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Constitutional Roots and Shadow: The School Board's Manifest Power Under Article VIII, Section 7

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Introduction

Dortch Warriner, a former Emporia City Attorney, eventually became a U.S. District Judge for the Eastern District of Virginia, serving on the federal bench for more than 10 years.[1] Known perhaps distinctively for his direct and candid judicial approach, he had occasion to address various constitutional issues that involved Virginia's public schools. In one particular instance, Judge Warriner vented about the practical difficulties in handling a constitutional issue within the framework established by the Fourth Circuit Court of Appeals. You have to admire the candor and clarity in his published opinion that included a notable, down-to-earth passage:

> This Court has previously sought the guidance of the Fourth Circuit in the morass in which decisions in this area have left the trial judges to flounder . . . . Absent some . . . dividing line between common law tort and constitutional tort, we are left to a two-step analysis that does little to divide one tort from another. . . . Only after a trial . . . can we determine whether we had jurisdiction to try the case. If we are not shocked we didn't have jurisdiction. *That is a heck of a way to run a Constitution.*

Brooks v. Sch. Bd., 569 F. Supp. 1534, 1539 (E.D. Va. 1983) (emphasis added). While his memorable words in that case focused on what he perceived as a confounding Eighth Amendment test, they provide a reminder of how constitutional analysis—both under the U.S. Constitution and Virginia Constitution—can be challenging for courts and counsel. Those words challenge us to consider, as well, how Virginia's Constitution has been "run" when it comes to the authority of the Commonwealth's school boards. This kind of review brings to the discussion some of the legal, strategic, and tactical questions under Article VIII, Section 7 and, in the

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Chairman's Message

As you may know, the Virginia State Bar is planning a different format for next year's Annual Meeting in Virginia Beach. As a result of renovations underway at the Cavalier Hotel, which has hosted the Annual Meeting for decades, the VSB had to get creative and find new places and new ways to hold the Annual Meeting. The VSB's Better Annual Meeting Committee (evocatively known by its acronym as the "BAM Committee") took on the challenge and it lived up to its name. The programs and events will be scheduled at several hotels along the boardwalk instead of concentrating them at one headquarters hotel. Instead of multiple CLE sessions running simultaneously, fewer but bigger and better sessions will be held. The BAM Committee developed a long list of timely and engaging subjects and the sections were asked to weigh in on what they thought would be of greatest interest to their members.

I'm happy to say that one of the programs that the Local Government Law Section advocated for was ultimately selected. Together with the Construction Law Section, the Local Government Law Section will co-sponsor a "Showcase CLE" on Private Property Rights/Public-Private Partnerships. The panel will address property rights, public-private partnerships, tolls for tunnels and HOT lanes, and where the constitutional line is for private action or authority action, as opposed to legislative action by the state or local governments. The Supreme Court of Virginia's October 31, 2013, decision in *Elizabeth River Crossings Opco, LLC v. Meeks* will be one focus of the discussion.

The BAM Committee also proposed scheduling lunches for sections that want to combine their annual business meetings with social time. Your Board of Governors responded favorably, so we will be conduct our business meeting over lunch next year. In short, there are extra reasons for Local Government Law Section members to attend the Annual Meeting in 2014, so put it on your calendars. It will be on June 13 and 14, 2014.

Meanwhile, we present the Fall issue of the *Journal of Local Government Law.* This issue includes a retrospective by Mike Kaestner, who was awarded the Section's First Fellowship, an article by Staunton City Attorney Doug Guynn on the constitutional authority of school boards, and an article about the future impact of the U. S. Supreme Court's decision in *Shelby County v. Holder*, by Stephen C. Piepgrass and Anne Hampton Andrews of Troutman Sanders.

Erin Ward
Chairman

process, a greater appreciation for the historical contexts in which the Virginia Supreme Court has found itself dealing with the consequences of other institutions' actions and the ensuing conflict that occasioned litigation. The timing is especially fitting with the approach of the 60th anniversary of the U.S. Supreme Court's groundbreaking decision, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (often referred to as "*Brown I*"), on racial segregation in the public schools.[2] A discussion of this history and Virginia judicial precedent additionally invites reflection on the post-*Brown* role of courts and judges today in the operation of our public schools—operations that can implicate a myriad of personnel

and other decisions leading to litigation.[3] Advocates, including local government attorneys, who underestimate the grounding and reach of the Virginia Constitution's Article VIII, Section 7 do so at some considerable risk, especially given what is the long "shadow of [Virginia Supreme Court] . . . cases giving full effect to that provision." *Russell Cnty. Sch. Bd. v. Anderson*, 238 Va. 372, 384, 384 S.E.2d 598, 604 (1989). The federal courts, too, have recognized the unique authority of Virginia school boards and those federal judicial decisions also bear study to appreciate the potential implications.

Public education is a complex, often big, business in contemporary times and the conflicts touching it continue in various ways. Those conflicts can bring competing claims of legal-societal control and influence that test traditional notions of local governance and decision-making before the courts. Even today, however, Virginia school boards seem to have considerable authority rooted not just in statutory provisions but more powerfully in the Virginia Constitution itself in the form of a deceptively simple declaration: "The supervision of schools in each school division shall be vested in a school board . . . ." Va. Const. art. VIII, § 7. With the record of results before the Virginia Supreme Court over almost 100 years, the constitutional injunction casts a long shadow that might surprise more than a few institutional players and lawyers—and judges—unschooled about the reach.

Development and Nature of Virginia School Boards

In the late 1700s in Virginia, Thomas Jefferson proposed his Bill for the More General Diffusion of Knowledge. He believed "to diffuse knowledge more generally through the mass of the people" would have the effect of "rendering the people safe, as they are the ultimate guardians of their own liberty." *See* A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 879 (1974) (hereafter, "*Commentaries"*). His early Bill would have resulted in allowing several years of some education at public expense for various children, although it did not ultimately get adopted.[4] Eventually,[5] though much later, Virginia's Constitution of 1870 "gave public education in the Commonwealth its first genuine constitutional underpinning." *Commentaries* at 881. Consistent with that development, a statewide board of education came statutorily into being, with authority to appoint county superintendents and manage school funds, *id.*, and elected or appointed trustees to constitute the local governing board of each school district, *id.* at 934. The 1902 Constitution included additional emphasis on public education and stipulated in its Section 133—the predecessor provision to today's Article VIII, § 7—that "the supervision of the schools in each county or city shall be vested in a school board." *See Bradley v. Sch. Bd.*, 462 F.2d 1058, 1067 (4th Cir. 1972). As history would demonstrate in yet unforeseen ways, the judicial interpretation of this language would become pivotal in determining issues of legal control and decision-making discretion in the century ahead. In the constitutional amendments ratified in 1928, Virginia also adopted what is the more modern-day structure for basic public education: the Governor's appointment of all members of the Board of Education and of a Superintendent of Public Instruction and division superintendents selected locally by the respective local school boards. *Commentaries* at 914-15, 932.

In 1969, the Commission on Constitutional Revision rendered its report to Governor Godwin, recommending changes that led to the 1971 Constitution. Through the process that culminated with overwhelming voter approval, the Constitution's Education Article VIII assumed its present form: cities and counties would not be able to elect whether to have schools and to help fund them, the supervision of the schools remain "vested" in the local school boards by virtue of a single sentence, and a constitutional ethic of education gained standing in the Bill of Rights," declaring in distinctive Jeffersonian-like language:

> That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which

> nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.

Va. Const. art. I, § 15. *See* A.E. Dick Howard, *The Virginia Constitution at 40*, 39 VBA J. 22, 25 (Spring 2012). The Commission included, among others, Albert V. Bryan, Jr., who in his father's footsteps became a U.S. District Judge,[6] Staunton City Attorney and General Assembly member George M. Cochran,[7] who became a Virginia Supreme Court Justice,[8] former Richmond School Board Chairman, Virginia Board of Education member, and nationally prominent lawyer and American Bar Association President Lewis F. Powell, Jr., an eventual U.S. Supreme Court Justice,[9] and Virginia's revered leading civil rights attorney, Oliver Hill. *The Constitution of Virginia, Report of the Commission on Constitutional Revision* (1969). In various ways, each of them had witnessed the epic battles in public education in the turbulent 1950s and 1960s and beyond. They knew the force of a single constitutional sentence, as interpreted by the courts, which operated to considerably blunt, if not undermine, some aspects of Virginia's "massive resistance" to racial integration of the public schools. As courts today consider what meaning and force to ascribe to a Virginia school board's fully exercised "supervision" under Article VIII, § 7, that reality should not be lost in any analysis. Yet, an in-depth examination of Virginia Supreme Court's decisions from this era and beyond leaves questions about incoherent doctrine and predictability of the rules or standards for future cases in assessing that authority. In the end, though, Virginia school boards have an enviable history of prevailing under its constitutional grant of power.

