove school officials in failing schools via alternative methods such as a petition process.²³⁷ Additionally, a 2012 movie entitled *Won't Back Down*, starring major Hollywood players Viola Davis and Maggie Gyllenhaal, attempted to glamourize parent trigger laws.²³⁸ Despite the movement's seeming popularity, critics have emerged and amassed evidence that questions the effectiveness of these laws.²³⁹

To date, evidence of the law's effective implementation and impact is limited. Despite the law being adopted in seven states, only four attempts have been made by parents to take advantage of parent trigger laws to reform an underperforming school.²⁴⁰ One of the attempts ended in failure ultimately leaving the community divided,²⁴¹ while the other three attempts

233. *Parent Trigger Laws in the States*, *supra* note 230.

234. *See id.* (describing the type of power parent trigger laws entrust in the parents).

235. *See id.* ("Advocates argue that parents should have a more active role in how their child's school is managed.").

236. *See id.* (noting how these laws allow parents to have a "more active role in how their child's school is managed" and that the traditional methods used to turn around a school are often politically motivated, rather than driven by the interest in the students).

237. WILLIAM J. BUSHAW & SHANE J. LOPEZ, PUBLIC EDUCATION IN THE UNITED STATES: A NATION DIVIDED, 94 PHI DELTA KAPPA/GALLUP POLL 22 (Sept. 2012), available at <http://pdkintl.org/wp-content/blogs.dir/5/files/2012-Gallup-poll-full-report.pdf>.

238. *See* Greg Toppo, 'Won't Back Down' *Highlights Parent Trigger Law For Schools*, USA TODAY (Aug. 5, 2012), <http://usatoday30.usatoday.com/news/education/story/2012-08-04/schools-parent-takeover/56762688/1> (describing the film's premise and noting the film's unique position at the forefront of a social trend).

239. *See* discussion Part IV.B.

240. All four attempts have been made in California school districts: McKinley Elementary in Compton, Desert Trails Elementary in Adelanto, 24th Street Elementary in Los Angeles, and Weigand Avenue Elementary School in Watts. *See* Natasha Lindstrom, *For First Time, Parents Look to Pull 'Trigger' Without Fight*, HECHINGER REPORT (Apr. 9, 2013), <http://hechingerreport.org/for-first-time-parents-look-to-pull-trigger-without-fight/> (describing the four attempts to reform schools through parent trigger laws).

241. *See* Kristina Rizga, *The Battle Over Charter Schools*, MOTHER JONES (Apr. 7, 2011), <http://www.motherjones.com/politics/2011/03/parent-trigger-compton-NCLB?page=2>

have led to various reformation actions being taken.²⁴² With all three reforms taking place in the summer of 2013, it is too early to tell whether these reforms will have any impact on educational outcomes. Noting that there is no evidence that parent-trigger legislation is an effective way of improving schools, Ravitch questions why legislators are passing laws that provide for a remedy that has no supporting evidence and has never been put into practice.²⁴³ Ravitch is not alone in her questioning and Big Philanthropy may be to blame.²⁴⁴

2. The Connection Between Big Philanthropy and Parent Trigger Legislation

The parent trigger movement showcases the negative impact Big Philanthropy has on public education when it imposes its education initiatives and policies on school districts.²⁴⁵ Parent Revolution, one of the advocacy groups at the forefront of the parent trigger movement in California, illustrates Big Philanthropy's monetary commitment to this movement. While Parent Revolution claims to be a grassroots

(describing the aftermath in Compton, California of a failed attempt to ignite reform via a parent trigger law).

242. See Sean Cavanagh, *School Born of California Parent-Trigger Law Opens Its Doors*, EDUC. WEEK (July 29, 2013, 5:00 AM), http://blogs.edweek.org/edweek/charterschoice/2013/07/school_born_of_california_parent-trigger_law_opens_its_doors.html (describing the opening of Desert Trails Elementary, which is the first school born of the parent trigger movement); see also Teresa Watanabe, *Popular Principal's Dismissal Leaves a South L.A. School Divided*, L.A. TIMES (May 24, 2013), <http://articles.latimes.com/2013/may/24/local/la-me-weigand-20130525> (describing the ousting of the school's principal as a result of parent trigger laws); see also Allie Bidwell, *Los Angeles 'Parent Trigger' School Sets Precedent with Public-Charter Hybrid*, U.S. NEWS & WORLD REPORT (Aug. 13, 2013), <http://www.usnews.com/news/articles/2013/08/13/los-angeles-parent-trigger-school-sets-precedent-with-public-charter-hybrid> (describing the creation of a public-charter hybrid as a result of a successful parent trigger petition and negotiations with the school district).

