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Centric Charter Schools: When Separate May Be Equal

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CENTRIC CHARTER SCHOOLS: WHEN SEPARATE MAY BE EQUAL

*Sarah Rivkin Smoler**

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INTRODUCTION

Brown v. Board of Education remains one of the most notable Supreme Court decisions in American history.¹ The 1955 landmark decision declared it unconstitutional to operate segregated public schools. The Court held that racially divided schools were inherently unequal and intrinsically violated the Equal Protection Clause of the Fourteenth Amendment.² The Court later held school boards immediately responsible for “elucidating, assessing, and solving” the problem of discrimination in public schools.³ Despite this seemingly momentous change of law that overruled nearly sixty years of *Plessy v. Ferguson* precedent,⁴ the face of American public schools remained distinctly divided by color.

Since *Brown*, the Supreme Court has decided countless cases and repeatedly set new precedent to combat segregation in public schools.⁵ Although some schools and communities successfully desegregated over time,⁶ much of America remains where it began, and some communities and cities stand even more divided.⁷ Despite valiant efforts to educate minority students, public schools with

¹ See *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954). This Comment will refer to this case simply as “*Brown*” in the text in keeping with common usage.

² *Id.*

³ *Brown v. Board of Educ. of Topeka, Kan.*, 349 U.S. 294, 299 (1955).

⁴ *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896) (holding that separation of races in public schools and other public locations was constitutional).

⁵ See, e.g., *Green v. County Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430 (1968); *Milliken v. Bradley*, 418 U.S. 717 (1974); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

⁶ For example, Nevada public school districts are the most diverse in America. *Diversity in the Classroom*, N.Y. TIMES, <http://projects.nytimes.com/immigration/enrollment/nevada> (last visited Apr. 27, 2015).

⁷ Monique Langhorne, *The African American Community: Circumventing the Compulsory Education System*, 33 BEVERLY HILLS B. ASS'N J. 12, 19 (2000). Court-ordered desegregation led to “White flight” in many cities and left the communities more segregated than they began. *Id.*

predominantly minority populations still greatly underperform schools with primarily White schools.⁸

Because equal institutions did not develop organically, school boards and city governments sought alternative methods to reach underserved populations.⁹ Charter schools provide one such solution and have emerged rapidly in recent years.¹⁰ Charter schools implement creative methods to attract underserved populations and use specialized curriculum to educate students.¹¹ Some educators have taken the charter school concept one step further and developed centric charter schools.¹² These centric charter schools deliberately attract only members of specific races or cultures, which results in homogenous student bodies and culturally tailored teaching methods.¹³ Contrary to history, these intentionally segregated schools

⁸ SCHOTT FOUND. FOR PUB. EDUC., BLACK LIVES MATTER: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES 9-13 (2015), available at <http://blackboysreport.org/bbreport2015.pdf>.

⁹ See, e.g., 1996 Ill. Laws 429 (enacting Charter School laws in Illinois).

¹⁰ “Statewide enrollment in charter schools has surged from 6,152 students in 2000 to 54,054 this school year—with most of them in Chicago—according to the Illinois State Board of Education. The first charter school in Illinois opened in 1996. Now there are 132 campuses operating under 58 charters.” *The Thirst for Charter Schools*, CHI. TRIB. (Apr. 4, 2013), http://articles.chicagotribune.com/2013-04-04/opinion/ct-edit-charter-20130404_1_charter-school-andrew-broy-58-charters.

¹¹ Leland Ware & Cara Robinson, *Charters, Choice, and Resegregation*, 11 DEL. L. REV. 1, 2 (2009).

¹² See Jennifer Rose Jacoby, *Race-Conscious Charter Schools and the Antibalkanization Perspective of Equal Protection*, 15 U. PA. J. CONST. L. 1561, 1569 (2013).

¹³ For instance, United Neighborhoods Organization (UNO) charter schools’ approach to teaching is to appeal directly and exclusively to Latino students. Their mission states in part,

UNO leads the transformation of the Hispanic Community toward an educated, powerful, and prosperous citizenry by engaging and challenging it to redefine its potential and its legacy in metropolitan Chicago and the United States of America. UNO-CSN seeks to redefine the culture and expectations of public education, especially in urban environments among minority students.

do not carry a stigma, but rather are often viewed as a creative solution to a persistent problem.¹⁴ Centric charter schools use segregation as a tool to create a setting where students can flourish.¹⁵

Not surprisingly, the centric charter school movement faces some pushback. The ramifications of centric charter schools raise numerous constitutional questions.¹⁶ Critics of the schools argue that public schools continue to suffer from the effects of segregated school systems, and that centric charter schools promote a renaissance of ideas better left in the history books.¹⁷ They claim that *Brown* demanded the immediate desegregation of public schools, and that America is now unconstitutionally encouraging schools to re-segregate.¹⁸ On the other side, proponents maintain that the new system produces promising results for minority students who face otherwise bleak futures. *Brown* specifically intended to eliminate the inferiority felt by minorities as a result of segregation,¹⁹ and that is precisely what these schools aim to do.

Around the time of the Civil Rights Movement, the Congress mandated that “separate” not define American public schools.²⁰ In the modern context, this Comment argues that the *Brown* Court would have believed that centric charter schools uphold the spirit of *Brown*

Mission, History and Vision, UNO,

http://www.unocharterschools.org/mission_history_vision (last visited Apr. 11, 2015). The mention of “Hispanics” specifically demonstrates the population these schools seek to enroll. *Id.*

¹⁴ Sonia R. Jarvis, *Brown and the Afrocentric Curriculum*, 101 YALE L.J. 1285, 1287 (1992).

¹⁵ *Id.*

¹⁶ Charter schools are public schools within cities’ public school systems, *Understanding Charter Schools*, NAT’L CHARTER SCH. RESEARCH CTR., <http://www.charterschoolcenter.org/priority-area/understanding-charter-schools> (last visited Nov. 2, 2013), thus the *Brown* constitutional analysis applies. [NEEDS A SOURCE, PROB BROWN].

¹⁷ Jarvis, *supra* note 12, at 1289.

¹⁸ *Id.*

¹⁹ See *Brown v. Board of Educ.*, 347 U.S. 483, 494-95 (1954).

²⁰ Title VI of the Civil Rights Act of 1964 states the United States Department of Education may not discriminate if it hopes to receive federal funding. 42 U.S.C. § 2000d (1964).

because they provide opportunities for marginalized populations to compete with the majority. However, this Comment further argues that current racial demographics complicate the constitutional question. America is not as Black and White as it once was; in fact, in many areas minority populations now constitute the majority.²¹ In these new minority-dominated contexts, centric charter schools must be careful they do not unconstitutionally separate competing minority populations by inadvertently discouraging other minority students from enrolling.

Part I of this Comment describes *Brown*, its progeny, and its failure to desegregate America. Part II outlines the origin of the charter school movement, how charter schools operate, and the emergence of centric charter schools. Part III explains why centric charter schools are constitutional in regard to their impact on the relationship between majority and minority populations. Part IV discusses the potential for centric charter schools to be unconstitutional among competing minority populations should some centric schools perform better than others. Throughout the analysis, this Comment focuses on the City of Chicago, as it provides a concrete, focused example of the emergence and impact of centric charter schools.

²¹ According to the United States Census Bureau, the percentage of White people (still the majority) in America decreased by 2.3% from 2000 to 2010. In 2000, 77.1% of the population reported being White, whereas in 2010, only 74.8% checked the same box. See THE WHITE POPULATION: 2010, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE 3 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf>. Though Illinois did not experience an identical trend, its White population increased by 0.6% from 2000 to 2010, while its Hispanic and Latino population increased 32.5%. 2010 Census Data, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, <http://www.census.gov/2010census/data/> (last visited Apr. 8, 2015). The Census Bureau predicts that by 2020, more than half of the nation's children will be a minority race or ethnic group. Release, U.S. Census Bureau, U.S. Dep't of Commerce, New Census Bureau Report Analyzes U.S. Population Projections (Mar. 3, 2015), available at <https://www.census.gov/newsroom/press-releases/2015/cb15-tps16.html>.