A School Board's Role and Power of "Supervision"

Virginia's Constitution[10] does not detail in any way what is meant by "supervision" in its succinct prescription that such supervisory role is "vested" in the local school board for each school division. In various Virginia statutes within Title 22.1, however, the legal status and functions of school boards are identified and, to some degree, delineated. For example, a school board is recognized as a

> body corporate and, in its corporate capacity, is vested with all the powers and charged with all the duties, obligations and responsibilities imposed upon school boards by law and may be sued, contract, be contracted with and, in accordance with the provisions of this title, purchase, take, hold, lease and convey school board property, both real and personal.

Va. Code § 22.1-71.[11] In addition, a

> school board may adopt bylaws and regulations, not inconsistent with state statutes and regulations of the Board of Education,[12] for its own government, for the management of its official business and for the supervision of schools, including but not limited to the proper discipline of students, including their conduct going to and returning from school.

Va. Code § 22.1-78. Other provisions of the Virginia Code specify that a Virginia school board, among other things, "shall see that school laws are properly explained, enforced and observed," be fully informed about the schools and "take care that they are conducted according to law and with the utmost efficiency," maintain, manage and control school property and the related operations, including erecting and equipping necessary school buildings by purchase, lease or contract, consolidate schools and redistrict school boundaries or adopt pupil assignment plans for efficiency, determine the studies and methods of teaching and governance in the schools, adopt grievance procedures, and various other duties sown sometimes vexingly throughout Title 22.1.[13] The statutorily prescribed functions and tasks of a school board include both the educationally substantive[14] and the procedurally tedious,[15] and range from those focused on essential instructional achievement matters[16] to those focused on what might be considered peripheral, if not extraneous, kinds of things.[17]

Early Virginia Supreme Court Decisions

As early as the 1920s, the Virginia Supreme Court began to give voice to the principle of deference owed to a Virginia school board. The Supreme Court, in a case that somewhat pitted parental authority against school disciplinary rules in much simpler times, had occasion to offer comments on the place of the legislature and of a school board in the Virginia legal structure for public education:[18]

> [T]he Acts [of the General Assembly] conferred upon the . . . school board the power to make local regulations for the conduct of the schools and the proper discipline of students. This power, however, was to be exercised in connection with, and not paramount to, the general provisions of the Code relative to the operation of the public schools. Pursuant to this grant of authority, the . . . school board made the regulation complained of.
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> While the Constitution of the State provides in mandatory terms that the legislature shall establish and maintain public free schools, there is neither mandate nor inhibition in the provisions, as to the regulation thereof. The legislature, therefore, has the power to enact any legislation in regard to the conduct, control, regulation of the public free schools which does not deny to the citizen the constitutional right to enjoy life and liberty, to pursue happiness and to acquire property.
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> In the conduct of the public schools it is essential that power be vested in some legalized agency in order to maintain discipline and promote efficiency. In considering the exercise of this power, the courts are not concerned with the wisdom or unwisdom of the act done. The only concern of the court is the reasonableness of the regulation promulgated. To hold otherwise would be to substitute judicial opinion for the legislative will.

Flory v. Smith, 145 Va. 164, 168, 134 S.E. 360, 362 (1926).

In 1933, the Virginia Supreme Court squarely addressed the role and authority of a school board under the constitutional grant that reposes in the school board—and only the school board—the authority to supervise the schools. The General Assembly of Virginia had undertaken statutorily to mandate that the Carroll County Board of Supervisors make a special levy for erecting and equipping a high school. The Carroll County School Board joined with the Carroll County Board of Supervisors initially to defend an attack against the locally enacted tax levy intended to benefit the school division. When the Board of Supervisors chose not to prosecute the appeal to the Virginia Supreme Court, a taxpayer challenged the continuation of the appeal given the absence of the taxing authority. In what is one of the early, if not the earliest, pronouncements by the Virginia Supreme Court on a school board's special role, the Court discussed the import of the predecessor provision to what is now § 7 of Article VIII of the Virginia Constitution. Implicitly leveraging the interplay of the "supervision" declaration of the Constitution and the provisions of the Virginia Code, the Court began to acknowledge a school board's power:

> Section 133 of the Constitution provides for the creation of a school board for each county and city, vested with the supervision of the public schools within their several jurisdictions, to be selected in the manner prescribed by law. . . . Among the manifold powers and duties prescribed by the statutes on the subject, the county school board is vested with the exclusive control of all school property in the county, both real and personal, has authority to condemn land for and erect school houses, employ teachers, and to incur other expenses incidental to the proper operation and administration of the public schools of the county. Under [several statutory provisions], the school board alone is vested with the use and control of all school funds . . . and has the exclusive authority to expend funds set apart for school purposes. . . . [T]he county school board is also given authority to employ counsel,

> and . . . whenever such action may be necessary "for the protection of the public schools of the county from loss or detriment from any cause". . . . [W]e see no good reason why the . . . school board of Carroll county should be denied the right of appeal in this case . . . . *Under the law the school board not only has the authority, but it is its duty, to protect the school revenues by proper legal action, whenever threatened with loss or detriment from any cause*.

Sch. Bd. v. Shockley, 160 Va. 405, 409, 168 S.E. 419, 421 (1933) (emphasis added).

In reaching the underlying merits on the tax levies, the Supreme Court remarked that "[m]anifestly, it was not contemplated by the framers of the Constitution to permit the legislature to nullify the powers and discretion thereby conferred upon the local authorities of the several counties *and school districts* of the State, as is attempted to be done by the act under consideration." *Id.* at 415, 168 S.E. at 423 (emphasis added). From *Shockley*, the Court begins to establish the doctrinal development of a school board's unique grounding in the Constitution of Virginia and the exclusive prerogatives that grow from that grounding.

The Virginia Supreme Court found itself having squarely to address a school board's constitutional authority a decade later in a Chesterfield County clash—over, imagine it, money. Helping us remember that some things do not change that much in local government dynamics, the Chesterfield County Board of Supervisors tried to dictate the division superintendent's salary contrary to the school board's own budgetary choice. "The Board of Supervisors reduced this item" and after this amount had been expended for this purpose, the Treasurer refused to honor the warrants of the School Board, with the result that the Superintendent only received a smaller local salary supplement. *Board of Supervisors v. County School Board*, 182 Va. 266, 268, 28 S.E.2d 698, 699 (1944). Adopting *in toto* the "excellent opinion of the learned trial judge" while referencing its 1933 *Shockley* decision, the Virginia Supreme Court specifically recognized what it regarded as the exclusive grant of Section 133 of the Virginia Constitution and embraced the following conclusions:

> [T]he Constitution of Virginia and the statutes of the State clearly set up the school board as an independent local agency charged by law with establishing, maintaining and operating "an efficient system of public free schools." It would be illogical to make the School Board solely responsible for the efficient conduct of the school system, and then give another board control over expenditures to be made by the School Board. The school boards, because of the duties placed upon them by law, know accurately its personnel, its mode and manner of operation and the importance of the various parts of the system. This information, the board of supervisors do not have. If the board of supervisors has control of the various items of the budget, it could exercise a large amount of control over the operation of the school system, and there would be a serious division of authority, which it would not seem the legislature would have intended.
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> . . .
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> It is noted from these constitutional provisions [including Section 133] that the local school authorities, which is the school board, is to apportion and expend this money, and that all the supervisors have to do with it is to lay the levy . . . .
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> . . .
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> [T]he board of supervisors has the right, within the limits prescribed by law, in their discretion, to fix the amount of money to be raised by local taxation for school purposes at whatever amount they see fit, but they are concerned only with the total amount of tax to be levied, and not with the individual items of the school budget, except in so far as it helps them to determine the total amount of the tax to be levied. After the board of supervisors have appropriated money for schools, the exclusive right to determine how this money shall be spend is in the discretion of

> the school board, so long as they stay within the limits set up in the budget.

Id. at 275-78, 28 S.E.2d at 702-03.[19]

Thirteen years later, the Virginia Supreme Court had to decide yet another intergovernmental local dispute in Fluvanna County. This time the contest involved control of bond proceeds. In *County School Board v. Farrar*, 199 Va. 427, 100 S.E.2d 26 (1957), "the question presented [was] whether the School Board, or the Board of Supervisors of Fluvanna county, has the authority to disburse $750,000, the proceeds from the sale of bonds for school construction and improvement." *Id.* at 238, 100 S.E.2d at 27. After being advised by the Attorney General that it had that authority, the School Board accepted a construction bid and later went to pay a contractor for a $24 invoice. The Fluvanna treasurer refused to honor the school board's warrant. A $24 invoice then became the impetus for seeking a writ of mandamus against the treasurer—a big fight over a big principle notwithstanding the small expenditure. Reciting once again that "Section 133 of the Constitution provides that supervision of schools in each county shall be vested in a school board," and noting that statutorily a school board has the "powers and duties" to erect and furnish and equip school facilities, the Supreme Court concluded that "[t]he Board of Supervisors has no authority either to expend such proceeds or to prohibit the School Board from expending the same for a legitimate and proper purpose." *Id.* at 432-33, 100 S.E.2d at 30.