243. See RAVITCH, *supra* note 69, at 205 (“It seems odd to legislate a remedy that not only has no evidence behind it but that has never actually been put into practice anywhere before the legislation was passed.”); see also PARENTS ACROSS AMERICA, *PAA on the Parent Trigger* (Sept. 17, 2012), <http://parentsacrossamerica.org/paa-parent-trigger/> (noting that parent trigger legislation has “shown no overall success in improving schools nationwide”).

244. See Barkan, *supra* note 90 (criticizing Big Philanthropy's promotion of parent trigger legislation).

245. See Cohn, *supra* note 228 (questioning why these new methods are more effective than the traditional procedures in place and the ability of the parents to understand and be aware of measures the schools are taking to fix a school); see generally Diane Ravitch, DIANE RAVITCH BLOG, <http://dianeravitch.net> (last visited Feb. 11, 2015).

organization,²⁴⁶ critics question how this advocacy group can remain independent when the majority of its budget comes from Big Philanthropy.²⁴⁷ Since 2009, Parent Revolution has received almost \$15 million from Big Philanthropy, including \$6.3 million alone from The Walton Family Foundation.²⁴⁸ The executive director of Parent Revolution, Ben Austin, previously worked for Green Dot, which is a charter school organization that was launched with a \$10.5 million grant from the Broad Foundation.²⁴⁹ Even *Won't Back Down*, which heavily promoted the parent trigger movement, was funded by Big Philanthropy.²⁵⁰ While the connection between parent trigger and Big Philanthropy is clear,²⁵¹ the motivation behind and the effects of this legislation are even more alarming.

Parent Revolution's mission is: "In states with Parent Trigger Laws, Parent Revolution supports parents by empowering them to transform their school. We equip parents with knowledge, train them in organizing, and support the actions they take to improve their local public school."²⁵² Although seemingly honorable, it has been suggested that this mission statement acts as a veil to the real goal of promoting charter schools.²⁵³

246. See Rita Solnet, *Grassroots or Astroturf? Parents, Be Aware!*, PARENTS ACROSS AMERICA (June 7, 2012), <http://parentsacrossamerica.org/grassroots-or-astroturf-parents-be-aware/> (noting how a Parent Revolution organizer testified claiming the organization had grassroots origins).

247. See Cohn, *supra* note 228 ("[Parent Revolution's] heavy reliance on Walton money, critics say, raises questions about the independence of Parent Revolution and the intentions of the Walton Family Foundation.").

248. *Id.*

249. See RAVITCH, *supra* note 90, at 198 (describing the connection between Parent Revolution and Big Philanthropy).

250. See FUND EDUCATION NOW, *What is the "Parent Trigger?"*, <http://www.fundeducationnow.org/resource-room/parent-trigger/> (last visited Feb. 11, 2015) (highlighting that The Broad Foundation is funding the movie).

251. See CAL. TEACHERS ASS'N, *Issues & Action: Parent Trigger*, <https://www.cta.org/Issues-and-Action/Education-Reform/Parent-Trigger.aspx> (last visited Feb. 11, 2015) ("There is also growing evidence that funding for many of the 'parent trigger' initiatives comes from wealthy philanthropists, policymakers, and think tanks that support charter school expansion and free market approaches to school reform.").

252. See PARENT REVOLUTION, *What We Do*, <http://parentrevolution.org/what-we-do/> (last visited Feb. 11, 2015) (describing the purpose and goals of Parent Revolution).

253. See Diane Ravitch, *The Trouble With the Parent Trigger*, EDUC. WEEK (Oct. 4, 2011, 9:29 AM) [hereinafter *Trouble*], http://blogs.edweek.org/edweek/Bridging-Differences/2011/10/the_trouble_with_the_parent_tr.html ("Parent Revolution is what is known as an "Astroturf" group, an organization pretending to be representative of ordinary parents, but actually promoting a charter agenda."); see also RAVITCH, *supra* note 69, at 205 ("[Parents Across America] warned that the underlying goal of the trigger was to hand

