

1 MICHELE S. MOSES is Professor in the School of Education, and Associate Vice Chancellor for
2 Faculty Affairs at the University of Colorado Boulder, School of Education, 249 UCB, Boulder, CO
3 80309-0249; e-mail michele.moses@colorado.edu. Her primary areas of scholarship are moral
4 and political disagreements about education policies, democratic theory, and access and equity
5 in higher education.

6 TERRI S. WILSON is Assistant Professor in the School of Education at University of Colorado
7 Boulder, 249 UCB, Boulder, CO 80309-0249; e-mail terri.wilson@colorado.edu. Her research
8 focuses on the philosophical foundations and normative significance of educational policy,
9 including issues raised by school choice, marketization and opting out.

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11 When Is It Democratically Legitimate to Opt Out of Public Education?

12 Michele S. Moses and Terri S. Wilson

13 School of Education

14 University of Colorado Boulder

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16 ABSTRACT. In this essay, Michele Moses and Terri Wilson explore the recent movement to opt out
17 of state tests. They situate this activism within a diverse line of efforts to refuse aspects of public
18 education, asking how to evaluate the democratic legitimacy of different kinds of refusal in
19 public education. Drawing on specific examples of opting out, they point to different ethical
20 principles at stake in conflicts over public education. They pose three sets of questions —
21 emphasizing reasons, positionality, and consequences — to help guide local educational

1 leaders, policymakers, and citizens in negotiating difficult cases of refusal in public education.
2 Moses and Wilson conclude that opting out of tests may, under certain conditions, serve the
3 public purposes of education in a democratic society. Although many opt out activists justify
4 their actions in terms of individual rights, others are concerned with public goals and ideals,
5 including concerns about the narrowing of curriculum, the erosion of teacher authority, and the
6 widening privatization of public education. Yet communicating across and between different
7 interests in this movement remains a challenge, one that points to the need for spaces of
8 democratic deliberation about the aims of education policy.

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10 KEY WORDS: opting out; activism; public education; democratic legitimacy; education policy

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Introduction

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Over half a century ago, with the support of civil rights leaders, 460,000 public school students in New York City refused to attend their racially segregated schools. The students sought to make a political statement for racially integrated public schools, one that would spur education officials to make good on their stated beliefs in integrated education.¹ More recently, with the support of their parents and other activist groups, nearly 750,000 students across the United States refused to take standardized tests at school.² These acts of refusal, known collectively as the “opt out movement,” have been framed as a protest against overtesting, high-stakes accountability reform, and the role of private test developers in public education.³ Both movements involved many individual decisions to opt out of aspects of public education, yet both also put collective pressure on officials and districts to change educational policies.

1 But how might these two movements differ? And what might these differences reveal
2 about the potential tensions at play in efforts to opt out of public education? In this essay, we
3 explore the movement to opt out of state tests by placing this activism in context and
4 conversation with a longer line of efforts to refuse public education. Parents have long asserted
5 their rights to opt their children out of curricula including, for example, sex education and
6 particular portrayals of historical and religious movements; activities, such as equity-oriented
7 Black History programs or Gay-Straight Alliances (GSAs); as well as public school attendance
8 itself. Indeed, the rights of parents to opt out of public schools (in favor of private alternatives or
9 homeschooling) are well recognized by legal precedent even though the limits of these rights
10 have been subject to extensive debate.⁴ Moreover, efforts to opt out of education are not
11 limited to parents; young people also have asserted their right to dissent, often through refusing
12 to participate in specific dimensions of public education. Although debates about the role and
13 place of testing have gained widespread public attention in recent years, this activism is a newly
14 visible *edge* to the landscape around efforts to contest — and refuse — aspects of public
15 education.

16 Opting out of state assessments, however, is also novel terrain. Supported by the
17 development of new activist groups, state and national movements have emerged to promote
18 opting out of standardized tests, especially those aligned with the Common Core State
19 Standards.⁵ Such groups arose in opposition to what Patrick McGuinn has termed the
20 “accountability regime,” a reform agenda that has relied on standardized tests to measure
21 student achievement and hold public schools accountable for that achievement.⁶ While united
22 against testing, opt out activists have varying goals and are politically, socioeconomically, and

1 racially diverse.⁷ Activists alternately frame their opposition to testing as advancing social justice,
2 defending parental rights, resisting private, “corporate” interests, upholding teacher
3 professionalism, and prioritizing authentic learning over narrow test preparation.

4 In particular, the opt out movement combines, sometimes in uneasy tension, two
5 primary claims. First, many activists make a claim rooted in parents’ rights discourse — and
6 underscored by a line of legal decision-making — that parents have the *right* to refuse
7 curriculum that conflicts with their moral values. Second, parents may claim that refusing the
8 test is a *political act*, a critique of market models of school reform. In this case, opting out is a
9 broader political strategy designed to force change in the public school system. Yet in opting
10 their children out of district and state assessments, parents have built on (and incorporated)
11 many of the parents’ rights arguments used to justify refusals of school curricula, programs, and
12 activities.⁸