In the cases ahead for the Virginia Supreme Court, legal and political events brought added opportunity to outline the reach of a school board's authority in other contexts particularly as to the Governor and General Assembly. This time, the legal battle into which it became drawn involved the so-called "massive resistance" of Virginia to judicially mandated racial integration of the public schools in the aftermath of the U.S. Supreme Court's *Brown* decision in 1954. For anyone anticipating a contest today over the reach of a Virginia school board's authority, the "massive resistance" cases—both state and federal—are not only historically but legally important and instructive in any effort to synthesize the law and appreciate the deeply rooted source of authority.

The Massive Resistance Era: A Trilogy of Surprise—Perhaps

Professor Howard, in his two-volume *Commentaries on the Constitution of Virginia*, helps us remember and grasp what Virginia's education system—and the courts—experienced following the U.S. Supreme Court's *Brown v. Board of Education* decision:

> In 1954 the United States Supreme Court held racial segregation in public schools to be "inherently unequal" and hence in violation of the Fourteenth Amendment. The aftermath of that decision was a crisis in public education in Virginia. In its effort to avoid or soften the impact of racial mixing in the schools, the General Assembly enacted "massive resistance" legislation, then later turned to a "freedom of choice" plan. These moves raised serious questions under both the Federal and Virginia Constitutions and provoked litigation in both federal and state courts . . . . The schools . . . were subsequently reopened by a ruling of the United States Supreme Court.

Commentaries at 883.

J. Harvie Wilkinson, III, now a long-serving and esteemed U.S. Fourth Circuit judge, describes the circumstances in this way in his fascinating book on the Commonwealth's politics during 1945-1966:

> In the spring of 1954 . . . a new issue appeared on the horizon which was to retrieve the fortunes of the Byrd organization. The issue was school desegregation, and under the banner of 'massive resistance' the Byrd machine quickly refueled its sputtering engines.
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> . . .
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> Massive resistance was truly Virginia's issue of the century. The profound changes hinging on its outcome should not obscure the human crises which enveloped its major participants.

> Caught between disbelief and circumstance, political leaders faced anguished decisions.

J. Harvie Wilkinson, III, *Harry Byrd and the Changing Face of Virginia Politics* 112-13 (1968). [20]

It also enveloped those in the legal community and brought the Virginia Supreme Court into the currents of political, social, and judicial controversy, producing decisional authority that continues to be cited by school boards today as they encounter legal conflict over institutional boundaries and prerogatives under state law. Three cases offer lessons—and leave unanswered questions—about how those decisions will be applied even now to recently enacted legislation that has the Commonwealth, yet once more for wholly different reasons, seeking to intervene boldly into local public education. The trilogy of cases— *DeFebio v. Cnty. Sch. Bd.*, 199 Va. 511, 100 S.E.2d 760 (1957); *Harrison v. Day*, 200 Va. 764, 106 S.E.2d 636 (1959); and *Cnty. Sch. Bd. v. Griffin*, 204 Va. 650, 133 S.E.2d 565 (1963)—collectively help tell the story of state and local governments in stress and distress during massive resistance,[21] with plenty of opportunity for conflict that leads to the courthouse.

DeFebio v. County School Board brought to the Virginia Supreme Court a challenge by Fairfax County parents to the statutory creation of the Pupil Placement Board—one of the schemes to avoid the effects of the *Brown* rulings. The Pupil Placement Board had as its aim to freeze any child in the school then attended absent contrary action by the Pupil Placement Board. *Commentaries* at 891. The Virginia Supreme Court rejected the parent's argument that the statewide Pupil Place Board violated the Virginia's Constitution's Section 133 vesting of exclusive supervisory control in the local school board. In rebuffing the parent's contention, the Virginia Supreme Court seemed emphatic in its sweeping conclusions:

> The legislature functions under no grant of power. It is the supreme law making body of the Commonwealth, and has the inherent power to enact any law not in conflict with, or prohibited by, the State or Federal Constitutions. Section 133 [now § 7 of Article VIII] of the Virginia Constitution, while vesting "supervision" of public schools in local school boards, does not define the power and duties involved in that supervision. The general power to supervise does not necessarily include the right to designate the individuals over whom supervision is to be exercised. If the legislature deems it advisable to vest the power of enrollment or placement of pupils in an authority other than the local school boards, it may do so without depriving such local school boards of any express or implied constitutional power of supervision.

199 Va. 511, 512-13, 100 S.E.2d 760, 762 (1957).

In hindsight, it is worth pondering what, if anything different, would have unfolded, unlike in *DeFebio*, if the school board had joined the attack on the Pupil Placement Board law and been a challenger rather than a defender.

Yet, just two years later, several other related legislative enactments also got tested in the state courts even as parallel federal litigation ensued over desegregation and the resistance to it. In the words of the Virginia Supreme Court in *Harrison v. Day*, "[i]t will be observed that the stated purpose of the plan embodied in these acts is to prevent the enrollment and instruction of white and colored children in the same public schools. To that end, all . . . public schools in which both white and colored children are enrolled are, upon the happening of the event, automatically closed, removed from the public school system, and place under the control of the Governor." 200 Va. 439, 441-43, 106 S.E.2d 636, 639-42 (1959). At that time, Section 140 of the Virginia Constitution provided that "White and colored children shall not be taught in the same school." *See id.* at 444, 106 S.E.2d at 642. In *Harrison*, a majority of the Virginia Supreme Court decided to spurn the Virginia Attorney General's argument that "the General Assembly now has plenary power to deal with the public free school system in any manner it may deem fit, unfettered by any requirements of, or

limitations in, the Constitution of Virginia." *Id.* at 446, 106 S.E.2d at 643. As to school boards' constitutional authority, speaking through Chief Justice Eggleston, the Court determined:

> Again, [the Act] . . . providing for the closing of schools because of integration, divesting local authorities of all power and control over them, and vesting such authority in the Governor, violates Section 133 of the Constitution which vests the supervision of local schools in the local school boards [(citing *School Board v. Shockley*)] . . . .
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> Similarly, the [other] Act . . . providing for the establishment and operation of a State school system to be administered by the Governor and under the supervision of the State Board of Education, violates Section 133.
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> . . .
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> While we agree that the State, under its police power, has the right under these conditions to direct the temporary closing of a school, the provision divesting local authorities of their control and vesting such authority in the Governor runs counter Section 133 of the Constitution.

Id. at 452, 106 S.E.2d at 646-47.

The concluding case of the massive-resistance era state court trilogy is as much remarkable for the Virginia Supreme Court's curious reasoning as it is for the outcome. In *County School Board v. Griffin*, "the Supreme Court . . . held that the General Assembly was under no obligation to see that schools closed by a county were reopened—despite the seemingly clear language of section 129 that the General Assembly must 'establish and maintain an efficient system of free public schools throughout the State.'" *Commentaries* at 883. In its opinion, the Court remarked that:

> The Board of Education, the Superintendent of Public Instruction and the local school boards are, as we held in *Kellam v. School Board*,[22] . . . agencies of the State in the performance of their duties, but the State has committed to them by its Constitution and laws no duty, no power and no means to operate the public free schools apart from the will of the people of the localities as expressed by the local governing bodies.
>
> The General Assembly may determine for itself what is an "efficient system" of public free schools so long as it does not impair or disregard constitutional requirements [(citing *Harrison v. Day*)] . . . .

Griffin, 204 Va. at 667, 133 S.E.2d at 577.

What curious reasoning, indeed, perhaps especially in light of its own collective precedent and the seemingly overarching constitutional principles to which it ostensibly subscribed in *Shockley*, *Harrison*, and *Farrar*. Yet, it may be that the Virginia Supreme Court partly worried that, within the ambivalent framework of then existing constitutional language about state and local governments' obligations, the Commonwealth otherwise would have had to bear the entire cost of public education when a locality is unwilling to pay its share. Chief Justice Eggleston, who authored the majority opinion in *Harrison v. Day*, acknowledged as much and yet still pointed out that there existed the constitutional duty of the State to "maintain" the system, [23] and the Report of the Commission on Constitutional Revision in 1969 harkened to these considerations when it recommended a constitutional mandate of state and local funding. *Report on the Commission of Constitutional Revision* 258-59 (1969). In his dissent in *Griffin*, Chief Justice Eggleston foreshadowed what was to come:

> The refusal of the highest court of this State to recognize here the rights of the citizens of Prince Edward county, guaranteed to them under the Constitution of the United States, is a clear invitation to the federal courts to step in and enforce such rights. I am sure that that invitation will be promptly accepted. We shall see!