When parent trigger legislation came up in the Florida legislature, a plethora of local education groups, such as the Florida PTA, 50th No More, and Testing is Not Teaching, objected to the bill.²⁵⁴ These parent leaders “saw the parent trigger as an ‘underhanded ploy’ by well-funded groups to hand public schools over to private charter operators.”²⁵⁵ To combat the opposition, Parent Revolution flew in teachers from California to testify in favor of the legislation.²⁵⁶ Even an editorial in a Florida newspaper that supports charter schools noted that parent trigger legislation created an “uneven playing field” by giving an advantage to charter schools and those who support them over traditional public schools.²⁵⁷ Parents Across America, a grassroots organization aimed at improving the nation's schools, openly criticizes the legislation and its connection to charter schools and Big Philanthropy.²⁵⁸ Not only taking issue with Big Philanthropy's ties to parent trigger, Parents Across America is deeply concerned about the effects of this legislation.²⁵⁹

3. *The Effects of Parent Trigger Laws on Local Communities*

With the connection between Big Philanthropy and parent trigger established, it is important to turn to some of the deleterious effects caused by this legislation. Much of the opposition to parent trigger laws focuses on the ability of these laws to carry out their intended goals.²⁶⁰ In the few school districts in which parent trigger laws have actually been utilized,

public schools over to private charter operators and corporations.”).

254. See RAVITCH, *supra* note 69, at 201 (listing various Florida education organizations that opposed parent trigger legislation).

255. *Id.* at 201–202.

256. *Id.* at 202.

257. See *Promote Charter Schools, but Don't Stack the Deck*, ORLANDO SENTINEL (Mar. 10, 2012), http://articles.orlandosentinel.com/2012-03-10/opinion/os-ed-charter-schools-031012-20120309_1_charter-schools-traditional-public-schools-imani-elementary-charter-academy (“Last year, lawmakers tightened traditional public schools’ accountability, but loosened the shackles on charter school growth. This year’s legislative session only reinforced fears [that] charters have staged a coup.”).

258. See PARENTS ACROSS AMERICA, *supra* note 243 (“California’s Parent Trigger law was promoted by the organization Parent Revolution, which was founded by charter school operators and backed financially by venture philanthropists.”).

259. See *id.* (listing problems with the parent trigger legislation such as the narrow range of remedial options available, the resulting disruption in communities, and effects on neighboring school districts).

260. See discussion *infra* Part IV.B.3.

controversies arose and communities were left in disarray.²⁶¹ In one California town where advocacy groups attempted to utilize parent trigger legislation, parents and teachers recount the experience as dividing the community and disrupting their children's education.²⁶² Petition drives have been depicted as a process riddled with misinformation and deceptive tactics that pit parents against each other and the school.²⁶³ Animosity and tension in the community then starts to affect children in school.²⁶⁴ These unintended effects, however, should not come as a surprise. In their book exploring foundations' effects on society, Anheier and Hammack comment, "While foundation accounts typically highlight the constructive processes of mobilizing coalitions in support of change, grants may also have the potential to demobilize or disrupt ongoing practices and relationships in the system targeted for change."²⁶⁵ While philanthropists have aspirational goals, the fears of Peter Buffet are real: solutions created in a vacuum fail.

Another concern is the amount of power given to parents.²⁶⁶ While increased parental involvement is nearly universally held as an effective means to further positive educational outcomes, parent trigger puts an immense amount of power in the hands of people who know little about running a school.²⁶⁷ Some equate this legislation as tantamount to patients

261. See CAL. TEACHERS ASS'N, *supra* note 251 (arguing that parents were manipulated into signing petitions and that a parent trigger laws are not an education silver bullet).

262. See Jeff Bryant, *The Disempowerment of Public School Parents*, EDUC. OPPORTUNITY NETWORK (Mar. 12, 2013, 1:12 AM), <http://educationopportunitynetwork.org/the-disempowerment-of-public-school-parents/> ("They talk of how their community has been divided and how their children's learning has been disrupted for what is a completely unproven idea coming from rich people outside their town.").

263. See Dean E. Vogel, *Parent Trigger Laws Divide Communities: Opposing View*, USA TODAY (Aug. 12, 2013), <http://www.usatoday.com/story/opinion/2013/08/12/parent-trigger-laws-california-teachers-association-editorials-debates/2646393/> (describing the petition drive process at McKinley Elementary School in Compton, California).