13 Further complicating this picture are debates about testing and equity. Opt out efforts
14 have been met with criticism from school reform groups, federal and state authorities, civil rights
15 groups, and assessment experts. For instance, in a 2015 statement, a coalition of civil rights
16 groups came out against “anti-testing efforts,” arguing that “When parents ‘opt out’ of tests[,] ...
17 they’re not only making a choice for their own child, they’re inadvertently making a choice to
18 undermine efforts to improve schools for every child.”⁹ Opponents argue that opting out
19 undercuts the value of collecting high-quality assessment data for all students.¹⁰ Testing experts
20 point to the many equity-oriented benefits to achievement testing, such as the capacity to
21 compare students by race, ethnicity, socioeconomic status, and gender; in effect, tests might
22 measure not only achievement gaps, but *opportunity* gaps. These data, they argue, help to

1 justify and support efforts to improve school effectiveness, student learning, and other
2 outcomes.¹¹

3 Such issues are exacerbated because the largest numbers of students opting out of tests
4 have been from suburban communities that are often middle or upper-middle class.¹² Missing
5 test data can flatten or mask disparities between students, schools and districts, which affects
6 interpretations about equal educational opportunities.¹³ Critics also note opt out numbers are
7 highest in wealthier districts that receive less federal funding and bear fewer consequences from
8 accountability-oriented reforms.¹⁴ State and school officials may be inclined to tolerate such
9 opting out because it is concentrated in more affluent and middle-class communities.

10 Here, it is important to note that the position of civil rights groups is neither static nor
11 uniform. Some local chapters, and other activist groups, have argued that high-stakes
12 accountability reforms have damaged, not protected, the interests of low-income communities
13 and communities of color.¹⁵ Consider, for example, charges that high-stakes accountability has
14 narrowed the curriculum and created incentives for teachers to “teach to the test” and focus on
15 “bubble students.”¹⁶ Such reforms may undermine teacher and student morale and result in the
16 restructuring — and, in some cases, privatization — of schools in lower-income communities.¹⁷
17 Opt out proponents also note that statewide test refusal numbers often mask the activism of
18 many communities of color to opt out of assessments and protest accountability reforms.¹⁸

19 These are policy debates, but ones that also raise *philosophical* questions about the
20 nature of the claims and values parents invoke in refusing state assessments: What are the
21 values at stake when parents opt their children out of state assessments? What, if anything,

1 distinguishes opting out of testing from opting out of other dimensions of public education?

2 How can we evaluate the legitimacy of different claims to refuse public education?

3 To explore these questions, we start from a broadly democratic framework. That is, we
4 premise that the United States is a democratic society — regardless of the relative robustness or
5 fragility of that democracy — and that public education aims, at least in part, to reproduce this
6 political system by preparing students to be informed deliberators and voters who engage with
7 and participate in deliberative democratic politics. Our democratic framework is characterized by
8 the central idea that persons should learn to reflect on the values that shape their positions on
9 public issues, as well as to deliberate about these issues with others. The central conditions that
10 structure deliberative democratic processes are reciprocity, by which reason giving and
11 justification for mutually binding policies are a common endeavor; publicity, stipulating that
12 policymakers, researchers, officials, and members of the public should, in general, justify their
13 decisions and actions in public; and accountability, requiring stakeholders to answer to those
14 who are affected by their decisions.¹⁹

15 This democratic framework structures our exploration of some of the central claims of
16 recent opt out activism, and how such claims might compare with other examples of refusal in
17 public education. Such a comparative approach, we maintain, reveals how current opt out efforts
18 have struck an uneasy balance between individual rights and public goals. Opt out proponents
19 have appealed to *both* individual rights and public goals, arguing (at least in some cases) that
20 they are upholding, not rejecting, the democratic ideals of public education *and* that they have
21 the right to refuse educational initiatives that conflict with their values and deeply held beliefs.

1 Understanding — and evaluating — the opt out movement thus calls for a more thorough
2 understanding of these rights and claims.

3 In the first part of this essay, we review the legal and philosophical landscape of parent
4 (and student) rights to refuse public education. This review provides a foundation for examining
5 how such rights might be positioned — and limited — against public and democratic goals for
6 education. Against this backdrop, we focus on the role of democratic deliberation in negotiating
7 the inevitable tensions between individual rights and public goals in education. We then explore
8 how one might evaluate the *legitimacy* of various claims to refuse public education, including
9 recent efforts to refuse tests. We want to be clear at the outset that the legal rights of parents to
10 opt out of public education are well established²⁰ (albeit with key limitations).²¹ While this
11 judicial groundwork is important, philosophical considerations of parents' rights also go beyond
12 legal reasoning.²² In other words, what people are legally permitted to do can be different from
13 what it is ethically and politically justifiable to do. We focus on the latter concern in this essay.

14 To draw out these distinctions, we present specific examples of opting out, pointing to
15 the different ethical principles and positions at stake in conflicts over public education. We
16 argue that the claims and reasons for parents' objections to testing matter a great deal in
17 evaluating the democratic dimensions of this movement. In addition to reasons, the positionality
18 and power of those opting out also matter; for example, it matters if the parents opting out are
19 from upper-middle class suburbs or low-income communities. And the consequences and
20 effects of those choices matter as well. In this sense, we offer our three sets of questions —
21 emphasizing reasons, positionality, and consequences — to help guide local educational
22 leaders, policymakers, and citizens in negotiating difficult cases of refusal in public education.

1 Our criteria are designed to underscore what is potentially “at stake” in such cases, as well as to
2 provide space for local decision-makers to deliberate together and exercise judgment.