I. BROWN AND ITS PROGENY

The Supreme Court decided *Brown v. Board of Education* at the beginning of the American Civil Rights Movement.²² At the time of *Brown*, Jim Crow laws permeated life in the South, and caused a radical divide between Blacks and Whites by enforcing racial segregation in public locations.²³ The Supreme Court judicially reinforced the racial segregation mandated under Jim Crow laws in its 1896 decision in *Plessy v. Ferguson*.²⁴ *Plessy* held state-mandated racial segregation constitutional so long as “equal opportunities” existed for Whites and Blacks.²⁵

In the mid-1950s, individuals from several states independently brought cases that questioned the fundamental reasoning behind the *Plessy* decision.²⁶ The plaintiffs in each case were African-American students who had been denied admission to White schools.²⁷ The Court consolidated the cases into *Brown v. Board of Education*.²⁸ *Brown* challenged whether segregated public schools actually provided comparable opportunities for African-American students, as *Plessy* insinuated.²⁹ The plaintiffs argued that segregated public schools “are not ‘equal’ and cannot be made ‘equal.’”³⁰

²² *Brown*, 347 U.S. at 494-95.

²³ Melvin I. Urofsky, *Jim Crow Law*, in ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/303897/Jim-Crow-law> (last updated Apr. 20, 2015).

²⁴ *Id.*

²⁵ *Plessy v. Ferguson*, 163 U.S. 537, 551-52 (1896). *Plessy* established the “separate but equal” doctrine that held in American jurisprudence for decades. By way of demonstrating the concept of separate but equal, the Court explained that if White men were required to walk on one side of the street while “colored” men were required to walk on the other, there was nothing inherently unequal in their separation because both were able to walk on the same street. If the African-American side of the street was not as nice as the White side, it reflected a lack of effort rather than inherent inequality. *Id.*

²⁶ *Brown v. Board of Educ.*, 347 U.S. 483, 486 (1954).

²⁷ *Id.* at 488.

²⁸ *Id.* at 486.

²⁹ *Plessy*, 163 U.S. at 549.

³⁰ *Brown*, 347 U.S. at 488.

Contrary to *Plessy*, the *Brown* Court agreed it was not sufficient to assess only “tangible factors” such as “buildings, curricula, qualifications and salaries of teachers” when determining whether separate schools were equal.³¹ Beyond mere external factors, the Court examined how the racial divide affected public education more generally.³² In light of the historical context, the Court held that separating populations by race caused minority groups to feel inferior in regard to their community status, which caused irreparable personal and societal harm.³³ In its landmark decision, the Court famously stated, “in the field of public education the doctrine of ‘separate but equal’ has no place.”³⁴ *Brown* overruled *Plessy* in its entirety and began the nation’s slow march toward desegregation.

Nearly ten years after *Brown*, with little visible progress resulting from the decision, Congress enacted the Civil Rights Act of 1964 (the Act). Concerned about the lack of advancement towards desegregation, the Act included specific clauses aimed to engage federal agencies in desegregation and reinvigorate the process.³⁵ The Act prohibited discrimination on the basis of “race, color, or national origin” under any program that received federal financial assistance.³⁶ The Act applied to all facets of American life and officially terminated Jim Crow laws.

In a congressional hearing prior to the implementation of the Act, President Kennedy commented on how the Act would govern the spending of public funds.³⁷ He unequivocally stated that public funds could not be used in any manner that directly or indirectly contributed to racial discrimination.³⁸ As a result, the Act forced public schools to

³¹ *Id.* at 492.

³² *Id.*

³³ *Id.* at 495.

³⁴ *Id.*

³⁵ See 42 U.S.C. § 2000d-1 (2012).

³⁶ 42 U.S.C. § 2000d (1964).

³⁷ H.R. DOC. NO. 124, at 12 (1st Sess. 1963) (providing a message from President John F. Kennedy).

³⁸ *Id.*

comply with *Brown* in order to receive government funding.³⁹ Despite this seemingly great effort to initiate desegregation, American public schools continued to show very little progress towards integration.

Many attribute the failure of *Brown* to the ill-conceived requirements it set for desegregation.⁴⁰ The Court assigned school boards the immediate task of desegregating their districts,⁴¹ but did not adequately account for the fact that those same school boards established and maintained segregation in the first place.⁴² Additionally, the new laws and precedents lacked clear definition, and many states found loopholes to avoid integration.⁴³

Initiating “freedom of choice” plans became common practice as a way to collect government funding without integrating public schools.⁴⁴ These types of plans allowed students to attend any school

Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.

Id.

³⁹ *School Desegregation and Equal Educational Opportunity*, LEADERSHIP CONFERENCE, <http://www.civilrights.org/resources/civilrights101/desegregation.html> (last visited Apr. 12, 2015).

⁴⁰ Jacoby, *supra* note 12, at 1564-65.

⁴¹ *Brown v. Board of Educ. of Topeka, Kan.*, 349 U.S. 294, 299-301 (1955).

⁴² Jacoby, *supra* note 12, at 1564-65.

⁴³ This was done primarily through “freedom of choice” plans and school voucher systems. See Klint Alexander & Kern Alexander, *Vouchers and the Privatization of American Education: Justifying Racial Resegregation from Brown to Zelman*, 2004 U. ILL. L. REV. 1131, 1132 (2004).

⁴⁴ For examples of cases where plans were instituted, see, e.g., *Green v. County Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430 (1968); *Raney v. Board of Educ. of Gould Sch. Dist.*, 391 U.S. 443 (1968).

they chose in their district.⁴⁵ At face value, these plans looked integrative; in practice, however, they often merely gave the illusion of compliance with *Brown*, as numerous obstacles made integration nearly impossible.⁴⁶ In order to eliminate such loopholes, the Supreme Court altered the requirements for desegregation in 1968 in *Green v. County School Board of New Kent County, Virginia*.⁴⁷

In *Green*, the town of New Kent, Virginia feigned compliance with *Brown* and opened its two public schools to students of both races.⁴⁸ Parents and students were given the “freedom” to attend whichever school they desired.⁴⁹ Even with the option to attend either school in the district, the school population in the two schools remained nearly identical to their pre-*Brown* makeup. Under the new policy, no White student transferred to the African-American school, and 85% of the African-American students remained at the African-American school.⁵⁰

The school district claimed that simply providing students with the freedom to choose which school to attend sufficiently complied with *Brown*. The Supreme Court concluded otherwise.⁵¹ The Court held that “freedom of choice” plans were not inherently unconstitutional, but were not an end in themselves.⁵² The plans required a good faith proposal, and a feasible means for desegregation that trumped any alternatives.⁵³ The Court held it necessary to measure whether a freedom of choice plan effectively achieved the goals of *Brown* before it could be considered constitutional.⁵⁴ If freedom of choice resulted in no change of circumstance or break down of racial divides, it did not adequately desegregate a dual

⁴⁵ See, e.g., *Green*, 391 U.S. at 433-34.

⁴⁶ See *id.* at 440-41.

⁴⁷ See *id.*

⁴⁸ See *id.* at 434-36.

⁴⁹ *Id.* at 433-34.

⁵⁰ *Id.* at 433.

⁵¹ *Id.* at 440-41.

⁵² *Id.* at 439-40.

⁵³ *Id.* at 439.

⁵⁴ *Id.* at 437.

system.⁵⁵ Because the plan in *Green* did not adequately dismantle divides, the Court held it unconstitutional.⁵⁶

Later, in *Swann v. Charlotte-Mecklenburg Board of Education*, the Court built upon the new requirements for school boards set out in *Green*. Along with articulating that choice was not sufficient for desegregation, *Swann* stated that it was also unacceptable for a school district to develop integrated schools that intentionally excluded students of one race.⁵⁷

Under *Swann*, the Court acknowledged that segregation in schools could result from residential housing patterns in cities, over which school boards had no control.⁵⁸ Although it was constitutional for segregated schools to exist by virtue of population distributions, the Court found that the school boards intentionally took advantage of uneven population distributions to continue segregation.⁵⁹ The Court held that school boards could not purposefully locate schools in segregated areas and size the schools so as to only “accommodate the needs to immediate neighborhoods,” and continue racially segregated education.⁶⁰

Even after countless cases regarding school boards’ failure to integrate school districts, and repeated clarification of the guidelines for desegregation, the United States has still not achieved a truly integrated public school system.

II. CHARTER SCHOOLS: WHAT THEY ARE AND THE DEVELOPMENT OF CENTRIC CHARTER SCHOOLS

In the 1990s, educators aggressively confronted America’s failing public school systems and started an alternative movement

⁵⁵ *Id.* at 439-40.

⁵⁶ *Id.* at 440.