204 Va. at 677, 133 S.E.2d at 584. And Virginia did.

The Federal Courts Recognize School Boards' Authority

In Virginia, "Prince Edward County . . . was one of the

localities involved in the four cases that, as consolidated, were decided as *Brown v. Board of Education* in 1954." *Commentaries* at 893. While the General Assembly of Virginia ultimately abandoned the school closing legislation and, instead, "enacted new tuition grant and pupil placement programs[,] [i]t also repealed Virginia's compulsory attendance laws and . . . made school attendance a matter of local option." *Id*. As Professor Howard highlights, "[m]eanwhile the Prince Edward suit dragged on. In 1959, the . . . Fourth Circuit directed the federal district court to enjoin discriminatory practices and to require the school board to take immediate steps toward desegregation of the county schools." *Id*. In the context of Virginia's response to *Brown*, while the Virginia Supreme Court's *Harrison v. Day* is remarkable in some sense, the federal courts get credit for opening the public schools not only in Prince Edward County but also in Norfolk and other localities. In *James v. Duckworth*, 170 F. Supp. 342, 343 (E.D. Va. 1959), Judge Hoffman recounted that "[t]his is another chapter involving the legal skirmishes confronting this and appellate courts following . . . *Brown* . . . ." Aside from the obvious result, Judge Hoffman's decision reiterated that the school board's authority had been usurped by the city council in preventing the opening of Norfolk schools; and, after citing the Virginia Supreme Court's *Board of Supervisors v. Chesterfield County School Board* and *Harrison v. Day* decisions, concluded that "Council's action . . . will deprive the School Board of its rights, powers, duties and obligations . . . ." *Id*. at 351. Several years later, in a continuation of extensive desegregation litigation,[24] the Fourth Circuit Court of Appeals put it even more cogently:

> The power to operate, maintain and supervise public schools in Virginia is, *and has always been*, within the *exclusive jurisdiction of the local school boards* and not within the jurisdiction of the State Board of Education . . . . Indeed, the operation of public schools [prior to the 1971 Constitution] has been a matter of local option.

Bradley v. Sch. Bd., 462 F.2d 1058, 1067 (4th Cir. 1962) (emphasis added). [25]

Even more recently, albeit in a different context, the Fourth Circuit also noted that "Virginia law vests the School Board with exclusive authority over Richmond's public schools," citing § 7 of Article VIII of the Virginia Constitution and quoting *Bradley v. School Board*. *Bacon v. City of Richmond*, 475 F.3d 633, 641-642 (4th Cir. 2007). The Fourth Circuit underscored that

> [l]ocal control over the operation of public schools is one of our nation's most deeply rooted traditions—and for good reason. "[L]ocal autonomy has long been thought essential" . . . [and] [s]chool authorities are granted substantial authority to formulate educational policy because they must balance so many competing interests. They are more in tune with educational exigencies . . . than are federal courts. Thus, even where appropriate, "[r]emedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary."
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> . . .
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> In the case at hand . . . the separate corporate bodies established by Virginia law are no subterfuge; they were not intended to circumvent any federally created right. To the contrary, Virginia's longstanding division of authority serves legitimate state purposes . . . . [P]laintiffs' invitation to blur the lines of educational authority must be declined.

Id. at 641-42. [26]

Alleghany County Decision Adds Force

Squeezed chronologically between the trilogy of Virginia massive resistance cases and later case developments, the Virginia Supreme Court rested its *Howard v. County School Board of Alleghany County*, 203 Va. 55, 122 S.E.2d 891 (1961), decision again on the Virginia Constitution in resolving what was presented as a property control dispute. This time, the contest originated with a group of Alleghany County citizens who sought a referendum, sanctioned by a Virginia statute, to determine that a recently acquired property by the school board was no

longer needed. As the Virginia Supreme Court summarized the situation, "[t]he present proceeding is a further attempt of [the citizens] to thwart the purpose of the [school board] to construct the high school building on the site and thus devote the property to the use for which it was acquired." *Id.* at 56, 122 at 893. The school board decided to intervene in the proceedings instituted by the citizen group to obtain a court-ordered referendum. Once more, adding deeper roots to earlier decisions and more branches to the case law, the Virginia Supreme Court rested on a central constitutional principle under the predecessor to now §7 of Article VIII:

> We agree with the position of the Board that this statute violates § 133 of the Constitution of Virginia and is invalid.
>
> . . .
>
> In plain language § 133 vests in the local school board, as the agency of the State, the "supervision of schools." *Harrison v. Day*, . . . *Kellam v. Sch. Bd.* In such supervision, it is an *essential function* of the local school board to determine whether a particular property is needed for school purposes and the manner in which it shall be used. Yet the effect of the statute under review is to divest the board of the exercise of that function and lodge it in the electorate . . . . Moreover, by virtue of the statute, the board may be divested of all school property, even though devoted to a present use, by an electorate that may disagree with its policies. Clearly the board cannot properly exercise "supervision" of schools entrusted to it if it may thus be divested of property which in its judgment is being used or should be used for school purposes.

Id. at 58-59, 122 S.E.2d at 893-94.

Distinguishing its 1957 decision in *DeFebio*, which sanctioned the legality of a central Pupil Placement Board to direct pupil assignment in the local schools, the Virginia Supreme Court held "that the statute under consideration is unconstitutional and void . . . ." *Id.* at 60, 122 S.E.2d at 895.

Arlington County and Parham Cases—Doctrinal Coherence?

Following *Howard*'s constitutional contest, in the 1970s the constitutional authority of school boards got play before the Virginia Supreme Court in two cases that both involved personnel matters: one from the City of Richmond and one from the County of Arlington. Both decisions, with little more than a year between them, involved disputes primarily over school board decision making authority and the delegation of it. In each scenario, under prescribed procedures, employment disputes were to be decided to some degree by a third party—a kind of binding arbitration.

In *Commonwealth v. County Board of Arlington County*, 217 Va. 558, 232 S.E.2d 30 (1977), the Attorney General of Virginia challenged a collaborative, coordinated effort by the Arlington County Board of Supervisors and the Arlington County School Board to adopt policies that authorized entering into collective bargaining agreements with various labor unions as the sole representatives of different groups of Arlington public employees and a form of dispute arbitration. *Id.* at 559, 232 S.E.2d at 32. Invoking the Dillon Rule[27] and acknowledging analytical tension with the mode-and-manner argument in response by the school board especially within its Article VIII, § 7 implied powers, the Supreme Court of Virginia could not be persuaded. It rejected the school board's and the board of supervisor's arguments that either had the constitutional power to enter into such collective bargaining agreements. In doing so, beyond emphasizing the lack of support in Virginia public policy for collective bargaining with public employees, *id.* at 581, 232 S.E.2d at 44, the Court latched on to analytical criterion that there could not be a "legitimate claim" that "the [implied] power to enter into collective bargaining agreements is *indispensable* to the discharge of the [constitutional] functions of the School Board," *id.* at 576, 232 S.E.2d at 41-42 (emphasis added). The Supreme Court cites no legal authority for its use of the "indispensable" criterion—and offers no doctrinal factors to distinguish between what is "indispensable" or not. What may have been the

pivotal motivation for the Supreme Court was the specter of local public employee bargaining and Virginia's historical public policy about it—in its own words, the "overwhelming indications of legislative intent" not (yet) to embrace it generally. *Id.* at 581, 232 S.E.2d at 44. From one vantage point, the Supreme Court gives every hint that its decision allowed a judicial sense of public policy—buttressed merely by cited advisory opinions of the Virginia Attorney General—to trump the Virginia Constitution and its Article VIII, § 7 mandate. In the telling words of the Court near the end of its opinion, "we decline to intrude upon what the Attorney General succinctly describes as a 'singularly political question.'" *Id.* Instead, from the vantage point of the Arlington County School Board, the Court intruded upon the local constitutional authority to run the schools.

In the other case, *School Board v. Parham*, 218 Va. 950, 243 S.E.2d 468 (1978), the Virginia Board of Education had imposed on the Commonwealth's school boards a grievance procedure that ultimately required the submission of a covered employment dispute to binding arbitration. The arbitration panel consisted initially of two partisans: one selected by the school board and one selected by the employee. If the two partisans failed in resolving the dispute, they would choose a third member to comprise a three-member panel. The panel purportedly also had authority to decides questions of grievability of particular disputes. The Richmond School Board rightly advanced the argument that such a scheme violated the Virginia Constitution's Article VIII, § 7 provision exclusively vesting supervision of the schools in local school boards. In this instance, again speaking through Justice Carrico as in the *Arlington* case, the Court framed the "real question in the case" as "whether the binding arbitration provision of the Procedure produces an unlawful delegation of power." *Id.* at 956. 243 S.E.2d at 472. Drawing from "essential function" language in its *Howard* case that refused to allow a state referendum statute to strip a school board of control over property, the Court found the grievance binding arbitration provision to have the "same effect" to "transfer to others a function *essential and indispensable* to the exercise of the power of supervision vested by § 7 of Article VIII." *Id.* at 957, 243 S.E.2d at 472 (emphasis added). Now, the extant constitutional § 7 doctrinal test ostensibly employs a new phrase: not only "indispensable" but also "essential"—whatever that means, if different from just "indispensable." The court concluded "that the binding arbitration provision of the Procedure produces an unlawful delegation of power, violative of § 7 of Article VIII of the Constitution." *Id.* at 959, 243 S.E.2d at 473.