3 We conclude with the argument that opting out of tests may, under certain conditions,
4 serve the public purposes of education in a democratic society. In particular, even though many
5 opt out activists justify their actions in terms of individual rights, others are concerned with
6 public goals and ideals, including concerns about the narrowing of curriculum, the erosion of
7 teacher authority, and the widening privatization of public education. We argue that such goals
8 — if more broadly communicated and shared among parent activists — have the potential to
9 reframe the seeming conflict between individual rights and public goals in the opt out
10 movement. But communicating across and between different interests in this movement
11 remains a challenge, one that points to the need for spaces of democratic deliberation about
12 the aims of education policy.

13 Individual Rights and Public Goods in Education²³

14 Although “opting out” of testing is a relatively new phenomenon, this activism is a new
15 iteration in a long line of efforts to contest — and refuse to participate in — public education.
16 Philosophers have long examined the claims and values invoked by parents in opting out of
17 various dimensions of public education. Such considerations often take up two landmark court
18 cases: *Wisconsin v. Yoder* (1972) and *Mozert v. Hawkins County Board of Education* (1987). In
19 these and less-known conflicts, the state’s interest in providing a public, democratic education is
20 balanced against parents’ rights to pass on particular ways of life to their children.²⁴ Theorists
21 also contend that children — not just parents and the state — have an independent interest in
22 education: autonomy.²⁵ That is, children are not simply vehicles of their parents, nor instruments

1 of the state; they have the right to independently reflect on — and choose — among different
2 commitments, values, and beliefs.

3 In this section, we briefly review the major legal cases and philosophical arguments that
4 undergird claims about opting out of public education, and then turn to arguments and court
5 cases that address the shared, public goals of education. We conclude by addressing concerns
6 about public deliberation in the policymaking process. We take these legal precedents and
7 analyses into account not because we view such decisions as always right, but because they
8 form the backdrop against which parents, students, school leaders, and policymakers make
9 choices related to opting out. Moreover, as we argue, *why* parents and students opt out, in
10 terms of the *reasons and claims* they offer to support their choices, are relevant for assessing
11 the legitimacy of different acts of refusal, as well as how such claims intersect with the public
12 goals of education.

13 Rights to Refuse Public Education

14 The United States Supreme Court made several rulings in the 1920s that established
15 precedents regarding parents' rights within the context of public education: *Hardwick v. Board*
16 *of Trustees*, *Meyer v. Nebraska*, and *Pierce v. Society of Sisters*.²⁶ These decisions supported
17 parental control over the education of their children. *Hardwick* ruled in favor of a parent opting
18 their child out of the social and folk dancing part of a school's physical education program
19 because it violated parents' right to control the education of their children. Based on the liberty
20 clause of the Fourteenth Amendment, *Meyer* made clear parents have the right to direct the
21 education of their children without unreasonable interference from the government. *Pierce*

1 allowed parents the right to send their children to private schools; in effect, the state could not
2 force children to attend public schools.²⁷

3 Most of the lawsuits brought by parents since *Hardwick*, *Pierce*, and *Meyer* have been
4 denied by the courts, with the prominent exception of *Wisconsin v. Yoder* in 1972,²⁸ a case that
5 established Amish parents' rights to withdraw their children from public school at an age earlier
6 than that permitted by the state's compulsory education rules. In addition, two additional
7 federal statutes have established parental authority for educational decisions: the Family Rights
8 and Privacy Act (FERPA) of 1974 and the Education for All Handicapped Children Act of 1975 (a
9 precursor to the Individuals with Disabilities Act, or IDEA). FERPA established that parents have
10 the right to unrestricted access to their children's school records, as well as the right to
11 challenge those records and to prevent their disclosure. The Education for All Handicapped
12 Children Act declared that parents of children in special education are equal partners with public
13 schools in determining the educational program for their children.

14 Considerations of parents' rights, however, go beyond legal reasoning. There are well-
15 established philosophical arguments that enumerate the state's interests in establishing
16 minimum standards for education, civic education, equality of educational opportunity and
17 other goals. Yet these arguments are often framed alongside — and balanced against — claims
18 about parents' and students' *rights* to make their own educational decisions. *Pierce*, for instance,
19 deliberately recognized the rights of parents to educate their children as a form of liberty
20 protected under the Fourteenth Amendment. As Nancy Rosenblum summarizes, this decision
21 sought to balance the "fundamental values necessary for the maintenance of a democratic
22 political system" against the "private beliefs of the student and his or her family."²⁹ Parents'

1 rights include both the right to *exit* public schools and the right to hold certain private *beliefs*
2 that may conflict with public schooling. A number of philosophers have drawn on the 1972
3 *Wisconsin v. Yoder* case as an emblematic example. William Galston, for instance, draws on this
4 case to advance a principle of “expressive liberty” in education: the presumption that individuals
5 and groups should be able to lead “lives as they see fit, within a broad range of legitimate
6 variation, in accordance with their own understanding of what gives life meaning and value.”³⁰

7 While endorsing respect for parental rights, particularly with respect to “culturally
8 dissident minorities,” Eamonn Callan cautions that the state has a legitimate interest in
9 protecting the future autonomy — in a sense, the future expressive liberty — of children.
10 Protecting the developing autonomy of children may, at times, conflict with protecting parents’
11 rights to different views of a flourishing life. The conflict here, as Callan argues, is not between
12 individuals and the state, but between “parental choice and the basic interests (as society
13 defines those interests) of individual children.”³¹ Rob Reich also emphasizes the child’s
14 perspective, particularly a child’s interest in education, and in becoming an autonomous adult.³²