⁵⁷ *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 30-32 (1971).

⁵⁸ *Id.* at 27-30.

⁵⁹ *Id.*

⁶⁰ *Id.* at 7.

known as charter schools.⁶¹ The first charter school legislation passed in Minnesota in 1991.⁶² Since then, forty-two states and Washington D.C. have adopted similar charter school laws.⁶³ Illinois was one state that enacted charter school legislation and continues to build its charter school presence within its public school systems.⁶⁴ Part II of this Comment first describes the concept of charter schools generally and then focuses on charter schools in Chicago and the emergence of centric charter schools throughout the City.

A. What are Charter Schools?

Charter schools are “publicly funded, independently operated schools that are allowed to operate with more autonomy than traditional public schools in exchange for increased accountability.”⁶⁵ Charter schools use teaching methods and curricula not available in traditional public schools.⁶⁶ They provide new environments to develop innovative teaching methods and create new means to achieve academic excellence.⁶⁷ The schools especially target at-risk students who consistently struggle within the traditional public school system.⁶⁸

Generally speaking, charter schools must meet key criteria required of traditional public schools: (1) they must be free and open to every student who wishes to enroll, (2) they must not discriminate, (3) they receive public funds based on enrollment, and (4) they must

⁶¹ Tomiko Brown-Nagin, *Toward A Pragmatic Understanding of Status-Consciousness: The Case of Deregulated Education*, 50 DUKE L.J. 753, 756 (2000).

⁶² Jacoby, *supra* note 12, at 1567.

⁶³ *Understanding Charter Schools*, *supra* note 16.

⁶⁴ INSTITUTE ON METROPOLITAN OPPORTUNITY, UNIVERSITY OF MINNESOTA LAW SCHOOL, CHARTER SCHOOLS IN CHICAGO: NO MODEL FOR EDUCATION REFORM 1 (Oct. 2014), available at <https://www.law.umn.edu/uploads/77/fd/77fd345c608a24b997752aba3f30f072/Chicago-Chararters-FINAL.pdf>.

⁶⁵ *Understanding Charter Schools*, *supra* note 16.

⁶⁶ Ware & Robinson, *supra* note 11, at 2.

⁶⁷ See 1996 Ill. Laws 429.

⁶⁸ 105 ILL. COMP. STAT. 5/27A-4(d) (2012).

comply with state and federal academic standards.⁶⁹ However, unlike traditional public schools, charter schools are often run by private institutions or individuals and are governed by slightly different statutory requirements.⁷⁰

First, any student may enroll in any charter school within his or her school district.⁷¹ In the Chicago Public School district (CPS), this means that any child living within the CPS borders may enroll in any of the available charter schools. However, in order to better serve low-income and at-risk students, charter schools give priority for enrollment to students located in overcrowded and low achieving areas within their district.⁷²

Second, charter schools cannot discriminate. The Illinois Legislature clearly aimed to respect *Brown*'s commands when it drafted charter school legislation.⁷³ The Illinois charter school statute specifically dictates that charter schools must comply with all desegregation plans and are subject to the same "constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, marital status, or need for special education services."⁷⁴

Third, charter schools collect public tax dollars. Specifically, charter schools receive funding that is no "less than 75% or more than 125% of the school district's per capita student tuition multiplied by

⁶⁹ See *Frequently Asked Questions About Public, Charter Schools*, UNCOMMON SCHOOLS, <http://www.uncommonschools.org/faq-what-is-charter-school> (last visited April 27, 2015).

⁷⁰ Mary E. Wright, *Single/Majority Race Charter Schools: Charting A New Course in the Aftermath of the Failed Mandates of Brown v. Board of Education*, 9 RUTGERS RACE & L. REV. 1, 1-3 (2007).

⁷¹ See NO CHILD LEFT BEHIND CHARTER SCHOOL PROGRAM: TITLE V, PART B, NON-REGULATORY GUIDANCE, US DEPT. OF EDUCATION, 2 (July 2004) <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CD8QFjAF&url=http%3A%2F%2Fwww2.ed.gov%2Fpolicy%2Felsec%2Fguid%2Fcspguidance03.doc&ei=tZFHVDjzNsXUoAT20oGoBg&usg=AFQjCNE23WCidEwK2FU3lhT95YsBha4bvw&bvm=bv.92291466,d.cGU> (last visited April 27, 2015).

⁷² 105 ILL. COMP. STAT. 5/27A-4(d).

⁷³ See *id.* 5/27A-4(a).

⁷⁴ *Id.*

the number of students residing in the district who are enrolled in the charter school.⁷⁵ Charter funding agreements may not provide either incentives or disincentives to establish charter schools.⁷⁶ However, in addition to tax dollars, charter schools often receive additional funding from private institutions or individuals.⁷⁷

Finally, charter schools must achieve certain educational standards like traditional public schools. Congress passed No Child Left Behind (NCLB) in 2002 to ensure high quality education for all public school students and to close achievement gaps between different schools and districts.⁷⁸ When a traditional public school repeatedly fails to reach the NCLB thresholds, the school must restructure.⁷⁹ Although charter schools are not subject to NCLB or any other state or federal achievement standards that apply to traditional public schools, charter schools must still demonstrate certain levels of educational performance.⁸⁰ The state has the authority to shut down charter schools that fall short of the education standards proposed in their charter.⁸¹ However, charter schools have much greater latitude in the means by which they fulfill these educational requirements.⁸² They have greater flexibility to adapt their teaching styles and curricula to target the learning and social needs of the communities they serve.⁸³

⁷⁵ *Id.* at 5/27A–11(b).

⁷⁶ *Comprehensive Cmty. Solutions, Inc. v. Rockford Sch. Dist. No. 205*, 837 N.E.2d 1, 3–4 (Ill. 2005).

⁷⁷ Terence Chea, *Charter Schools Expand with Public, Private Money*, HUFFINGTON POST (May 26, 2011, 12:40 PM), http://www.huffingtonpost.com/2011/01/21/charter-schools-expand_n_812183.html.

⁷⁸ 20 U.S.C. § 6301 (2012).

⁷⁹ NO CHILD LEFT BEHIND: A PARENTS GUIDE, U.S. DEP'T. OF EDUC. 9 (2003), available at <http://www2.ed.gov/parents/academic/involve/nclbguide/parentsguide.pdf>.

⁸⁰ See Jacoby, *supra* note 12, at 1568.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

In sum, charter schools are public schools operating within traditional public school systems, but may operate in whatever manner they see fit.

B. Charter Schools in Chicago and the Emergence of Centric Charter Schools

Chicago, much like other urban centers with large minority populations, struggles to improve graduation rates for minority students.⁸⁴ CPS is the third largest school district in America.⁸⁵ The district serves roughly 403,000 students between its 681 schools.⁸⁶ Among other factors, abysmal graduation rates have forced Chicago politicians to reassess the public school system. For example, in 2013, CPS boasted its highest graduation rates ever, settling at 65.4%.⁸⁷ Though seen as a big step for the City, this was truly a small victory considering that the CPS graduation rate remained more than 9% below the national average.⁸⁸

As one response to the graduation crisis, charter schools emerged throughout the City. The first Chicago charter school opened in 1996⁸⁹ and they have continued to gain popularity and support since then.⁹⁰ Despite forty-nine public school closings in Chicago in

⁸⁴ Graduation rates in Chicago have gone up generally, but the graduation gap between African-American and White students increased by 5.5%. *Despite Some Progress Made, Chicago Public Schools is Not Meeting the Needs of Students for College Readiness, Graduation Rates and Closing Achievement Gaps*, CHI. PUB. SCH., <http://www.cps.edu/Spotlight/Documents/AchievementGapCPSTrends.pdf> (last visited Jan. 13, 2013).

⁸⁵ Press Release, Chi. Pub. Sch., CPS Students Set Record High Graduation Rate of 65.4 Percent for School Year 2012-2013 (Aug. 14, 2013), *available at* http://www.cps.edu/News/Press_releases/Pages/PR1_08_14_2013.aspx.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Emily Richmond, *High School Graduation Rate Hits 40-Year Peak in the U.S.*, ATLANTIC (June 6, 2013), <http://www.theatlantic.com/national/archive/2013/06/high-school-graduation-rate-hits-40-year-peak-in-the-us/276604/> (noting the average graduation rate in America in 2013 was 74.7%).

⁸⁹ *The Thirst for Charter Schools*, *supra* note 10.