More Recent School Board Wins

Two more modern-day decisions and language used by the Virginia Supreme Court strongly suggest a renewed recognition of the unique constitutional grant of power to school boards. Yet, the Court's decisions still leave questions about coherent consistency in doctrine. Those representing school boards, however, should find comfort in both decisions. In the process of analysis that emphasizes the Article VIII, § 7 mandate, the Court strengthens even more the grounding for Virginia school board's exclusive prerogatives that are part of the meaning of "supervision"—and the full exercise of it.

After the Supreme Court in *Parham* had invalidated the binding arbitration provision of the Virginia Board of Education's grievance procedure, the General Assembly enacted statutes which authorized the Board of Education to prescribe an optional, advisory three-member fact-finding panel process in employment disputes. After conducting a hearing, the panel would submit a report and recommendation to the school board. The Virginia Supreme Court's decision in *Russell County School Board v. Anderson*, 238 Va. 372, 384 S.E.2d 598 (1989), aside from its interesting facts about the teacher's alleged conduct, brought to the fore whether the panel's findings carried special weight. The circuit court had concluded that the panel's fact findings must be accorded the weight given jury verdicts. *Id.*

at 379, 384 S.E.2d at 600-02. Reversing the circuit court and citing its precedent, the Virginia Supreme Court made plain with emphatic language that:

> [T]his case presents a clash between the finality of the findings of a statutorily created panel and a school board's power to discharge employees—a power which is *rooted in the Constitution of Virginia*. Va. Const. art. VIII, § 7. No statutory enactment can permissibly take away from a local school board its *fundamental* power to supervise its school system. *See Howard v. County School Bd.*, 203 Va. 55, 58-59, 122 S.E.2d 891, 895 (1961) (unconstitutional to divest school board of authority to decide when school property could be put up for sale); *Harrison v. Day*, 200 Va. 439, 452, 106 S.E.2d 636, 646 (1959) (unconstitutional to attempt, by statute, to divest local school board of authority to run schools); *County School Board v. Farrar*, 199 Va. 427, 433, 100 S.E.2d 26, 30 (1957) (county board of supervisors lacked power to expend proceeds of school construction bonds or to prohibit school board from expending such funds for legitimate and lawful purpose).
>
> . . .
>
> In *School Board v. Parham* . . . , we struck down a provision which sought to make local school boards subject to binding arbitration . . . . In *Parham*, we wrote that "the function of applying local policies, rules, and regulations, adopted for the management of a teaching staff, is a function essential and indispensable to exercise of the power of supervision vested by § 7 of Article VIII." . . . If, as the trial court believed, the findings of the statutory panel bind the Board, the statute may be constitutionally infirm; but we think that a proper reading of the statute—which we undertake below—obviates any constitutional concern.
>
> . . .
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> Thus, from a statutory standpoint, the situation is one in which the statute was written in the shadow of the Constitutional provision concerning school boards and *in the shadow of our cases giving full effect to that provision.* Neither the statutory provision concerning panels, nor the one concerning school-board review of panel decisions, states or suggests that panel fact findings shall be binding on a school board.
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> . . .
>
> We hold, therefore, that the Board was empowered to redetermine the facts where it deemed it appropriate to do so. It follows then . . . that the trial court erred in ruling that the Board was not free to conclude that class projects involving premarital sex, inter-racial violence, fascism, Molotov cocktails, and other controversial subjects were inappropriate for a seventh grade class.

Id. at 383-85, 384 S.E.2d at 604-06 (emphasis added).

Twenty years later, in 2009, the Virginia Supreme Court had yet another potential clash between an enactment of the General Assembly and a school board's constitutional supervisory role even as it pitted a circuit court's authority against that of a school board. The school board's view prevailed, again. In *Commonwealth v. Doe*, 278 Va. 223, 682 S.E.2d 906 (2009), a Virginia statute allowed a sexually violent offender to seek permission to be somewhere he knows or has reason to know is a place where he is statutorily prohibited: a day care center or private or public school property during school-related and school-sponsored activities. Aside from several narrow exceptions stated in the statute, such a person must follow a procedure to give notice to the Commonwealth Attorney and the school administrator, and the offender must petition a juvenile and domestic relations district court or a circuit court for permission. The statute, as written at that time, included no mention of obtaining the permission of the division superintendent or school administrator. The circuit court granted permission over the objection of the Charlottesville Commonwealth Attorney and the Division Superintendent of Charlottesville Public Schools. On appeal, they contended that the circuit court applied the statuto-

ry provisions in a manner that violated Article VIII, § 7 of the Virginia Constitution. Writing for the Supreme Court, then Justice Keenan[28] emphasized that in construing statutes, the starting point is the principle that courts have a duty to avoid any conflict with the Virginia Constitution, whenever possible. In its review, through Justice Keenan, the Supreme Court observed that the offender's construction of the statutory permission language would "eliminate the school boards' authority to determine whether the presence of such an offender would adversely affect the safety and welfare of students on school property." *Doe*, 278 Va. at 230, 682 S.E.2d at 909. Without any reference to "essential" or "indispensable" or "fundamental," the Court readily, without citation to any authority, declared that "[s]uch decisions regarding the safety and welfare of students are *manifestly* a part of the supervisory authority granted the school boards under Article VIII." *Id.* (emphasis added). Rejecting the offender's argument that various other statutes directly or indirectly affect or restrict the supervisory authority of school boards, the Court summarized its determination in this manner:

> We agree with the Commonwealth's construction of the statute because this interpretation permits the school board to exercise fully its supervisory authority under Article VIII, while preserving the circuit courts' authority to determine whether the statutory ban should be lifted in whole or in part based on the particular circumstances of a given offender. This construction assures the constitutionality of the statute and preserves the sound legislative purpose of involving both the courts and the affected day care and school authorities in these decisions of *manifest* public importance.

Id. at 232, 682 S.E.2d at 910 (emphasis added).

The *Doe* decision now introduced yet another word in the judicial description of a school board's constitutional interest and related power: *manifestly*. At the same time, it also provided school boards with even more persuasive precedent that they are entitled under the Constitution to "exercise fully" their constitutional prerogatives. *Doe* reassured Virginia school boards that judges could not preempt the role of school boards in school safety matters.

The OEI Litigation: New or Familiar Ground?

Just recently, the issue of a school board's constitutional role has been raised in the context of a new, bold initiative by the Commonwealth. Referred to as "OEI," a shorthand moniker for Opportunity Education Institution, the 2013 General Assembly enacted this 2013 legislation—touted by the Governor—as a way to address what some might describe as students trapped in academically failing public schools. The Virginia School Boards Association (VSBA) and the City of Norfolk School Board have attacked the new law, filing a complaint for declaratory judgment, injunctive and other relief in the Norfolk Circuit Court. *Sch. Bd. v. Opportunity Educ. Inst.*, No. CL13006955-00 (Va. Cir. filed Sept. 13, 2013) (hereafter, "Complaint").

Under the OEI law, a part of the package of the Governor's so-called "ALL STUDENTS" initiative,[29] an OEI board is statutorily created to intervene and assume "[s]upervision of any school that has been accredited with warning for three consecutive years" by "transfer [of] such school to the Institution." Va. Code § 22.1-27.2(B). The legislative scheme also purports to empower the OEI board to "supervise and operate schools in the Opportunity Educational Institution in whatever manner that it determines to be most likely to achieve full accreditation for each school in the Institution, including the utilization of charter schools and college partnership schools." Va. Code § 22.1-27.2(C). Per pupil funding for any student "under the supervision of the Institution" is "transferred to the Institution." Va. Code § 22.1-27.5(A). The legislation has other bold features, including those that can impact personnel. *See, e.g.*, Va. Code § 22.1-27.4.