15 From another angle, Harry Brighouse and Adam Swift contend that parents have certain
16 rights through their status *as* parents and through the centrality of parenting to many
17 conceptions of a flourishing life.³³ This view conceptualizes the relationship between parent and
18 child as a unique good that supports parental partiality toward their children, even if that
19 partiality conflicts with the common good. Here, being able to make educational decisions for
20 one’s children is an important part of what it means to be a parent; likewise, parents are often
21 best situated to understand the needs of particular children and to act on their behalf. Yet

1 Brighthouse and Swift also sketch the boundaries of such claims. In particular, they view parents'
2 rights to refuse curricula as ones that need to be justified, rather than taken as a given.

3 From a similar perspective, Bryan Warnick has explored different justifications for
4 parents' rights to make educational decisions: the welfare interests of children, the expressive
5 interests of parents, and arguments based on the property rights of parents. He argues that
6 each fails to establish a substantial right to parental educational authority. Instead, Warnick
7 develops a concept of authority that rests on the "sacrificial labor of parenting," work that he
8 argues gives a parent the "right to invite" children into a particular way of life. This right to invite
9 — and the right to make educational decisions for children — is not, however, absolute, and
10 must be balanced against a child's right to develop autonomy.

11 With this backdrop in mind, we argue that the grounds and reasons for parents'
12 objections to testing matter a great deal for evaluating their actions. In some cases, objections
13 to testing are based on a view of the child's welfare; parents may be concerned about their
14 child's anxiety and stress over testing, or their privacy and the uses of student data. In other
15 cases, families make broadly moral claims, arguing that testing is miseducative,
16 counterproductive, and harmful to students and, in some cases, communities. In still other cases,
17 parents have argued that testing conflicts with their values or deeply held beliefs about what
18 education should be.

19 In this vein, parents' rights have sometimes been framed in terms of rights of
20 "conscience." Consider, for instance, New Hampshire House Bill 542, a law called the "Parental
21 Conscience Act" by supporters. This law, responding to a book advocates deemed anti-Christian
22 and anticapitalist (Barbara Ehrenreich's *Nickel and Dimed*), allows parents to opt their children

1 out of any material or pedagogical style they find “objectionable” and also requires the school
2 to provide an alternative curriculum that still meets state requirements in the subject.³⁴ New
3 Hampshire’s HB 542 — and similar state legislation in Florida and Kentucky — goes much
4 further than existing court cases, which have tended to limit parents’ rights to choosing
5 particular schools, not directing how schools teach.³⁵ Eric DeGroff explains this point:

6 The Supreme Court has long noted that the right of parents to direct the education and
7 upbringing of their children is fundamental to American culture and law and therefore
8 worthy of respect. The Court, however, has never explicitly held that it is a fundamental
9 right, which, if threatened, merits strict scrutiny.³⁶

10 Yet lower courts remain divided on the issue, and parents have relied on the *Yoder* case to
11 successfully argue for opt out procedures in their schools, most notably around sex education.

12 Public Goals and Limits on Individual Rights

13 Despite key cases in favor of parents’ rights to control their children’s education, the
14 courts also have been clear that these rights are limited and partial. While *Pierce* and *Yoder*
15 sketched the case for parental rights, they were followed by seven federal appellate court cases
16 ruling *against* parental control over their children’s curriculum.³⁷ The courts have placed specific
17 limits on the extent of parents rights to intervene in their children’s education.³⁸ In an analysis of
18 these cases, Kevin Rogers and Richard Fossey argue that the rulings suggest that parents do not
19 have the right to exempt their children from participating in school learning activities based on
20 their religious or moral views. They write, “Federal case law makes it clear: parents have no
21 constitutional right to excuse their children from any part of public school curricula, even if the
22 parents’ objection is based on religious or moral grounds.”³⁹

1 Court decisions over the last fifty years also have restored the authority of school boards
2 and teachers to adjudicate curriculum controversies. For example, in *Settle v. Dickson County*
3 *School Board*, the court upheld a teacher’s refusal to allow a ninth-grade student to fulfill a
4 research writing assignment by writing on “The Life of Christ.”⁴⁰ The ruling recognized that
5 teachers have broad discretion in limiting speech when they are engaged in administering the
6 curriculum. Courts have sometimes cited the “special characteristics” of educational institutions
7 in making their decisions on cases of parent refusal or opting out of parts of public education.
8 Warnick notes that three factors — order, discipline, and safety — are key characteristics that
9 have shaped issues of ethics and rights in educational settings.⁴¹ Such factors have often led
10 courts to grant teachers, schools, and districts wide authority over curriculum.

11 The oft-cited *Mozert v. Hawkins* decision also defended the school’s authority to
12 establish curriculum. The *Mozert* ruling argued that the state has a strong interest in preparing
13 students for citizenship and self-government, and so the school was correct in insisting that the
14 students participate in a given reading program (The Holt Reader), which focused on exposing
15 students to different characters, lifestyles, and perspectives, as well as developing students’
16 capacity for critical reasoning. In effect, *Mozert* lays out an argument for the public value of a
17 common public education curriculum. In her analysis of this case, however, Colleen Vojak
18 concludes that schools might consider reasons to accommodate parents requests to opt out of
19 the curriculum, even if they are not legally required to do so.⁴² Vojak argues that public schools
20 should seek out ways to minimize the number of parents who pull their children out of school.
21 Such accommodations might keep children enrolled in public school, exposing them to at least
22 a minimal amount of curriculum, and the opportunity to develop self-knowledge.