⁹⁰ Brown-Nagin, *supra* note 61, at 756.

2013,⁹¹ the City continued to put public dollars towards constructing more charter schools.⁹² Of the 664 CPS schools, roughly 20% are now charter schools.⁹³ Charter schools are predominantly located in minority communities in order to combat overcrowding and underperformance in at-risk areas.⁹⁴ The Chicago charter school population is 60% African-American, 35% Latino, and 90% low-income.⁹⁵ This means children of color make up 95% of the students attending charter schools, and 90% come from low-income families. Although these populations usually experience devastatingly low graduation rates in traditional public schools and underperform district averages, they show dramatically different results in charter schools. Not only do they demonstrate graduation rates above minority population averages in CPS, but students who attend charter schools also have a 7% greater chance of graduating than the state average.⁹⁶ Charter schools allow these students to begin to shine in the currently floundering CPS system.

Though most charter schools focus on underserved minority neighborhoods, some schools take it one step further, and specifically target only members of certain racial groups within those communities.⁹⁷ Several chains of culturally and racially focused schools now operate in numerous locations around Chicago. These

⁹¹ *The List: Chicago Schools to be Closed*, CBS CHI. (May 22, 2013, 3:14 PM), <http://chicago.cbslocal.com/2013/05/22/the-list-chicago-schools-to-be-closed/>.

⁹² Lauren Fitzpatrick, *Despite Closings and Budget Cuts, CPS Calls for New Charter Schools*, CHI. SUN-TIMES (Aug. 13, 2013), <http://www.suntimes.com/news/education/21908824-418/despite-closings-and-budget-cuts-cps-calls-for-new-charter-schools.html>.

⁹³ *Stats and Facts*, CHI. PUBL.SCHOOLS, http://cps.edu/About_CPS/At-a-glance/Pages/Stats_and_facts.aspx (last visited Apr. 11, 2015).

⁹⁴ 105 ILL. COMP. STAT. 5/27A-4(d) (2012).

⁹⁵ *Public Charter Schools*, STAND FOR CHILDREN ILL., <http://stand.org/illinois/action/chicago/public-charter-schools> (last visited Mar. 13, 2015).

⁹⁶ Kevin Booker et al., *The Unknown World of Charter High Schools*, EDUCATION NEXT (Spring 2010), <http://educationnext.org/the-unknown-world-of-charter-high-schools/>.

⁹⁷ Jacoby, *supra* note 12, at 1569.

schools, commonly referred to as “centric” charter schools,⁹⁸ tailor their curriculum towards a specific race or culture, and enroll an almost entirely homogeneous student body.⁹⁹ These schools aim to customize learning for specific populations and improve graduation rates. Students choose to attend these centric institutions as an alternative to traditional public schools or other charter school options. These centric charter schools produce promising results; yet carry with them remnants of the past, harkening back to the days of segregation. Despite the possibly divisive nature of the schools, the centric charter school movement continues to gain momentum in Chicago and throughout the country.¹⁰⁰

III. WHY CENTRIC CHARTER SCHOOLS ARE CONSTITUTIONAL DESPITE SEGREGATION BETWEEN MAJORITY AND MINORITY GROUPS

The precise problem that *Brown* sought to remedy still persists across America. Many school districts contain schools that are almost exclusively single-race, and predominately White schools in predominantly White neighborhoods experience much higher graduation rates and better compliance with educational standards than those that have a largely minority student body.¹⁰¹

In response to rampant segregation and achievement discrepancies in public schools, charter schools popped up all over

⁹⁸ Wendy Parker, *The Color of Choice: Race and Charter Schools*, 75 TUL. L. REV. 563, 605 (2001).

⁹⁹ Jacoby, *supra* note 12, at 1570-71.

¹⁰⁰ “From school year 1999-2000 to 2011-12, the percentage of all public schools that were public charter schools increased from 1.7 to 5.8 percent, and the total number of public charter schools increased from 1,500 to 5,700.” *Fast Facts: Charter Schools*, NAT’L CTR. FOR EDUC. STATISTICS, <https://nces.ed.gov/fastfacts/display.asp?id=30> (last visited Apr. 8, 2015).

¹⁰¹ Compare statistics at different CPS schools. See *Find A School*, CHI. PUB. SCH., http://www.cps.edu/Schools/Elementary_schools/Pages/Neighborhood.aspx (follow “View_list of Neighborhood schools” hyperlink) (last visited Jan. 12, 2014). Compare Northside College Prep, which has a White student population of 37.5% and a 97.3% graduation rate; and Walter Payton College Prep, with a White population of 42.6% and a 87.2% graduation rate.

America.¹⁰² A disproportionate number of minority students currently enroll in charter schools.¹⁰³ Rather than try to integrate these charter schools, districts widely use the uneven distribution to adapt curriculum and school culture to the specific needs of the attending demographics in order to improve academic performance – creating centric charter schools. Not surprisingly, many critics argue against the constitutionality of the “intentional” perpetuation of segregation in these schools.¹⁰⁴

The primary argument against centric charter schools is that they perpetuate segregation.¹⁰⁵ Empirically, this assumption has proven true.¹⁰⁶ Throughout America, charter schools are on average more segregated than traditional public schools¹⁰⁷ (which is the case even without factoring in centric charter schools). Critics argue that centric charter schools mimic a segregated school system by targeting certain groups at the expense of others.¹⁰⁸ The argument follows that centric charter schools in particular “break down social cohesion leading to racial segregation of school children.”¹⁰⁹ This intentional division in public schools cannot be constitutional as it directly opposes *Brown*’s holding.¹¹⁰ Critics argue that if “separate but equal” truly has no place in public schools, centric charter schools are unconstitutional despite their promising results.¹¹¹

This argument against centric charter schools, though compelling, is not conclusive. Centric charter schools do comply with *Brown* despite divisions they may create because it is clear that *Brown* hoped to carry forward the legacy of the intent behind the decision, rather than a textual interpretation.

¹⁰² Brown-Nagin, *supra* note 61, at 756.

¹⁰³ Ware & Robinson, *supra* note 11, at 5.

¹⁰⁴ Jarvis, *supra* note 14, at 1296-97.

¹⁰⁵ Jacoby, *supra* note 12, at 1574.

¹⁰⁶ See Ware & Robinson, *supra* note 11, at 5.

¹⁰⁷ *Id.*

¹⁰⁸ Jacoby, *supra* note 12, at 1574-75.

¹⁰⁹ Jacoby, *supra* note 12, at 1574.

¹¹⁰ See *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

¹¹¹ See Parker, *supra* note 98, at 611-15.

A. How the Intent Behind the Brown Decision Supports Centric Charter Schools

At the time of *Brown*, historical circumstances rendered the letter and intent of the holding in harmony. Prior to *Brown*, state legislatures could legitimately exercise their powers to enforce segregated schools.¹¹² The Supreme Court identified the significance of education in our democratic society and understood that groups who were denied adequate education would fail to lead successful lives.¹¹³ The *Brown* decision literally sought to eliminate divided public schools, as it states, “[s]eparate educational facilities are inherently unequal.”¹¹⁴ More generally, it promoted social goals and aimed to eliminate feelings of inferiority promulgated by Jim Crow laws.

Brown and the cases that followed beg readers to look beyond the text and consider the greater underlying concerns and principles.¹¹⁵ The Court’s predominant concern was not whether African-American students could access the same books and facilities as White students, but whether separation from other races produced feelings of inferiority in minority populations.¹¹⁶ It focused on the intangible harm done to minority groups as a result of segregation, rather than on the literal inequalities that differentiate segregated schools.¹¹⁷ The Court indicated that Blacks were not inherently inferior to Whites, but that their social environment made it impossible for them to compete with the majority.¹¹⁸ The Court’s decision that separate schools were unconstitutional rested upon the idea that the institutions produced feelings of inferiority in certain populations, which the Fourteenth

¹¹² Pamela W. Carter & Phoebe A. Roaf, *A Historic Overview of Brown v. Board of Education*, 51 LA. B.J. 410, 411 (2004).

¹¹³ *Id.* at 413.

¹¹⁴ *See Brown*, 347 U.S. at 495.

¹¹⁵ *See id.* at 492.

¹¹⁶ *Id.* at 494.

¹¹⁷ *See id.*

¹¹⁸ Kevin D. Brown, *Brown v. Board of Education: Reexamination of the Desegregation of Public Education from the Perspective of the Post-Desegregation Era*, 35 U. TOL. L. REV. 773, 785 (2004).