In its complaint, the Norfolk School Board and the VSBA contend that the OEI law is unconstitutional because it allegedly purports "to establish a statewide school division,

contrary to Article VIII, § 5" and purports "to create a school division that is supervised by the OEI Board" that is "contrary to Article VIII, § 7" of the Virginia Constitution. Complaint at ¶¶ 33-34, No doubt, the resolution of these contentions will involve arguments that employ prior opinions of the Virginia Supreme Court. On the school plaintiffs' side, *Shockley*, *Chesterfield*, *Harrison*, *Farrar*, *Howard*, *Parham*, and *Anderson* will likely be cited. On the OEI board side, the courts can expect to hear about the preeminence of the Legislature and much about *DeFebio* and *Arlington County*, among other authorities. It may be that *DeFebio*—with its seemingly emphatic, broad language about "[t]he general power to supervise . . . not necessarily includ[ing] the right to designate the individuals over whom supervision is to be exercised"—may prove most interesting. 199 Va. at 512, 100 S.E.2d at 761-62. Perhaps, if the litigation reaches the Virginia Supreme Court, the case will offer an opportunity for the Court to synthesize and harmonize in a more doctrinally coherent manner the analysis that should be used to determine a school board's claim of constitutional power or encroachment. Lower courts and the Bar can only hope, so there might be even more predictability and consistency. Looking at the overall precedential record of wins over almost a hundred years, the OEI litigation portends to be a significant constitutional contest—if it gets beyond potential threshold issues over jurisdiction, ripeness, standing, and even "political questions." *See Comm. v. Cnty. Bd.*, 217 Va. 558, 581, 232 S.E.2d 30, 44 (1977).

Some Legal, Strategic and Tactical Questions

At some point, whether in the OEI litigation or in another legal contest,[30] a fundamental question needs to be asked and answered. That question is whether, as suggested by *DeFebio*, the General Assembly has preeminence and may define—however it prefers—the meaning of "supervision" under § 7 of Article VIII:

- Put perhaps another way, is § 7 of Article VIII self-executing,[31] as more recent opinions of the Virginia Supreme Court would implicitly suggest without directly confronting the issue?[32]
- Also, as to those situations in which the General Assembly has not spoken about the boundaries or contours of the exclusive power of "supervision," what analytical criteria or factors should be determinative in the courts?
- Will it be a test that turns on "indispensable" or "essential"—or "indispensable *and* essential," as fashioned and described by the judicial branch?
- Or will the constitutional power under Article VIII, § 7, simply be "manifest"—again, according to the judiciary?
- Should some other doctrine—a rule or standard—be utilized that reflects the "deeply rooted tradition" of local educational control; that acknowledges the tenuousness of courts, in effect, presuming to be in the business of second-guessing what is "supervision" as school boards undertake their democratic decision-making in governance and operational challenges in a modern day world; that recognizes the business of public education today as complex and big with dynamic tensions in an arguably litigious environment for school boards; and that demonstrates the judiciary's ultimate deference to a vital local government institution of a self-governed people who, in an overwhelming number of Virginia localities, now have the power to elect directly their school board members?[33]
- Or, using its own language in *Arlington County*, might the Court in the OEI or other future litigation assert that "conscious of the respective roles of the General Assembly and the judiciary, we decline to intrude upon what the Attorney General succinctly describes as a 'singularly political question'"?[34] And if so, what is the potential mischief of the Virginia Supreme Court determining that its sense of public policy trumps the Virginia Constitution, as

might be seen as occurring in *Arlington County*?

On the strategic and tactical levels, before contemplating any litigation by a school board against another public body, school board counsel will want to be sure that either the governing body consent statute does not apply or the requirements have been met.[35] Also, as to any school board legal contest with its county governing body, careful analysis is merited on whether, perhaps, a claim must first be presented to the county?[36] Just as importantly, counsel will need to keep in mind the nature and context of the dispute.[37] The Virginia Supreme Court has shown notable deference to school boards regarding personnel decisions,[38] property disposition,[39] student matters,[40] and considerations of safety.[41] Any counsel considering litigation, as well, needs to assess legally whether an "actual controversy" exists sufficient to establish a court's jurisdiction, including the possibility of a declaratory judgment proceeding.[42] Also in a strategic sense, when a Virginia circuit court or a juvenile court[43] seeks to interpose its authority so as to impinge on a school board's constitutional powers, is it the right scenario for an appellate challenge? And will that challenge from a circuit court, if it involves adverse injunctive relief, merit immediate tactical interlocutory recourse to the Virginia Supreme Court (or possibly the Virginia Court of Appeals) through the special avenue afforded statutorily? Va. Code § 8.01-626.[44]

Yet another tactical consideration for local government and other counsel is the value and advantage, if any, of any formal opinion of the Virginia Attorney General, either marshaling it as an historical reference on an issue or seeking on the immediate issue within a particular context. Such opinions addressing a school board's constitutional authority, like any other Attorney General opinion, are merely advisory, and the Virginia Supreme Court need not give them much or any weight.[45] Moreover, sometimes the Attorney General misses the mark,[46] although recent opinions seem to suggest a consistent recognition of a Virginia school board's unique constitutional authority described in ways favorable to school boards.[47]

In the representation of a school board by an attorney who also has an attorney-client relationship with another governmental body in a potential dispute, matters of conflict of interest should be identified early and transparently with candor as both a tactical and ethical concern. The prospect of divergent legal positions, especially as they might manifest themselves ultimately in litigation, should be a sobering consideration for any counsel serving in dual roles and desiring to comply with the Rules of Professional Conduct.[48] While dual representation can work and can have its advantages in general, the perception of directly competing loyalties, particularly on sensitive inter-government relationship issues, can undermine the confidence in the independence of legal counsel that is not easily repaired.[49]

Conclusion

The Virginia Supreme Court's jurisprudence on Article VIII, § 7, and its predecessor provision may leave some questions about doctrinal coherence.[50] Nonetheless, Virginia's school boards may make rightful claim to considerable preeminence, with citation to those Virginia Supreme Court decisions that give full effect to the deeply rooted, long shadow of the boards' manifest constitutional power. For Virginia school boards, they might even be tempted to say—in a positively candid moment — that "it is a heck of a [pretty good] way to run a Constitution." Yes, perhaps, indeed.

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[1] Obituaries, *D. Dortch Warriner*, N.Y. TIMES (March 17, 1986), *available at* http://www.nytimes.com/1986/03/18/obituaries/d-dortch-warriner.html. Judge Warriner began his tenure on the federal bench in 1974, following service as Emporia's City Attorney and his and selection by President Nixon. *Id.*

[2] "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." *Id.* at 495. *See generally History of Brown v. Board of Education*, U.S.

COURTS, http://www.uscourts.gov/educational-resources/get-involved/federal-court-activities/brown-board-education-re-enactment/history.aspx.

[3] In a school personnel case, Judge Warriner also illustrated his plain-spoken ways and gave a reminder about his view on the role of the court: "This is a court of limited jurisdiction having no authority to right all wrongs or to rectify errors. Where there is no substantial issue of fact it would be error to grant a plenary hearing and a trial on the merits. It would also be an imposition upon school officials to have the thought, effort, resources and money diverted to litigation which properly belongs to education." *Gwathmey v. Atkinson*, 447 F. Supp. 1113, 1121 (E.D. Va. 1976). A former Chief Judge of the Fourth Circuit years later informally expressed similar concern about litigation and the schools in a provocatively entitled forum. *See* J. Harvie Wilkinson, III, et al., *Did the Law Cause Columbine*? (Aug. 13, 1999), at Panel Discussion of the Federalist Society, *available at* http://www.fed-soc.org/publications/detail/did-the-law-cause-columbine ("So we now are in a society which freely and instinctively litigates routine public school decisions in the federal judiciary . . . . Time spent in court is time out of the classroom. Answering depositions educates no one. . . . The impulse to let courts decide can undermine parental and educational authority to the serious detriment of an entire generation. . . . .").

[4] *See* Anna Berkes, *A Bill for the More General Diffusion of Knowledge*, MONTICELLO (April 2009), available at http://www.monticello.org/site/research-and-collections/bill-more-general-diffusion-knowledge.

[5] Professor Howard offers this recap of developments: "In 1850-51, a convention achieved many of the reforms sought . . . . At last, 75 years after the Revolution, the governor was to be elected by the people, something like free white manhood suffrage was adopted, and representation was based more closely on population. The Civil War and Reconstruction brought the next round of constitutional change. The policies of Reconstruction obliged the former Confederate states to adopt new constitutions. At a convention in Richmond in which a quarter of the delegates were black, innovations included provision for a statewide system of education." A.E. Dick Howard, *The Virginia Constitution at 40*, 39 VBA J. 22, 25 (Spring 2012).

[6] *See Albert Vickers Bryan, Jr.*, Federal JUDICIAL CENTER, http://www.fjc.gov/servlet/nGetInfo?jid=296&cid=999&ctype=na&instate=na.