1 While contemporary debates around parental rights have shifted to topics other than
2 religion, such as sex education or evolution, the potential conflict between a parent’s right to
3 direct the education of their children and the state’s interest in inculcating values through public
4 schools remains.⁴⁵ Most of the arguments for parents’ rights are made on the basis of a concern
5 about the values being inculcated in the child. The opt out movement seems to diverge from
6 this line of reasoning, at least on the surface. Objections to testing — unlike objections to
7 curriculum — rarely turn on the *values* students may be exposed to while learning a curriculum.
8 Some objections to testing do, however, focus on the harmful *experience* of testing itself. Still
9 others are concerned with the broader *effects* of testing on curricula, students, teachers and
10 schools. In many cases, parents’ objections to testing rest on concerns about the uses and
11 necessity of these tests. Parents have objected, for instance, to testing that seems unnecessary,
12 that is untied to postsecondary options, or not used to make classroom decisions.

13 Although part of the school curriculum, assessment systems have been met with
14 skepticism and distrust by members of the public. This distrust points toward the essential
15 connection between educational policy and aspects of democratic legitimacy. Focusing on
16 debates about accountability and standards, Meira Levinson highlights an important tension
17 between local control by “ordinary people” and more abstract control by officials imposing
18 regulations.⁴⁶ Noting that standards are “public goods,” she argues that standards, assessments,
19 and accountability (SAA) mechanisms can serve democratic goals. In particular, to the extent
20 that they facilitate ideals of equality, transparency, and deliberation, SAA systems can empower
21 citizens to assert their authority over schools. Yet Levinson contends that the current system of
22 SAA in the U.S. context is rigid and uniform, and does not live up to that promise, as it

1 strengthens neither civic education, nor opportunities for democratic deliberation. Levinson's
2 conclusion lends support to the idea that public policy — to be legitimate — must be up for
3 public deliberation.

4 Gutmann in particular stresses that political aims should be decided through an ongoing
5 process of democratic engagement and dialogue.⁴⁷ Being able to engage in dialogue across
6 difference — about curriculum, for example — is essential to both policy deliberation and
7 democratic citizenship. Jonathan Zimmerman notes, too, that clashes over the content of
8 American public education are an inescapable fact of life in a democratic society, and defy easy
9 solutions. Rather than aim for elusive consensus, he argues that educators should create space
10 for such disagreement. History, he reminds us, is not “a litany of unassailable truths” but a
11 “continuous and contested discussion.”⁴⁸ Zimmerman and other scholars stress the centrality of
12 deliberation about the inescapably contested values at the heart of American public education.
13 Engaging in deliberation demands including the perspectives and voices of all those with
14 interests at stake in dialogue, even in the face of significant moral disagreement.⁴⁹

15 Local school leaders are often called on to respond to parent concerns and to weigh
16 those concerns against other public goals. Such challenges often go beyond legal questions
17 about which forms of opting out are permissible or not. Indeed, the legal landscape is rarely so
18 clear cut and is often complicated by state legislation and local district and school policies.
19 School leaders, we contend, often need to make ethical judgments about the different individual
20 rights and public goals at stake. Moreover, they do not just make decisions but are asked to
21 negotiate and “talk through” potential conflicts, as well as mediate potential disagreements. In
22 doing so, we argue, educational decisions and matters of education policy must be more than

1 legally correct; they must also be legitimate in and for their communities. In the next section, we
2 draw on concepts of democratic legitimacy to pose criteria that stakeholders can use to evaluate
3 the different dimensions of opting out of public education.

4 The Democratic Legitimacy of Opting Out

5 Against the philosophical backdrop and deliberative framework outlined in the previous
6 sections, we aim to develop criteria that may help school leaders, policymakers, and citizens in
7 general judge the democratic legitimacy of various instances of refusal in public education. In
8 emphasizing democratic legitimacy, we are concerned with a particular question: how might
9 stakeholders decide what kinds of opting out (if any) are justified in a *public* education system in
10 a society that is (at least nominally) *democratic*? Our exploration relies on a framework that
11 seeks to *strengthen* democratic values and goals. Other frameworks — ones that emphasize
12 goals of individual liberty, for example — may pose different kinds of criteria. We contend that a
13 democratic framework is a uniquely powerful lens through which to analyze public education in
14 general and opting out in particular.