Amendment strictly forbids.¹¹⁹ The decision aimed to eradicate the inferiority felt by minority populations as a result of mandatorily segregated schools.¹²⁰

The Court's later decision in *Green* further demonstrates that the intent of *Brown* trumped the literal text.¹²¹ The Court in *Green* held that, technically speaking, giving students a choice of which school to attend could comply with a literal reading of *Brown*.¹²² However, because the freedom of choice plans did not result in desegregation, they violated the intent behind *Brown* and were therefore unconstitutional.¹²³ Today, members of the Supreme Court continue to think about *Brown* as an anti-subordination opinion and apply it loosely to fulfill that overarching goal.¹²⁴

Over the past fifty years, the Court has re-emphasized the intent behind *Brown*, so it seems reasonable to continue to do so in regard to centric charter schools. Accordingly, it is clear that the intent behind centric charter schools complies with the mandates of *Brown*. They comply with *Brown* because they eradicate feelings of inferiority in three specific ways: (1) they provide individuals with a legitimate choice, (2) they allow students to find their self-identity,¹²⁵ and (3) they establish institutions in which minority students can actually succeed. Each justification for the constitutionality of centric charter schools is discussed below.

1. Choice as a Means of Self-Affirmation

The most persuasive argument in favor of the constitutionality of centric charter schools is that they eliminate inferiority by

¹¹⁹ *Brown*, 347 U.S. at 494-95.

¹²⁰ *See id.*

¹²¹ *See Green v. County Sch. Bd. Of New Kent Cnty., Va.*, 391 U.S. 430, 440-42 (1968).

¹²² *Id.* at 437-39.

¹²³ *Id.* at 437-440.

¹²⁴ *See Gratz v. Bollinger*, 539 U.S. 244, 301 (2003) (Ginsburg, J., dissenting); *see also Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 315-16 (1986) (Stevens, J., dissenting).

¹²⁵ *Jarvis*, *supra* note 14 at 1287.

presenting legitimate choices to students and their families.¹²⁶ The notion of choice as a constitutional justification is not new in segregation cases. Choice has been used to explain community divisions that result from voluntary housing patterns and the segregated schools that subsequently emerge. In regard to centric charter schools, “choice” constitutionalizes segregation in two ways: (1) it allows for housing segregation, which leads to public school segregation, and (2) it allows individuals to autonomously select the schools they wish to attend.

First, the idea of choice provides a constitutional justification for racial or ethnic divisions that arise organically between neighborhoods. Residential housing patterns in Chicago form the basis for a majority of the segregation in the City.¹²⁷ For instance, among Chicago neighborhoods, Englewood on the Southside is 98.2% African-American, while Pilsen on the Lower West Side is 88.9% Hispanic or Latino, while in the North, Lincoln Park is 87.2% White.¹²⁸ These residential patterns generally result from several elements not connected with the state: “economic factors, personal preferences, social and neighborhood relationships, and private discrimination.”¹²⁹ The Court has repeatedly held that housing pattern segregation does not violate *Brown* or the Constitution so long as the state does not play a role in the segregated living situation.¹³⁰ Because housing discrimination in Chicago is no longer the direct product of

¹²⁶ Wright, *supra* note 70, at 47.

¹²⁷ See Steve Bogira, *A Dream Unrealized for African-Americans in Chicago*, CHI. READER (Aug. 21, 2013), <http://www.chicagoreader.com/chicago/african-american-percentage-poverty-unemployment-schools-segregation/Content?oid=10703562>.

¹²⁸ See *Chicago—77 Communities General Data: Census*, RECORD INFO. SERVICES, http://www.public-record.com/content/municipalities/cook/chicago_and_77communities_census_demo_graphics.asp (last visited Nov. 11, 2013).

¹²⁹ Dowell v. Board of Educ. of Oklahoma City Pub. Sch., 8 F.3d 1501, 1516 (10th Cir. 1993). For a broader discussion of this issue see Joseph R. McKinney, *The Courts and White Flight: Is Segregation or Desegregation the Culprit?*, 110 EDUC. L. REP. 915, 921 (1996).

¹³⁰ McKinney, *supra* note 129, at 919.

state actions, the fact that single-race neighborhoods exist arguably results, at least to some extent, from personal choice.

Once people of the same race settle in distinct neighborhoods, it logically follows that segregated school systems emerge because students typically attend the schools closest to their homes.¹³¹ In *Freeman v. Pitts*, the Supreme Court held the state was not liable for school segregation that resulted from housing pattern segregation created by free choice.¹³² In Chicago, the schools within segregated communities are often exclusively, or very close to, single-race.¹³³ Like in *Freeman*, Chicago's segregated schools are constitutional because the clear divide between minority and majority public schools is not the result of government-imposed segregation, but rather the product of independently chosen housing patterns.¹³⁴

Since the Court consistently finds segregated public schools within segregated neighborhoods constitutional, it is reasonable that charter schools that cater to the needs of those segregated communities are also constitutional.¹³⁵ Given the current concentration of races within Chicago neighborhoods, it is difficult to claim that placing centric charter schools in predominately single-race

¹³¹ Each neighborhood assigns students to schools that guarantee admission; if students choose to enroll elsewhere, unassigned schools neither assure admission nor provide transportation. *Neighborhood*, CHI. PUB. SCH., http://www.cps.edu/Schools/Elementary_schools/Pages/Neighborhood.aspx (last modified Oct. 10, 2013).

¹³² 503 U.S. 467, 491 (1992).

¹³³ For a demonstration of racial distribution among CPS, look at demographics for public schools located in zip code 60621 (about 95% African-American) and schools in 60608 (98% Hispanic). *School Profile Pages*, CHI. PUB. SCH., <http://www.cps.edu/Schools/Pages/school.aspx?id=400061> (enter "60621" in search bar and enter "60608" in search bar and compare results) (last visited Feb. 5, 2014).

¹³⁴ The Civil Rights Era perpetuated much of the housing segregation in Chicago. *See Bogira, supra* note 127.

¹³⁵ Note that if the entire district were predominantly one race, the courts would likely find that single-race charter schools that mirrored the population were constitutional. The single-race schools would be a result of housing segregation between districts, rather than school segregation within. *Parker, supra* note 98, at 603-04.

communities creates segregation that does not already exist.¹³⁶ The schools in these neighborhoods will likely remain almost exclusively single-race whether or not the schools institute a centric curriculum.

Second, not only are these segregated schools constitutional by virtue of their evolution through personal choice, but they comply with *Brown* because they present students the choice to attend any school in the district, including any charter or centric charter school. When schools do not exclude children on the basis of race, but rather students choose to enroll in predominately single-race schools, this eliminates the inherent sense of inferiority created within the children, which was the evil the Court intended to correct when it concluded that separate educational facilities were “inherently unequal.”¹³⁷

On several occasions, the Supreme Court has ruled on the notion of choice and its impact on the constitutionality of segregated schools. In *Green*, the Court decided that providing students with the option to attend whichever schools they desired was only unconstitutional because it did not result in students actually making a choice.¹³⁸ Had the “freedom of choice” plans actually resulted in minority students choosing to attend White schools, the Court likely would have accepted the plan. Admittedly, the situation in CPS is different than in *Green*, as White students comprise only 8.5% of the CPS population.¹³⁹ Minority students in Chicago (nearly 92% of the schools’ populations) generally cannot choose to attend a majority school over a minority school, but they can select a good minority school over a lesser one.¹⁴⁰

Unlike school enrollment policies at the time of *Brown*, individuals today are not forced to attend specific schools. Within

¹³⁶ See Jarvis, *supra* note 14, at 1296.

¹³⁷ Wright, *supra* note 70, at 47.

¹³⁸ Green v. County Sch. Bd. of New Kent Cnty., Va., 391 U.S. 430, 440-41 (1968).

¹³⁹ *District and Community Demographics*, CHI. PUB. SCH., http://www.cps.edu/FY13Budget/Documents/AppendixA_DistrictCommunity.pdf (last visited Jan. 14, 2014).

¹⁴⁰ This relates to the facts of *Green* where Black students were able to choose to attend the better all-White schools. See *Green*, 391 U.S. at 439-42.