[7] George Moffett Cochran was one of the "Young Turks" who, in the 1950s and later, following *Brown*, "represented a new political breed in Virginia." J. HARVIE WILKINSON, III, HARRY BYRD AND THE CHANGING FACE OF VIRGINIA POLITICS 106 (1968). Staunton's judicial center is named in his honor and memory. Led by Armistead Boothe of Alexandria, George Cochran and the other Young Turks "moved almost completely away from the Governor's influence" in a "revolt" that included "calling for repeal of state segregation laws affecting all forms of public transportation and for the establishment of a Virginia Civil Rights Commission to study economic, educational, and other phases of race relations in order to recommend corrective measures." *Id.* As now-Judge Wilkinson describes it in his book,

> Many [of the Young Turks] had served in World War II and had traveled far beyond the borders of Virginia. They had returned to the state aware that all governments did not run on the gospel according to Harry Byrd. In the postwar years the Young Turks entered politics. They were concerned over the growing demands on state and local government and eager to play some role in shaping state policy. Yet the Byrd organization, steeped in the tradition of balanced budgets and pay-as-you-go, demanded long apprenticeship. The Turks (most of whom represented districts which, historically, had been marginal territory for the organization) soon became impatient . . . . The Turks were above all respectable; they offered many moderate Virginians the first real alternative to orthodox organization doctrine . . . . [They] offered a middle course between the radical reformers and the low-tax, low-service formula of the old Byrd organization.

Id. at 106-07. Also counted among the Young Turks were Stuart Carter of Botetourt-Craig, Joseph Blackburn of Lynchburg, Eveland Compton of Albemarle-Greene, Walter Page, John Rixey and Toy Savage of Norfolk, Julian Rutherfoord of Roanoke, William Spong of Portsmouth, Charles Wampler of Rockingham-Harrisonburg, and John Web of Fairfax-Falls Church. *Id.* at 108-09 (Table 10).

[8] *See George M. Cochran*, WASHINGTON POST (Jan. 28, 2011), *available at* http://www.washingtonpost.com/wp-dyn/content/article/2011/01/27/AR2011012707482.html.

[9] Joan Biskupic & Fred Barbash, *Retired Justice Lewis Powell Dies*, WASHINGTON POST, Aug. 26, 1998, at A1, available at http://www.washingtonpost.com/wp-srv/national/longterm/supcourt/stories/powell082698.htm. Judge Wilkinson

comments that "Lewis F. Powell, Jr., is best known as a voice of decency and moderation on the United States Supreme Court. But the years after *Brown v. Board of Education* were among the most difficult of his life." J. HARVIE WILKINSON, III, ONE NATION INDIVISIBLE 67-69 (1997).

[10] "Depending on how one counts, we in Virginia have had at least six constitutions—1776, 1830, 1851, 1870, 1902, and 1971." A.E. Dick Howard, *The Virginia Constitution at 40*, 39 VBA J. 22, 23 (Spring 2012).

[11] A school board also has been referred to as a political subdivision of Virginia, *see, e.g.*, Va. Code § 15.2-2701; Va. Code § 2.2-3701; Va. Code § 2.2-4115; *Purdham v. Fairfax Cnty. Sch. Bd.*, No. 1:09-cv-50, 2009 WL 4730713 (E.D. Va. Dec. 9, 2009); *Frederick Cnty. Sch. Bd. v. Hannah*, 267 Va. 231, 236, 590 S.E.2d 567, 569 (2004), and as a quasi-municipal corporation. *See, e.g.*, *Taylor v. City of Charlottesville*, 240 Va. 367, 373, 397 S.E.2d 832, 836 (1990); *Kellam v. Sch. Bd.*, 202 Va. 252, 258-59, 117 S.E.2d 96, 100 (1960); *West v. Jones*, 228 Va. 409, 413-14, 323 S.E.2d 96, 99 (1984).

[12] Or may it, given its power under Article VIII, § 7 of the Virginia Constitution?

[13] *See, e.g.*, Va. Code § 22.1-79.

[14] *See, e.g.*, Va. Code § 22.1-199.1, 22-1-201 (authorizing school boards to create an implement a plan for integrating technology into the classroom and to develop curriculum focusing on key American historical documents in order to emphasize Virginia's role in United States history).

[15] *See* Va. Code § 22.1-305 (probationary/annual contract teacher nonrenewal process).

[16] *See* Va. Code §§ 22.1-252.14.1-253.13:9 (Standards of Quality).

[17] *See, e.g.*, Va. Code § 22.1-79.1 (giving school boards the authority to set the academic calendar, not to begin before Labor Day, unless the school division meets the prerequisites for an alternative schedule).

[18] *See generally* Norma E. Szakal, *The Governing Structure of Public Education in Virginia*, 73 THE VA. NEWS LETTER 1 (Weldon Cooper Center for Public Service 1997), available at

http://www.coopercenter.org/publications/governing-structure-public-education-virginia-0.

[19] Conflict between a Virginia school board and a governing body are not new and can—and do—occur today. The Virginia Supreme Court, in what might be a rare rhetorical flourish for its historically staid opinions, had the following to say in putting the blame on the board of supervisors in a quarrel over a piece of property that the school board sought to acquire from a trustee but could not seem to get funded adequately: "Mr. Wright, counsel for the trustee bank, has, with Ithuriel's spear, touched the heart of this litigation and the source of all its troubles: [the board of supervisors] . . . . The Board of Supervisors may be justly charged with rue-bargain." *Cnty. Sch. Bd. v. Bd. of Supervisors*, 184 Va. 700, 706-07, 36 S.E.2d 620, 623 (1946).""Ithuriel's spear" is a reference to Milton's *Paradise Lost*. The spear of the angel Ithuriel caused everything it touched to assume its proper shape, including the image of Satan in the Garden of Eden. WEBSTER'S NEW TWENTIETH-CENTURY DICTIONARY 976 (2d ed. 1956). With the Virginia Supreme Court's description in that appeal, the local governing body could hardly be flattered by it in the context of realizing Milton's description and an artistic rendering of it. *See WOA 2885*, PARLIAMENT, http://www.parliament.uk/worksofart/artwork/john-callcott-horsley/satan-touched-by-ithuriel's-spear-while-whispering-evil-dreams-to-eve--paradise-lost-/2885.

[20] Any fuller understanding of the legal issues of that time also is informed by the broader political context and contests and the lives of those involved during those times. For example, Virginia Attorney General Almond became a central figure in the legal battles, as the "'little David' defending the laws of the commonwealth from the 'Goliath of the federal judiciary' . . . [attacking] integration, federal bureaucracy, and all the other leftist demons. Publicly Almond appeared the political go-getter, the spellbinding orator, and one of the most massive of all resisters." *Id.* at 136. Almond, however, came face to face in a gubernatorial race with Ted Dalton, "the Republican who had almost defeated Stanley [(with running mate Staunton lawyer Stephen Timberlake for lieutenant and Norfolk lawyer Walter Hoffman for Attorney General)] just four years before." *Id.* at 138. Dalton, who would become a U.S. District Judge in the Western District of Virginia, "launched a systematic attack on massive resistance. He called the Pupil Placement Board 'the most flagrant example of centralized power that has been witnessed in Virginia and American since the adoption of the Tenth Amendment to the Constitution' . . . and advocated a locally administered pupil assignment plan and token compliance with the [U.S. Supreme] Court's [*Brown*] decision . . . ." *Id.* According to Judge Wilkinson, "Dalton was quickly branded an integrationist. Eisenhower's decision in the fall of 1957 to send troops to enforce integration in Little Rock, Arkansas, cost him thousands of votes . . . [In his own words, explaining the loss to Almond,] candidate Dalton remarked '[i]t wasn't a little rock, it was a big rock.'" *Id.* President Eisenhower ultimately put Judge Dalton, a native of Carroll County, on the federal bench in 1959, as the successor to Judge John Paul. *See Ted Dalton*, FEDERAL JUDICIAL CENTER,

http://www.fjc.gov/servlet/nGetInfo?jid=554&cid=999&ctype=na&instate=na. As events would have it, Judge Dalton eventually presided over school desegregation cases in the Western District of Virginia. *See, e.g.*, *Green v. Sch. Bd.*, 330 F. Supp. 674 (W.D. Va. 1971); *Burruss v. Wilkerson*, 310 F. Supp. 572 (W.D. Va. 1969). In the Western District, school divisions continued to deal with issues on how to implement desegregation. In Staunton, for instance, at least into the mid-late 1960s, school board meeting minutes reflect discussions and efforts to address race-related issues. *See* Minutes of Staunton Sch. Bd. Meeting (March 15, 1966). Other Virginia localities had their

issues—and litigation—as well yet into the 1970s. In *Wright v. City Council*, 407 U.S. 451 (1972), the City Council of Emporia, represented by soon-to-be federal judge Dortch Warriner, argued before the U.S. Supreme Court in defense of the operation of its schools post-*Brown*.