264. See Natasha Lindstrom, *A Struggling School, a Bitter Fight Over 'Parent Trigger' Law and No Tidy Hollywood Ending (a la Won't Back Down) in Sight*, NBC NEWS (Oct. 2, 2012, 12:09 PM), http://usnews.nbcnews.com/_news/2012/10/02/14182480-a-struggling-school-a-bitter-fight-over-parent-trigger-law-and-no-tidy-hollywood-ending-a-la-wont-back-down-in-sight?lite ("It's tearing that school apart," Adelanto School Board Member Jermaine Wright said. "If the parents are fighting, then it starts to trickle down to the kids.").

265. ANHEIER & HAMMACK, *supra* note 96, at 62.

266. See *Trouble*, *supra* note 253 ("But giving the current parents the power to close the school or to hand it over to a private management company is akin to saying that whoever uses any public facility should have the same power, the power to transfer control to a private entity.").

267. See RAVITCH, *supra* note 69, at 203 (quoting a mayor whose constituents had

seizing control of a hospital if cure rates were found to be low.²⁶⁸ Giving parents this level of power also disrupts the democratic accountability typically associated with public schools.²⁶⁹ Explaining how schools are supposed to function as a public trust, Ravitch writes, “The school belongs to the public, to the commonwealth. It belongs to everyone who ever attended it (and their parents) and to future generations. It is part of the public patrimony, not an asset that can be closed or privatized by its current constituents.”²⁷⁰ Parent trigger laws take schools out of democratic regulation and put it in the hands of a few parents, who will inevitably be controlled by those who control the money—Big Philanthropy.²⁷¹ School policy, therefore, will revolve around political alliances rather than the best interests of the children.²⁷²

In California, critics attack the law itself. One writer describes California’s parent trigger law—the Parent Empowerment Act²⁷³— as “480 hastily approved words that give parents the option of turning low-performing public schools . . . into charter schools of various stripes.”²⁷⁴ The Los Angeles Times editorial board argues that while some local communities have made adjustments to what the board calls a “sloppily written and poorly implemented state law,” the state legislature must take action in order to make this law more effective.²⁷⁵ The editorial board argues that the law’s biggest problem is its glaring lack of transparency noting that the law does not require a public forum where all parents can be

access to parent trigger legislation as saying “Mayors understand at a local level that most parents lack the tools they need to turn their schools around”).

268. *Id.*

269. See ANHEIER & HAMMACK, *supra* note 96, at 58 (discussing the common tensions between philanthropies and public education systems: their difference in approaches to standards of accountability and the democratic process); see also Barkan, *supra* note 90 (reminding the reader that “voters—directly through their elected officials—decide on and pay for public institutions in a democracy” not just parents).

270. RAVITCH, *supra* note 69, at 203.

271. See Barkan, *supra* note 90 (arguing that in school systems where Big Philanthropy has invested resources, they control the school, “how classroom time is spent, how learning is measured, and how teachers and principals are evaluated”).

272. See ANHEIER & HAMMACK, *supra* note 96, at 58–66 (discussing the powerful role politics plays in the success of the foundations’ initiatives).

273. CAL. EDUC. CODE § 53300 (West 2010).

274. Rizga, *supra* note 241.

275. See L.A. Times Editorial Board, *Fix the ‘Parent Trigger,’* L.A. TIMES (Sept. 20, 2013), <http://www.latimes.com/opinion/editorials/la-ed-parent-trigger-laUSD-20130920,0,157841.story#axzz2peObQkRQ> (arguing that local government adjustments to the law is not enough).

educated about the potential use of parent trigger laws.²⁷⁶ This lack of public awareness has led to secrecy, which has resulted in the aforementioned division in communities and distribution of misinformation.²⁷⁷ Describing the impact of the legislation on one city, a reporter writes, “Parents on both sides have accused each other of intimidation and harassment and called police on one another. PTA meetings have erupted into shouting matches, and kids have been bullied for wearing pro- or anti-trigger law shirts to school.”²⁷⁸ Additionally, many parents asked to sign petitions do not understand the ramifications of the petition.²⁷⁹ One parent who unknowingly signed a petition to transform her daughter’s school to a charter school thought she was just acknowledging that she had safety concerns about the school.²⁸⁰ The lack of transparency and resulting division in communities and confusion among parents evidences the carelessness that was used in enacting such powerful legislation.

Another fundamental flaw with California’s Parent Empowerment Law is that if the petition garners enough signatures, then parents who did not sign the petition activating the parent trigger law are denied the ability to vote on what remedial action should be taken.²⁸¹ At Desert Trails Elementary School in California, a court battle ensued after parents who were confused about the petitions being circulated wanted to rescind their names.²⁸² Ruling that parents were not allowed to rescind their names,

276. *See id.* (“The lack of a public forum is fundamentally wrong. These are public schools, and the petitions have the force of law. The fate of taxpayer-funded schools should not be decided in secrecy.”).