CPS, students may enroll in any school in the City, not just the CPS school closest to their homes.¹⁴¹ The same goes for enrollment in centric charter schools.¹⁴² Across the board, charter schools—even centric charter schools—open their doors to any student within the district, have no “barriers to enrollment,” and maintain racially neutral admission policies.¹⁴³ Centric charter schools do not present “facial racial classification[s]” or discriminatory purposes.¹⁴⁴ The state does not insist that minorities attend centric charter schools; it merely provides the option as an alternative to traditional public schools.¹⁴⁵

Students have a legitimate choice to attend the schools. Unlike the children in *Green*, minority students in Chicago actually *do* enroll in the centric charter schools. Minority students in fact constitute the dominant population in these schools. As noted previously, 95% of charter school students in Chicago come from minority populations, and because they do not face race-based enrollment requirements, one could reason that these groups independently choose to attend the centric charter schools over the traditional public schools. The choice presented to Chicago minority students is more than an illusion as it was for the students in *Green*. Centric charter schools are constitutional because of the choice they provide students; that choice, in turn, extinguishes a sense of inferiority.

2. Personal Identity as a Means to Eliminate Inferiority

Centric charter schools uphold the intent of *Brown* because they allow students to thrive in supportive environments. *Brown* aimed to eradicate feelings of inferiority in minority populations through integration.¹⁴⁶ Some scholars today argue that continued segregation might actually eliminate those same feelings of inferiority.¹⁴⁷ Centric

¹⁴¹ *Neighborhood*, *supra* note 131.

¹⁴² Parker, *supra* note 98, at 605.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Wright, *supra* note 70, at 47.

¹⁴⁶ See *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

¹⁴⁷ Jarvis, *supra* note 14, at 1287.

charter schools can create curricula that minority students relate to more effectively, and their homogenous settings may in fact encourage equality.¹⁴⁸ For instance, Sonia Jarvis claims that centric charter schools may allow minority students to shed feelings of inferiority they face in integrated schools, and build self-esteem through feelings of acceptance.¹⁴⁹ Through increased self-esteem, it is likely that the educational achievements of minority populations will improve.¹⁵⁰ It can hardly contravene *Brown* to eliminate inferiority and improve academic performance for minority populations, even if done through different means than those originally suggested by the Court.

White students have acted on this principle for years and secluded themselves from minority students in predominately White private schools. Many private schools do not receive any funding from the state so they can maintain discriminatory admission policies.¹⁵¹ Because different laws govern private schools than public schools, segregated private schools became a powerful tool to avoid integration.¹⁵² Originally, White students received vouchers to attend private schools, while minority students were not provided the same opportunity.¹⁵³ Private schools became an effective means for students to isolate themselves from minority populations and learn in more successful environments.¹⁵⁴ Many private schools still cater to specific

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 1294.

¹⁵¹ See 16B C.J.S. § 1136 (2010) (“State action or involvement which encourages racial or religious segregation in private educational institutions violates the constitutional guarantee of equal protection. Thus, the use of state funds to support a segregated private school constitutes unconstitutional state action under the Equal Protection Clause.” (footnotes omitted)).

¹⁵² “In 1966-67, according to the U.S. Commission on Civil Rights, at least 200 private segregated schools were in operation in six southern states.” Note, *Federal Tax Benefits to Segregated Private Schools*, 68 COLUM. L. REV. 922, 924 (1968) (footnote omitted).

¹⁵³ Alexander & Alexander, *supra* note 43, at 1137-38.

¹⁵⁴ See *id.* at 1132-33 (stating that many middle class parents attempted to remove their children from integrated schools; vouchers became a popular method for this practice).

groups of people.¹⁵⁵ However, the price of tuition in these schools is prohibitively high for most minority students in the public school system.¹⁵⁶ Centric charter schools present opportunities similar to those available in private schools, and provide low-income and minority families with an option that for many years existed solely beyond their reach.

3. Results as a Means to Eliminate Inferiority

Finally, centric charter schools eliminate feelings of inferiority by providing students with an option to enroll in superior educational institutions. Given the population distribution in Chicago, racial integration by means of minority students entering majority-dominated schools is almost certainly an unattainable goal.¹⁵⁷ Because the vast majority of the CPS population is non-White, schools should focus on “determining how to achieve educational equality for poor, predominately non-white public school students.”¹⁵⁸ That is precisely what centric charter schools aim to do. The schools have proven their ability to produce exceptional educational environments by creating schools that well outperform the CPS district averages.

One such centric charter school chain is Urban Prep Academies. Tim King, founder of Urban Prep, began the chain of charter schools in order to tackle “the crisis of poor academic performance among African-American boys.”¹⁵⁹ Urban Prep Academies currently enrolls

¹⁵⁵ For instance, there are twenty-four private Catholic high schools located in Chicago. See *Illinois Catholic High Schools*, HIGH-SCHOOLS.COM, <http://high-schools.com/report/il/catholic-high-schools-in-illinois.html> (last visited Jan. 12, 2014).

¹⁵⁶ Jacoby, *supra* note 12, at 1576.

¹⁵⁷ See Taunya Lovell Banks, *Brown at 50: Reconstructing Brown's Promise*, 44 WASHBURN L.J. 31, 50-51 (2004).

¹⁵⁸ *Id.* at 51.

¹⁵⁹ Kevin McKeough, *Is Separate Better?*, CHI. MAG., Apr. 2006, at 42, available at <http://www.chicagomag.com/Chicago-Magazine/April-2006/Is-Separate-Better/>.

only African-American males.¹⁶⁰ African-Americans run the schools, which focus their curriculum on the particular needs of African-American male students, and serve only African-American neighborhoods.¹⁶¹ Urban Prep Academies' mission is to "provide a comprehensive, high-quality college-preparatory education to young men that results in graduates succeeding in college."¹⁶² The charter chain's mission does not mention race.¹⁶³

For the past four years, Urban Prep Academies produced 100% graduation and college placement rates¹⁶⁴ among its senior class.¹⁶⁵

¹⁶⁰ *Id.* at 44. Young Women's Leadership Charter School offers African-American girls the same kinds of learning opportunities as Urban Prep Academies offers males. *See YWLC Mission, Vision & Pledge*, YOUNG WOMEN'S LEADERSHIP SCH. OF CHI., <http://www.ywles.org/about/mission.php> (last visited Apr. 15, 2015).

¹⁶¹ McKeough, *supra* note 159, at 43.

¹⁶² *History*, URBAN PREP ACADEMIES, <http://www.urbanprep.org/about/history-creed> (last visited Nov. 1, 2013).

¹⁶³ *See id.* Not only does the admission policy not mention race, but the school's website contains a full-page statement of non-discrimination. *Apply*, URBAN PREP ACADEMIES, <http://www.urbanprep.org/apply> (last visited Apr. 11, 2015).

¹⁶⁴ These graduation rates do not represent overall graduation rates for Urban Prep schools; instead they measure the graduation rates only for the senior class. Graduation rates typically demonstrate the number of students who complete high school in four years. Urban Prep claims that 100% of its senior class graduated. This statistic ignores the students who drop out of transfer prior to senior year. Becky Vevea, *Behind CPS Graduation Rates, a System of Musical Chairs*, WBEZ, March 31, 2015, <http://www.wbez.org/news/behind-cps-graduation-rates-system-musical-chairs-111786>. *See also Urban Prep Charter Academy Englewood High School (9-12)*, ILLINOIS REPORT CARD 2013-2014, <http://illinoisreportcard.com/school.aspx?source=Trends&source2=GraduationRate&Schoolid=15016299025010C>.

¹⁶⁵ *See Urban Prep Graduates All College-Bound For Fourth Year In A Row*, HUFFINGTON POST, (Mar. 29, 2013, 5:51 PM), http://www.huffingtonpost.com/2013/03/29/urban-prep-graduates-all_n_2981203.html; *see also Class of 2014*, URBAN PREP ACADEMIES, <http://www.urbanprep.org/about/100-percent/class-2014> (last visited Mar. 13, 2015). Not only has Urban Prep graduated all of its seniors for four consecutive years, but also all graduates from the Englewood, West, and Bronzeville campuses were accepted to four-year colleges during that time. *Id.* Compare to the 52.7%, *see* Gary Schmitt & Cheryl Miller, *Trendsetting Charter Schools: Raising the Bar for Civic Education 111* (2015), graduation rate for African-American students in CPS

These numbers are significantly higher than the average graduation and placement rates for African-American students in traditional CPS schools.¹⁶⁶ This charter school chain demonstrates just one success story in a city where graduation rates differ so drastically among races.¹⁶⁷ African-American males finally have opportunities to achieve at the same levels as majority students in Chicago.¹⁶⁸ Accordingly, there is strong incentive to promote further construction of centric charter schools as they successfully bridge the achievement gap between Chicago populations.