15 Education, after all, is a unique policy context. In addition to a safe and nurturing
16 environment for the development of children, schooling is both *compulsory* and *public*. Such
17 circumstances make schools very particular kinds of environments and unique contexts for
18 public policy.⁵⁰ On one level, because public schools serve myriad constituencies, leaders have to
19 take into account the plural aims and concerns of different groups. In addition, public education
20 encompasses a wide range of both individual and collective goals. Consider that one set of
21 individual purposes of public schooling is for students to learn basic literacy and numeracy, as
22 well as the content of other subject areas, and to be prepared for both the workforce and

1 further schooling. One set of collective aims is to prepare democratic citizens for political
2 deliberation and participation in democratic governance; another is postsecondary workforce
3 preparation, which is linked to the economic well-being of both individuals and the nation.⁵¹

4 Standards, curriculum, and assessment ideally aim to contribute to fulfilling these
5 purposes.⁵² But disagreement emerges when certain collective aims come into conflict with
6 individual views and beliefs. In such cases, families may argue that they have the right to refuse
7 certain parts of public education that conflict with their beliefs or commitments. For instance,
8 families sometimes contend that their child would be harmed through exposure to particular
9 curricula or experiences. The idea of “harm by exposure” is one of the central and common
10 features of many claims for opting out, across ideological perspectives.⁵³ But administrators and
11 teachers need principled ways to judge such harms. And, we argue, they also need to take into
12 account the *harm by nonexposure* that may be created by opting out, including threats to
13 children’s autonomy, equity, and democratic aims.

14 In a liberal democratic society like the United States, the public schools are tasked with
15 the civic education of all students so that they are prepared for active, informed participation in
16 that democratic society. Schools have shouldered this responsibility under challenging and
17 nonideal circumstances, including inadequate funding, social inequality and a fractured political
18 landscape. Nonetheless, this responsibility underscores the potential harm by *nonexposure* to
19 education. Such harm can include inadequate cultural competency when students are deprived
20 of learning about those who are different from them; or inadequate knowledge of evidence-
21 based scientific truths when students are deprived of learning about birth control or sexually
22 transmitted infections. Not only are such harms individual (affecting the student), but they are

1 also public. For instance, inadequate sex education impacts not only the young person but may
2 contribute also to public health consequences related to teen pregnancies or disease.

3 Preparing students for life as democratic citizens is a central aim of education in the
4 United States,⁵⁴ so, from a democratic theoretical perspective, it may seem that shared or public
5 aims for education ought to be prioritized over individual rights and interests.⁵⁵ While we can
6 identify clear public consequences for some acts of refusal, we also recognize that there is often
7 profound moral disagreement about the aims of public education. Such questions — often
8 touching on religious beliefs and moral claims — cannot be answered easily or definitively,
9 particularly in the complex contexts of real schools and communities. Rather than offering
10 definitive answers, we hope this inquiry fosters discussion of the ethical complexity of such
11 debates and advances more nuanced considerations of relevant moral tensions that characterize
12 policy disagreements.

13 To this end, we pose three sets of questions that might be useful for stakeholders to
14 consider in the midst of such discussions. These questions — while designed to open up debate
15 about the contested aims of public education — also function as potential criteria to help
16 policymakers and school leaders evaluate the democratic legitimacy of various acts of refusal in
17 public education. They are designed to evince *why* parents and students opt out — their *reasons*
18 *and claims*, *who* is opting out — their *power and positionality*, and *what* may happen as a result
19 — the *public consequences* of the opting out.

20 Reasons and Claims

21 First, what claims are made when refusing public education, what reasons are cited for
22 acts of refusal? Here, we consider the nature of the *reasons and claims* made in refusing public

1 education. Parents and students often have deeply personal reasons and moral claims for opting
2 out of aspects of public education. Take, for example, the young people cited at the beginning
3 of the article who refused to go to school to protest segregated and unequal public school
4 systems.⁵⁶ In New York City, as well as in many communities throughout the North and South,
5 students refused to attend public school, seeking recognition of the inequitable education
6 provided to them. Consider also *Davis v. County School Board*, one of the five cases folded into
7 the 1954 *Brown v. Board of Education* decision. This case was brought on behalf of students
8 from Prince Edward County, Virginia.⁵⁷ In April of 1951, students in Farmville, Virginia, organized
9 a two-week strike to protest inadequate school conditions at Moton High School. Over 450
10 students refused to attend school, arguing that their school — underfunded, over capacity, and
11 lacking a gym, cafeteria, and adequate restrooms — was depriving them of the opportunity to
12 receive an equal education.

13 Their claims (and subsequent court case) were dismissed by local and state officials, as
14 well by the U.S. District Court, before eventually becoming part of the *Brown* appeal to the
15 Supreme Court. However, after the U.S. Supreme Court ordered the desegregation of schools,
16 white Virginians launched a campaign of massive resistance. Prince Edward County refused to
17 appropriate any funds for the County School Board between 1959 and 1964, effectively
18 shuttering all public schools rather than integrating them. The students who protested
19 inadequate educational conditions had significant reasons to refuse to go to school. The key
20 claim undergirding their acts of refusal was that they could no longer abide an unjust and
21 segregated system.

1 Another key question, then, is this: to what extent might opting out contribute to public
2 goals of civic education and democratic participation? In general, our democratic framework
3 posits that students — and citizens — need to be able to participate in deliberative practices
4 across difference rather than exercise individual rights to refuse formal or informal curricula with
5 which they may disagree. This criterion does take into account how complex and difficult it can
6 be to answer our evaluative questions. Opting out can itself be an act that is in the *service* of
7 democratic deliberation and civic ends. For example, consider the decision to not say the Pledge
8 of Allegiance or to not stand for the national anthem.⁵⁸ These acts of refusal are, at least in many
9 cases, potentially powerful civic acts designed to draw attention to — and question —
10 potentially unjust practices or circumstances. As such, the claims and reasons for opting out
11 cited by the African American students in our example above cannot be understood in the same
12 light as the refusal of white parents to participate in public education in order to avoid attending
13 integrated schools. Both were acts of refusal, but they involved different kinds of claims and
14 came from different positions of privilege and power.