277. *See id.* (noting that this secrecy has resulted in parents being fed misinformation from both parents promoting parent intervention and teachers fighting the changes).

278. Lindstrom, *supra* note 264.

279. *See* Rizga, *supra* note 241, (“[M]any parents didn’t fully understand what they were signing, or realize that teachers and the principal would be fired when Celerity comes in . . . some parents . . . thought they were agreeing to “beautify” the school, or just signed the petition to get the canvassers to go away.”).

280. *See* David Bacon, *Trigger Laws: Does Signing a Petition Give Parents a Voice?*, 26:1 RETHINKING SCHS. (Fall 2011), http://www.rethinkingschools.org/archive/26_01/26_01_bacon.shtml (quoting a parent who had a woman with a petition come to her door saying, “There was a place on the form that asked about our concerns, so I signed and circled ‘safety.’ I’ve been worried that the school gates are sometimes left open, and children might wander out, or other people come in”).

281. *See* L.A Times Editorial Board, *supra* note 275 (describing this type of treatment as “tantamount to telling voters that if they didn’t cast ballots for the winner in the primary election, they’re not allowed to vote in the runoff”).

282. *See* RAVITCH, *supra* note 69, at 200 (detailing the effect of parent trigger legislation at the Desert Trails Elementary School).

fifty-three parents at a school of over six hundred students determined the fate of the school.²⁸³ The Los Angeles Times editorial board argues that these issues deny parents a truly informed choice when it comes to their child's education and could be easily remedied by the California legislature.²⁸⁴ Without such changes, the board argues, the Parent Empowerment Act has no chance of being an effective method of education reform.²⁸⁵

While few schools have been impacted by parent trigger legislation so far, the few communities who have evidence the harmful side effects. Like the small school initiative, this law is another example of how Big Philanthropy's efforts to reform schools have backfired. Once this legislation is adopted by a state, Big Philanthropy can then utilize "grassroots" advocacy groups, some of which were founded by charter school organizations,²⁸⁶ to change underperforming public schools to charter schools funded by Big Philanthropy.²⁸⁷ In the process, communities are broken, battles in court ensue, democratic accountability is lost, and children in already failing schools suffer.²⁸⁸ Parent trigger legislation may be another failed experiment in the ever-revolving door of education reform silver bullets.

V. A Prescription for Change

Big Philanthropy's involvement in advancing education reform movements has major implications for the national education landscape. As evidenced by the discussions on the charter school movement and parent

283. *Id.*

284. See L.A Times Editorial Board, *supra* note 275 (arguing that leaving these changes up to individual school districts is ineffective and that some rules—including the inability for parents who did not sign the petition to vote on the intervention—must be amended at the state level).

285. See *id.* ("The concept of the parent trigger is worthwhile: to give parents some say when a school provides a grossly inferior education and educators ignore their valid concerns. Overall, though, the law has not risen to that lofty ideal.").

286. See Solnet, *supra* note 246 (noting that Parent Revolution was founded by Steve Barr, who is the founder of Green Dot Public Schools, a charter school organization funded by Big Philanthropy).

287. See Cohn, *supra* note 228 (illustrating this connection by noting that The Walton Family Foundation is one of the largest private donors to charter schools and that "it is a strong proponent of the expansion of charter schools, school voucher programs and other efforts to privatize public education").

288. See *supra* Part IV. A.4.

trigger legislation above, these reform movements are having negative impacts on surrounding communities, schools, and most importantly, students.²⁸⁹ Putting aside Big Philanthropy's motive behind their financial contributions, it is clear that greater transparency and more effective regulation is needed to combat the harmful side effects of Big Philanthropy's influence on education.

An increase in regulation of charter schools may help shield against many of the destructive effects in education caused by the proliferation of these schools. States should increase regulation of charter schools to ensure that they are collaborating with public schools, rather than working against them.²⁹⁰ Two-schools systems that have developed as a result of the differences between traditional public school and de-regulated charter schools have a significant deleterious impact on education.²⁹¹ By holding charter schools to the same standards as public schools—especially when it comes to accepting students with disabilities and low-performing students—the needs of the lowest-performing students would be better met.²⁹²

The authorization and funding of charter schools should also be subject to greater oversight. State laws should seek to ensure that charter schools are created and operated by local educators and members of the community rather than charter chains or a Big Philanthropy experiment.²⁹³ Describing the ideal charter scenario, Ravitch writes, “[Charter schools] should be stand-alone, community-based schools designed and managed by parents, teachers, and members of the local community for the children of that district.”²⁹⁴ Without the natural interest and insight into the community and the effects of educational reform on local schools, charter schools will continue to perpetuate these harmful effects that are currently being ignored because the direction is coming from outsiders instead of the community.