Consequently, segregation that arises between majority and minority races in centric charter schools is not unconstitutional, as it comports with the intent behind *Brown*. Centric charter schools eliminate inferiority felt by minority populations because they present students with choice, allow students to establish strong self-identities, and create environments in which students succeed well above expectations.

during the 2011 school year. *Despite Some Progress Made, Chicago Public Schools is Not Meeting the Needs of Students for College Readiness, Graduation Rates and Closing Achievement Gaps*, *supra* note 84.

¹⁶⁶ Compare with the average college completion rate for African-Americans in CPS, where “[f]or the CPS Class of 2009, 54.9 percent of African-American graduates went onto college.” Press Release, Chicago Public Schools, CPS College Enrollment Increases Fifth Straight Year (Aug. 10, 2010), *available at* http://cps.edu/News/Press_releases/Pages/08_12_2010_PR1.aspx.

¹⁶⁷ In 2007-2008, it was estimated that only 44% of African-American male students in Chicago graduated, while 63% of White male students graduated. *See* SCHOTT FOUND. FOR PUB. EDUC., YES WE CAN: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES 22 (2010), *available at* <http://schottfoundation.org/publications/schott-2010-black-male-report.pdf>. Since then the graduation rate for African-American males has increased, but remains several percentage points behind White males. *See* Press Release, *supra* note 166.

¹⁶⁸ For example, seniors at Urban Prep Academies are equal to, if not out performing the highest ranked schools in CPS like Northside College Prep, which has a 37.5% White population and 97.3% graduation rate and Walter Payton College Prep with 42.6% White students and 87.2% graduation rates. *Find A School*, CHI. PUB. SCH., http://www.cps.edu/Schools/Elementary_schools/Pages/Neighborhood.aspx (follow “View list of Neighborhood schools” hyperlink; then search “Northside” and “Walter Payton”).

IV. CENTRIC CHARTER SCHOOLS COULD BECOME UNCONSTITUTIONAL IN REGARD TO THE RELATIONSHIP BETWEEN COMPETING MINORITY GROUPS

Centric charter schools comply with *Brown* and are likely constitutional despite divisions they create between minority and majority populations. However, majority-minority segregation no longer remains the only form of segregation in America. The *Brown* paradigm assumes that segregation occurs between a majority race and a minority race.¹⁶⁹ This assumption does not align with CPS, where White students hardly factor into the equation. Latino students comprise 43.7% of the CPS student population, Black students constitute 42.9%,¹⁷⁰ and White students¹⁷¹ make up only 8.5%.¹⁷² It is unlikely that the *Brown* Court considered the constitutional ramifications of a divided minority school system, but fundamentally the Court's conclusions still apply to today's situation.¹⁷³

Both African-American and Latino populations consistently underperform White students in traditional CPS schools.¹⁷⁴ Centric charter schools give both of these populations a new chance for success. Schools like Urban Prep Academies exist for Black students, and a chain of Latino charter schools developed in Chicago in response to the accomplishments and popularity of Afrocentric charter schools. United Neighborhood Organization (UNO) runs a

¹⁶⁹ *Brown*, *supra* note 118, at 776.

¹⁷⁰ *District and Community Demographics*, *supra* note 139.

¹⁷¹ While White students make up 8.5% of the students in CPS, 71.5% of Chicago is White. *Chicago, IL, State & County QuickFacts*, U.S. CENSUS BUREAU, U.S. DEP'T OF COMM., <http://quickfacts.census.gov/qfd/states/17/1714000.html>.

¹⁷² *District and Community Demographics*, *supra* note 170.

¹⁷³ If anything, *Brown* is very relevant in cases of single-race charter schools in that the schools segregate minority and majority populations, but also specifically divide several minority groups. This may lead to further repression of minority educational opportunities as it creates smaller factions that must compete with the majority, and which will not only feel inferior to the majority group, but also to other minorities as one begins to outperform another.

¹⁷⁴ In the 2007-2008 School Year, African-American males had an estimated 44% graduation rate compared to a 63% graduation rate by White males. *See* SCHOTT FOUND. FOR PUB. EDUC., *supra* note 167.

network of sixteen charter schools for Latino students in Chicago.¹⁷⁵ UNO aims to educate Hispanic students and integrate them into American democratic society.¹⁷⁶ UNO's high school currently graduates 83.1% of its students, and enrolls 75% in college¹⁷⁷—numbers well above CPS averages. Though as a whole, centric charter schools provide minorities with new opportunities in a failing system, as they proliferate, the possibility of an unconstitutional racial divide lurks below the surface.

As explained above, the remarkable results some centric charter schools produce constitutionalize the schools because they allow marginalized populations to compete with the “majority.” However, like the rest of the country, minority populations in Chicago are rapidly changing and it is possible that the population changes will affect centric schools.¹⁷⁸ In Chicago, the Latino population has grown significantly over the last decade: between 2000 and 2010 the Latino population grew by 32.5%.¹⁷⁹ While the Latino population keeps expanding, the African-American population in the City slowly decreases.¹⁸⁰ The population change may produce notable differences

¹⁷⁵ *Our Schools*, UNO, http://www.unocharterschools.org/our_schools (last visited Oct. 20, 2013).

¹⁷⁶ *Id.* (stating UNO's “mission is to lead the transformation of the Hispanic Community toward an educated, powerful and prosperous citizenry by engaging and challenging it to redefine its potential and its legacy in metropolitan Chicago and the United States of America”).

¹⁷⁷ *Find A School*, CHI. PUB. SCH., http://www.cps.edu/Schools/Elementary_schools/Pages/Neighborhood.aspx (follow “View_list of Neighborhood schools” hyperlink and search UNO Charter School - Major Hector P. Garcia MD) (last visited April 15, 2015).

¹⁷⁸ Between 2000 and 2010, the Hispanic population in the U.S. increased by 42.3%, the Asian population increased by 43.3%, and the Black population increased 12%. ESRI, MINORITY POPULATION GROWTH—THE NEW BOOM: AN ANALYSIS OF AMERICA'S CHANGING DEMOGRAPHICS 8-12 (2012), available at <http://www.esri.com/library/brochures/pdfs/minority-population-growth.pdf>.

¹⁷⁹ *Census Reveals Population Change in Illinois*, INST. OF GOV'T AND PUB. AFFAIRS, UNIVERSITY OF ILL., <http://igpa.uillinois.edu/content/census-reveals-population-change-illinois> (last visited Nov. 2, 2013).

¹⁸⁰ *Id.*

for centric charter school chains as they adapt to the new communities.

Should the academic trajectory for Afrocentric schools, Latino schools, and other minority-populated schools diverge, it will be difficult to differentiate significantly between the majority-minority inequality *Brown* sought to destroy, and the minority-minority dichotomy that will inevitably develop. Though choice may constitutionalize divides between majority and minority populations in regard to centric charter schools, as explained in Part III-A, *supra*, when looking only at minority populations (the populations that actually attend the schools), the existence of a true choice to attend better performing centric charter schools may become less obvious.

Numerous external factors will likely bar minorities in failing centric schools from attending superior centric charter schools. If students cannot truly choose to attend a higher performing school because they are not part of the targeted ethnicity, their choice to select one centric charter school over another is almost certainly no choice at all. Accordingly, if centric charter schools that target one ethnicity begin to outperform schools that target another, these schools could drive a deeper wedge between minorities and fail to comply with *Brown*.

A. Choice Could be an Illusion

Green contradicts the notion that choice always eradicates inferiority,¹⁸¹ the central concern of *Brown*. In *Green*, the public schools in New Kent, Virginia provided students the choice to attend either one of the public schools in the town. Despite their freedom-of-choice, nearly every student remained in the school to which he or she had been assigned prior to *Brown*.¹⁸² Although a better school existed for African-American students (one that previously exclusively enrolled White children), very few African-American students

¹⁸¹ *Green v. County Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430, 439-41 (1968).

¹⁸² *Id.* at 441-42.

independently elected to attend that school, and no White students transferred to the African-American school.¹⁸³ The Court held that providing students with the freedom-of-choice did not adequately comply with *Brown* because it did not *actually* result in desegregation or achieve the other objectives of *Brown*.¹⁸⁴ Consequently one could reason that choice in and of itself did not sufficiently eliminate the feeling of inferiority in minority students.