15 Power and Positionality

16 The reasons people give and the claims they make to justify opting out do not exist in a
17 vacuum. Rather, the claims may come from very different positions of power: sometimes from
18 positions of advantage and privilege, in other cases, from positions of comparative disadvantage
19 and historic marginalization. Here, then, we should ask questions along these lines: Who is
20 opting out? How might their power or relative social dominance shape their decisions to refuse
21 aspects of public education?

1 Consider more recent debates about race and recognition in public education. Black
2 History Month events and activities are not required but are nonetheless important parts of the
3 informal curricula in many public schools. Teachers are called to incorporate Black History into
4 various subjects, and school events and assemblies often feature African American speakers and
5 history. Some on the political left have criticized Black History Month as a superficial symbol,
6 celebrated during the shortest, coldest month of the year, but typically political liberals
7 commemorate it seriously. Some on the right have criticized Black History Month as racially
8 divisive and as overemphasizing one race to the exclusion of others, even calling for a
9 counterpart White History Month.⁵⁹ Such calls — while perhaps rare — nonetheless underscore
10 the need to consider claims alongside positionality.⁶⁰ These seemingly “racially neutral” or
11 “color-blind” policies — that purport to treat all groups the same — elide our history of state-
12 sanctioned and long-standing racial discrimination.

13 Sometimes opting out of public education may reflect claims to nondiscrimination,
14 recognition, or dignity from historically marginalized groups. Refusing education that is
15 degrading, or practices that contribute to the dehumanization of members of the community,
16 may be important and legitimate grounds for refusal. Of course, other claims of recognition and
17 dignity may be less straightforward than the activism of African American students in the civil
18 rights movement that we cited above. What, for instance, about religious claims of recognition
19 in a secular public school? Or calls to recognize the political beliefs of students, particularly
20 when such beliefs run against prevailing sentiment in a school community? While there are
21 many harder cases, such cases still require attention to the specific moral claims and reasons
22 offered for opting out and the relative power and positionality of those posing such claims.⁶¹

1 Consequences and Harms

2 In connection to our questions about reasons and about power, we should ask what
3 might be lost — for both the person opting out *and* the rest of us — when someone refuses a
4 common curricular or educational experience? One way to consider such questions is by
5 thinking about the harms of nonexposure, as discussed earlier. Here, for instance, the harm of
6 nonexposure to adequate sex education not only has the potential to affect the young person
7 who opts out, but it also may have larger negative consequences for public health.⁶² Similarly,
8 opting out of state-mandated vaccination requirements — even for significant religious
9 concerns — has consequences both for the student in question, but also for the health of a
10 community, particularly for infants who are too young to be vaccinated or for those who cannot
11 be vaccinated because of certain health conditions.

12 This issue may be sharper in cases where the harms of nonexposure result in
13 consequences that are borne disproportionately by marginalized groups. Consider the case of
14 LGBTQ-related curricula, which typically are not required as part of the formal curriculum.⁶³
15 Conflicts nonetheless surface around informal practices in schools that recognize LGBTQ
16 identities and issues. Take, for example, Jefferson County, Colorado, where a high school
17 organized a “Day of Silence” event to raise awareness of the bullying and silencing of LGBTQ
18 students. This is a national event, but school and student participation is voluntary. A Jefferson
19 County school board member publicly called for families to keep students home to boycott the
20 Day of Silence activities, publicizing her call through her social media accounts. In the process,
21 she posted links to “Save California,” a recognized hate group.⁶⁴ In another example, in
22 Winchester, Tennessee, parents and community members were up in arms after a group of

1 students at one high school started a Gay Straight Alliance (GSA) student group. Relying on
2 religious dogma and on misinformation, adults in the community spoke at a school board
3 meeting, arguing that sexual orientation should not be discussed at school.⁶⁵ Yet state laws have
4 consistently upheld the presence of GSAs, and such student groups have been shown to allow
5 students to feel more connected to their school in an environment with less bullying and
6 harassment.⁶⁶

7 Consider as well examples having to do with religion and race. Seventh-graders in
8 Wapakoneta, Ohio, formally study ancient history, and, as part of a unit on various ancient
9 civilizations, the curriculum includes the study of Islam. Students are allowed to opt out of that
10 Islamic history lesson if they or their families claim it is in opposition to their religious beliefs.⁶⁷
11 One could argue that this kind of opting out of the history curriculum could, in effect, sanction
12 religious discrimination. Across these different cases, the students opting out were themselves
13 deprived of important, even crucial, information and insight into LGBTQ and Muslim
14 communities. This underscores the potential harms of nonexposure. Moreover, these acts of
15 refusal also potentially harmed vulnerable students by threatening to erase their identities, a
16 specific — and unacceptable — harm. In such cases, opting out of public education should be
17 considered in light of the shared public consequences of such refusals, as well as the potential
18 harms to specific vulnerable students.

19 As the examples we cite demonstrate, opting out can at times foster democratic
20 participation yet also be problematic for democratic education. Our threefold criteria —
21 focusing on *why* parents and students opt out (their *reasons and claims*); *who* is opting out
22 (their *power and positionality*); and *what* may happen (the *public consequences*) — are

1 designed to help discern what might be at stake in specific cases of opting out. The questions
2 we pose are meant to help school leaders and other stakeholders begin important conversations
3 about, for example, whether acts of refusal may be grounded in democratic impulses to make
4 positive changes to public school practices, or whether practices (such as testing) may be
5 undermining important educational aims, such as developing critical thinking and problem
6 solving skills. Understanding all three aspects of opting out — reasons, power, and
7 consequences — is essential.