289. See *supra* Part IV.

290. See RAVITCH, *supra* note 69, at 247–50 (discussing the detrimental effects of a two-school system operating in the same community).

291. See *supra* Part IV.A.

292. See RAVITCH, *supra* note 69, at 251 (“If charter schools sought to enroll the neediest students, they would become . . . a valued partner of public schools. Instead of fighting with each other over space and resources, the two sectors would have a common goal of educating all children well and a genuine basis for shared responsibility.”).

293. See *id.* at 250 (arguing that state laws should ensure charter schools are locally based operations).

294. *Id.* at 250.

Parent trigger legislation would benefit from both a less punitive approach and greater transparency.²⁹⁵ Pitting parents against teachers and school administrators not only severely disrupts the school environment, affecting student learning, but also dismantles communities.²⁹⁶ Rather than having reform coming from organizations with agendas, the reform strategy should be devised on a local level aiming to tailor to the needs of the community.²⁹⁷ Instead of narrowly focusing on firing staff or closing the school, parent trigger legislation should include more positive choices for parents to make.²⁹⁸ Additionally, the legislation should mandate greater transparency.²⁹⁹ Parents Across America, an organization that is weary of parent trigger legislation and those who are promoting its expansion, suggests that the “law must require that any paid organizers publicly identify themselves and disclose their financial backers. Paid organizers must be supporting parents’ interest, not acting on behalf of their own organizations or particular operators.”³⁰⁰ With greater transparency, parents would have a better understanding of the underlying issues, which would hopefully decrease the coercion and disrupted communities that have resulted from this legislation.³⁰¹

Perhaps states considering parent trigger legislation should follow the approach taken by Connecticut, which did not believe that the original model of parent trigger legislation provided meaningful parental involvement.³⁰² Instead of allowing parents to take over the school if it failed to meet adequate yearly progress, Connecticut created a program in which a council, selected by both parents and teachers, oversaw the school for three years.³⁰³ During those years, the council would be responsible for

295. See L.A. Times Editorial Board, *supra* note 275 (noting that the lack of transparency and “a public forum is fundamentally wrong”).

296. See Bacon, *supra* note 280 (quoting a co-director of the Advancement Project as stating, “Additionally, [parent trigger legislation] runs a serious chance of abuse and racial polarization where intentions behind the petition may not be just about academics”).

297. See PARENTS ACROSS AMERICA, *supra* note 243 (noting the need for a more locally-formulated approach to school reform).

298. See RAVITCH, *supra* note 69, at 205 (suggesting reforms to reduce the negative consequence of parent trigger legislation).

299. See PARENTS ACROSS AMERICA, *supra* note 243 (discussing the need for transparency).

300. *Id.*

301. See *supra* Part IV.

302. See Bacon, *supra* note 280 (detailing the concerns of Connecticut educators and legislators that parent trigger legislation did not promote meaningful parental involvement).

303. See *id.* (describing Connecticut’s alternative adaptation of parent trigger

developing parent involvement policies, reviewing achievement data, advising on hiring and firing decisions, and monitoring many other matters.³⁰⁴ If after three years of collaboration—not after gathering enough signatures—the school was still failing, then school takeover would be an option parents could pursue.³⁰⁵ This adaptation of parent trigger legislation could provide much-needed positive collaboration between parents and educators.

Change is, and has been, needed all across the education landscape. As test scores remain low, resegregation threatens schools, and educational outcomes remain stagnant, Big Philanthropy has spent the last decade trying to discover and implement the education silver bullet. While their intentions can be debated, it is more important to look at the effects of their efforts. By examining just two of Big Philanthropy's educational initiatives—one that has been around for years and one new to the education scene—it is evident that problems are emerging and students are suffering. States need to rein in the power of Big Philanthropy and put an end to the endless educational experiments being conducted on the nation's students. By offering more oversight and requiring increased transparency, communities can work in tandem with Big Philanthropy rather than in their shadow.

legislation).

304. *See id.* (illustrating what types of oversight the council would be involved in).

305. *Id.*