The African-American students in *Green* likely understood that the White school provided superior opportunities. It is also safe to assume that the African-American students hesitated to transfer schools not because they wanted to remain segregated in inferior facilities, but because they did not feel welcome at the White school, they felt more comfortable in their community, and the African-American school was probably more convenient. The same assumptions reasonably apply to students today.

Consider the hypothetical situation where Latino centric charter schools (UNO) fail due to an increase in the Latino population, a change in demographic or other factors. At the same time as the Latino centric charter schools fail to perform, Afrocentric schools (Urban Prep and others) continue to excel.

Because students may enroll in any charter school in the district, logic leads us to believe that if Latino centric charter schools fail, Latino students would migrate towards the other “good” centric charter schools (even over traditional public schools given their more promising results). Yet, numerous external factors will likely prevent them from exercising this choice. It cannot be consistent with the intent of *Brown* to create centric charter schools and not provide other minorities with a legitimate choice to attend the superior institutions.¹⁸⁵

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 438-41.

¹⁸⁵ *See id.* at 439-40. (“The New Kent School Board’s ‘freedom-of-choice’ plan cannot be accepted as a sufficient step to ‘effectuate a transition’ to a unitary system. In three years of operation not a single white child has chosen to attend Watkins school and although 115 Negro children enrolled in New Kent school in 1967 (up from 35 in 1965 and 111 in 1966) 85% of the Negro children in the system

For instance, although Urban Prep Academies does not intentionally create segregation, the schools display many characteristics that likely remove the choice for enrollment from non-Black students, and cause the schools to remain exclusively populated by a single race. In fact, despite the seemingly egalitarian nature of the schools' admission policies, Urban Prep Academies currently enrolls only African-American students.¹⁸⁶ The schools are unlikely to see integration in the near future due to their placement in predominately Black neighborhoods.¹⁸⁷

Although self-selected segregated housing patterns are generally constitutional, the Supreme Court shunned strategically placing schools to ensure that the schools remain segregated.¹⁸⁸ In *Swann v. Charlotte-Mecklenburg*, the Court said that although the school boards had not set the residential patterns in the city, they unconstitutionally manipulated the district lines when they controlled the placement of the schools and fixed the school size so as to encourage continued segregation.¹⁸⁹ Like the community in *Swann*, Englewood and Bronzeville (homes to Urban Prep Academies campuses) are extremely segregated neighborhoods in Chicago. Latino students seeking new schools could reasonably question the strategic placement of the Urban Prep Academies schools in predominantly African-American communities.¹⁹⁰ This is especially

still attend the all-Negro Watkins school. In other words, the school system remains a dual system. Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which Brown II placed squarely on the School Board.”).

¹⁸⁶ In her Law Review article regarding the constitutionality of single-race schools, Wendy Parker calls schools like Urban Prep Academies “centric schools.” It is these schools that teeter on the line of constitutionality. She explains that such schools may violate the Fourth Amendment because, “The school’s approach could be deemed a racial classification given the explicit focus on providing an education for one race, even if the school is designed to benefit that race.” Parker, *supra* note 98, at 611.

¹⁸⁷ McKeough, *supra* note 159, 42-45.

¹⁸⁸ See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 26-30 (1971).

¹⁸⁹ *Id.*

¹⁹⁰ See McKinney, *supra* note 129, at 917-18.

true because there is little reason to believe that only African-American neighborhoods need Urban Prep Academies schools.

Urban Prep administrators describe their teaching methods as harnessing and improving education for males in general.¹⁹¹ Research shows that males' hearing develops slowly and that they respond better under stress, so Urban Prep Academies teachers "talk louder and challenge the students aggressively."¹⁹² The schools also spend more hours teaching the classes in which males typically lag behind.¹⁹³ If the Urban Prep Academies curriculum truly appeals to males in general,¹⁹⁴ rather than exclusively to African-American males, there is no reason that the schools must exist only in neighborhoods that attract Black students. Presumably, they could be anywhere that males live, i.e. anywhere in the City. In theory, all minorities could easily access the schools. However, the planned placement of the centric charter schools discourages certain students from enrolling.¹⁹⁵

Additionally, beyond purely cultural or racial differences that may discourage open enrollment of Latino students in the Afrocentric schools, countless physical obstacles exist that make the idea of choice an illusion for those students. For instance, CPS does not provide busing for students who open enroll outside their neighborhood school.¹⁹⁶ The lack of busing may make the "better" centric schools in other neighborhoods inaccessible to the kids from the failed centric charter schools.

¹⁹¹ McKeough, *supra* note 159, at 42-43.

¹⁹² *Id.* at 43.

¹⁹³ *Id.* at 43-44.

¹⁹⁴ *Id.*

¹⁹⁵ The nearly 100% African-America enrollment in the Urban Prep Academies schools demonstrates this point. See *Find A School*, CHI. PUB. SCH., http://www.cps.edu/Schools/Elementary_schools/Pages/Neighborhood.aspx (follow "View_list of Neighborhood schools" hyperlink) (last visited Jan. 12, 2014). Showing that Urban Prep's Englewood Campus is 98.6% African American, its Bronzeville campus is 98.9% African American, and its West campus is 98.0% African American.

¹⁹⁶ *Neighborhood*, *supra* note 131.

Finally, the Latino population faces added challenges specific to their culture that make enrollment in Afrocentric charter schools unlikely. The Hispanic and Latino populations face the “nation’s largest dropout rate, gang violence, and teenage pregnancy,”¹⁹⁷ along with the hurdles of overcoming both racial and language barriers. Many Latino students in Chicago need extra help learning English. Traditional public schools in Chicago offer bilingual education (15.8% of CPS students partake),¹⁹⁸ as do the Latino centric charter schools. Because the same programs are likely not available at Afrocentric schools that cater to fluent English speakers, many of the Latino students in Chicago will be further discouraged from attending.¹⁹⁹

Accordingly, if population changes or other external factors cause African American centric charter schools to outperform Latino charter schools, the schools could create an unconstitutional division between minority populations because the Latino students will not have a genuine choice to attend whichever school they want. Similar arguments could be made for the reverse hypothetical situation. Choice cannot adequately negate the inferiority students may feel if they are discouraged from attending higher performing centric charter schools because of their race or ethnicity.

CONCLUSION

In the sixty years since *Brown*, the makeup of the United States has changed dramatically. Unfortunately, the makeup of our public schools has failed to undergo the same transformation. After decades of unsuccessful attempts to equally educate minority populations,

¹⁹⁷ David Feith, *The Masters of Hispanic Destiny*, WALL ST. J. (Sept. 17, 2011), <http://www.wsj.com/articles/SB10001424053111904060604576574924254753238>.

¹⁹⁸ *District and Community Demographics*, *supra* note 139.

¹⁹⁹ Part of UNO’s curriculum is to immerse students in English as they understand that many of the students are not fluent English speakers. *See Our Approach*, UNO, http://www.unocharterschools.org/our_approach (last visited Jan. 23, 2014).

centric charter schools finally provide minority populations the opportunity to compete with majority students. Though many question the means by which the schools accomplish these results, it would be wholly unreasonable to deny minority students the opportunity to attend centric charter schools simply because the schools enroll distinct minority populations. America should encourage a system where minorities can finally thrive academically and shed feelings of inferiority, rather than focus on the divide it creates in an already divided society.

On the whole, centric charter schools provide a promising remedy for a long-standing, societal problem; however, they must be implemented carefully. This Comment argues that centric charter schools are constitutional because they provide students invaluable opportunities to outperform district averages, and compete with the majority, but cautions they may become unconstitutional if some centric charter schools begin to fall behind centric schools that target different populations. Though centric charter schools do not explicitly prohibit any race from enrolling, they do not give students a true choice to attend schools that cater to a different ethnicity than their own. A divergence in the success of centric charter schools among different populations could reignite pre-*Brown* concerns. One minority race will not claim superiority over another overnight, but if a gap begins to emerge, we may once again see that separate is inherently unequal.

We must keep an eye on centric charter schools to ensure that they continue educating minorities at promising levels, and that some centric charter schools do not begin to outperform others. We must eliminate the possibility of a constitutional challenge that could effectively defeat and dismantle a system that is finally providing the results sought by *Brown* more than half a century ago.