8 Toward Principled Limits: Considering Opting Out of Testing

9 As we noted in our introduction, parents opting their children out of public school
10 activities is not a new phenomenon. Philosophers have long considered questions about the
11 proper scope of state and family authority over the provision of education. The decisions of
12 families affect not only their own children, but also have broader consequences for public
13 education in a democratic society. Such issues of authority are both morally and politically
14 complex. In the case of recent activism to promote opting out of state testing, political affiliation
15 does not necessarily determine how parents make their decisions. Indeed, this movement has
16 created fissures within both liberal and conservative positions, as well as unexpected alliances
17 between progressive and libertarian activists.⁶⁸ So, how might we assess the reasons given and
18 the claims made by members of the testing opt out movement? How might we assess their
19 relative power or their positionality? And how might we think about the larger public
20 consequences of their acts of refusal?

21 On the one hand, families opt out for a range of sometimes overlapping reasons,
22 including concerns about the narrowing of the curriculum, children's test anxiety, or the loss of

1 teacher autonomy. On the other hand, some parents opt their students out so that they can
2 have more time to spend on the tests that “really matter to them,” such as AP exams or college
3 placement tests, rather than those linked with state standards. Other parents opt out of testing
4 because of their opposition to any kind of government-endorsed standards or due to concerns
5 about the privacy of their children’s data.

6 In such cases, the questions we advocate using as criteria for evaluation, which
7 emphasize reasons and claims, power and positionality, and consequences and harms, may help
8 to clarify critical differences between different choices to opt out. Building on our consideration
9 of these criteria, and our analysis herein, we argue that, in general, students and families should
10 not be able to refuse curricula or assessments *if* such refusals lead to the perpetuation of
11 educational inequalities or the erasure (nonrecognition) of legitimate social identities. Such
12 consequences are harmful to community members with less institutional power and, more
13 broadly, to the aims of democratic education. We argue further that criteria for justifiable opt
14 outs that emphasize democratic engagement, nondiscrimination, and harms of nonexposure
15 may help to clarify the distinction between opting out for problematic reasons and opting out
16 for civic reasons that further the democratic purposes of education. Thus, we endorse *principled*
17 *limits* to opting out of public education without disallowing opting out wholesale.

18 As we have seen, opting out of aspects of public education can result in harms. Such
19 harms — in effect, harms of nonexposure — can deprive young people of opportunities to
20 participate in learning experiences that develop their autonomy and capacity for civic action.
21 Young people may also be deprived of opportunities to learn certain democratic dispositions
22 toward nondiscrimination, equality, respect for diversity, and upholding human dignity. Of

1 course, many public schools — especially ones that are segregated by race and class — fall short
2 daily of exposing students to those democratic principles. But refusing to participate in public
3 education includes at least the potential loss of common curricular experiences and interactions
4 across some lines of difference. Beyond the impact on children themselves, harms also stem
5 from the aggregate consequences of opting out. In addition to the loss of individual civic
6 capacities, such disengagement may harm the quality of democratic deliberation in particular
7 schools and communities.

8 Some might counter that in the case of state assessments, opting out of testing, even for
9 the “wrong reasons,” is likely to draw attention to the overuse and misuse of state standardized
10 exams, which would be positive for all public schools in the long run.⁶⁹ In effect, it might be that
11 the *reasons* for parent and student actions don’t matter; we should just judge these actions —
12 however selfish — by their long-term consequences, which might be, at least on the whole,
13 positive. Focusing on the possible positive consequences, however, amounts to something like
14 trickle-down activism; possible good outcomes in the long term do not justify specific, present
15 harms that might be caused by refusing public education. Acts of opting out, as we detailed in
16 the previous sections, have the potential to strengthen the democratic aims of education, but
17 only under particular circumstances.

18 We argue that opting out of tests may, under certain conditions, serve the public
19 purposes of education in a democratic society. In particular, while many instances of opting out
20 might be justified in terms of individual rights, other instances might be justified as furthering
21 public goals and ideals. Such goals — if more broadly communicated and shared among
22 activists — have the potential to reframe the seeming conflict between individual rights and

1 public goals in the opt out movement. Yet communicating across and between different
2 interests in this movement remains a challenge, pointing to the need for spaces of democratic
3 deliberation about the aims of education and policy.

4 In this essay, we contend that the *reasons* for opting out are important and, further, that
5 these reasons need public spaces where they might be named and articulated. Such spaces for
6 conversation and deliberation about education policy are rare, especially across lines of
7 difference. In at least some instances, activists have asserted that opting out is an action
8 designed to protect the public purposes of education. Moreover, prominent voices in the opt
9 out movement have recognized the need to engage with issues of power and privilege,
10 especially the need to consider the interests of low-income communities of color.⁷⁰ Yet, because
11 the majority of those opting out have been white and middle class, familiar patterns of power
12 and privilege may reassert themselves in ways that consolidate personal educational advantage
13 for certain families over others.⁷¹ Opportunities to engage across such lines of difference are
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17

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6

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