[21] For more information on massive resistance, see the information from the Virginia Historical Society, available at http://www.vahistorical.org/collections-and-resources/virginia-history-explorer/civil-rights-movement-virginia/massive, and the information from the University of Virginia Miller Center's Digital Resources for United States History, available at http://www.vcdh.virginia.edu/solguide/VUS13/vus13a04.html.

[22] *Kellam* involved an issue of sovereign immunity, not the constitutional authority of a Virginia school board. *See Kellam v. Sch. Bd.*, 202 Va. 252, 117 S.E.2d 96 (1960).

[23] 204 Va. at 675, 133 S.E.2d at 582-84. In *Griffin v. Cnty. Sch. Bd.*, the Supreme Court of Virginia concluded that it was within the discretion of a local board of supervisors to supply its share of the necessary funds to operate a local school.

[24] *See, e.g., James v. Almond*, 170 F. Supp. 331 (E.D. Va. 1959). The three-judge District Court decision, delivered just after *Harrison v. Day* on the same date seemingly in coordination, held various Acts of Assembly violative of the Fourteenth Amendment of the U.S. Constitution). *See generally* RACE, REASON AND MASSIVE RESISTANCE: THE DIARY OF DAVID J. MAYS, 1954-1959 253 (James R. Sweeney ed. 2008) ("Early in December 1958, Judge Walter Hoffman, who sat on the three-judge federal panel that was in the process of deciding the constitutionality of the massive resistance legislation, had a chance meeting on the golf course . . . with the chief justice of the Virginia Supreme Court of Appeals. Without revealing anything about the state court's decision, Eggleston asked that the federal court delay its ruling until the state court issued its decree on January 19. 'I just think it would be better if we spoke first,' he told Hoffman. Hoffman immediately called Judge Simon Sobeloff, another member of the panel of federal judges. As Hoffman later recalled, 'I told [Sobeloff] about Eggleston; and he said, 'Walter, for God's sake, hold that opinion. He's absolutely right.' Hoffman followed his colleague's advice."). Both decisions were released on January 19—Robert E. Lee's birthday. *Id.* at 254.

[25] The Fourth Circuit reversed the District Court's order to consolidate different school divisions, which are separate political subdivisions, as a fashioned remedy contrary to the fundamental principle of federalism incorporated in the Tenth Amendment.

[26] *Cf. Dennis v. Cnty. Sch. Bd.*, 582 F. Supp. 2d 536 (W.D. Va. 1993) (the court declined to validate the school board's constitutional arguments over the teacher nonrenewal statute).

[27] Under this decision, is the Court suggesting the Dillon Rule trumps the Virginia Constitution or controls its interpretation. Or is the "indispensable" formulation yet some kind of Dillon Rule corollary? *See generally Schefer v. City Council*, 279 Va. 588, 691 S.E.2d 778 (2010) (defining and applying the Dillon Rule).

[28] Justice Keenan is now a Fourth Circuit Court of Appeals judge. *See Judge Barbara Milano Keenan*, U.S. CT. OF APPEALS FOR THE FOURTH CIR., http://www.ca4.uscourts.gov/judges/judges-of-the-court/judge-barbara-milano-keenan.

[29] *See* ALL STUDENTS, http://www.allstudents.virginia.gov/.

[30] Under Virginia law, "[a] school board shall, prior to instituting any legal action or proceeding against any other governmental agency in Virginia or expending any funds therefor, first secure the authorization of the governing body." Va. Code § 22.1-82. As legal and strategic and tactical considerations, this statutory mandate requires consideration.

[31] *See generally Cnty. Sch. Bd. v. Griffin*, 204 Va. 650, 661 133 S.E.2d 565, 573 (1963) ("A constitutional provision is not self-executing 'when it merely indicates principles, without laying down the rules by means of which those principles may be given the force of law [citation omitted].'").

[32] *See, e.g., Comm. v. Doe*, 278 Va. 223, 230, 682 S.E.2d 906, 909 (2009).

[33] In 2013, the Virginia School Boards Association statistics show that Virginia has 21 appointed school boards and 111 elected school boards (report on file with author).

[34] 217 Va. at 581, 232 S.E.2d at 44. It bears mentioning that the Attorney General in *Arlington County* appeared, in part, through the same legal counsel that now is co-counsel prosecuting the OEI litigation just filed in the Norfolk City Circuit Court. Will the Court ask whether OEI, as the Supreme Court asserted in *Arlington County* as to that controversy, raises a "singularly political question"? Maybe, as Chief Justice Eggleston phrased it in *Griffin*: "We shall see!"

[35] *See* Va. Code § 22.1-82 ("A school board shall, prior to instituting an legal action or proceeding against any other governmental agency in Virginia or expending any funds therfor, first secure the authorization of the governing body of the county, city or town constituting the school division . . . except as to legal actions or proceedings arising between the school board and the governing body or bodies.")

[36] *See* Va. Code § 15.2-1248 (no claim may be brought against a county until it is first presented to the county). *See generally* Jim H. Guynn, Jr. & Elizabeth Dillon, *Handbook of the Virginia Local Government Law*, LOCAL GOVERNMENT ATTORNEYS OF VIRGINIA, INC., Ch. 20 (2013), available at http://www.coopercenter.org/lga/handbook.

[37] For an excellent resource on Virginia school law across a wide variety of issues, the Local Government Attorneys of Virginia, Inc.'s *Handbook of Virginia Local Government Law* should be consulted. *See The Handbook of Virginia Local Government Law*, LOCAL GOVERNMENT ATTORNEYS OF VIRGINIA, INC., CH. 18 (2013), available at http://www.coopercenter.org/lga/handbook.

[38] *See, e.g., Bristol Va. Sch. Bd. v. Quarles*, 235 Va. 108, 366 S.E.2d 82 (1988); *Cnty. Sch. Bd. v. Epperson*, 246

Va. 214, 435 S.E.2d 647 (1993); *Cnty. Sch. Bd. v. McConnell*, 215 Va. 603, 212 S.E.2d 264 (1975) (decided pre-grievance procedure); *Lee-Warren v. Sch. Bd.*, 241 Va. 442, 403 S.E.2d 691 (1991); *Sch. Bd. v. Giannoutsos*, 238 Va. 144, 380 S.E.2d 647 (1989); *Tazewell Cnty. Sch. Bd. v. Gillenwater*, 241 Va. 166, 400 S.E.2d 199 (1991); *Underwood v. Henry Cnty. Sch. Bd.*, 245 Va. 127, 427 S.E.2d 330 (1993). While the deference is noteworthy, another recent case begs the question why the court has jurisdiction at all. In *Sch. Bd. v. Westcott*, 254 Va. 218, 492 S.E.2d 146 (1997), the Virginia Supreme Court acknowledged the Article VIII, § 7 power of the school board. Using an arbitrary and capricious standard, it upheld the board's action to terminate the employment of the security guard. It does not, however, explain why—even more fundamentally—the court has jurisdiction in the first instance in this employment case, particularly given the added statutory confirmation that "[t]he school board shall retain its *exclusive final* authority over matters concerning the employment and supervision of its personnel, including dismissals, suspensions and placing on probation." Va. Code § 22.1-313(A) (emphasis added). Given that the employee received an administrative hearing, why would that not be the exclusive remedy, recognizing that the board is exercising its *exclusive and final* supervisory authority? *See, e.g.*, *School Board v. Giannoutsos*, 238 Va. 144, 380 S.E.2d 647 (1989). In employment disputes that involve a decision of the school board at the end of the grievance procedure, *Giannoutsos* may be argued to foreclose any jurisdiction of the state courts to undertake a review at all in such a matter.

[39] *See, e.g., Howard v. Cnty. Sch. Bd.*, 203 Va. 55, 122 S.E.2d 891 (1961).

[40] *See, e.g., Wood v. Henry Cnty. Public Schs.*, 255 Va. 85, 495 S.E.2d 295 (1998).

[41] *See, e.g., Comm. v. Doe*, 278 Va. 223, 682 S.E.2d 906 (2009).

[42] *See generally Cupp v. Bd. of Supervisors*, 227 Va. 580, 318 S.E.2d 407 (1984).

[43] A juvenile and domestic relations district court can misapprehend its authority relative to the constitutional authority of a school board, requiring action by the circuit court. *See, e.g., Comm. v. J.B.J.*, 29 Va. Cir. 101, at *2 (1992) ("Nowhere in Chapter 11 [of Title 16.1] of the Code is there any implication that the Legislature intended to give the Juvenile and Domestic Relations Court the same authority over the School Board. To do so would violate the provisions of Article VIII, Section 7, of the Virginia Constitution, wherein the supervision of schools is vested in local school boards.").

[44] Several such appellate injunction proceedings have been successful for school boards. *E.g., Armentrout v. Kuczko*, Order (Va. Oct. 9, 1992) (Carrico, C.J., Compton, Hassell, J.J.); *Frederick Cnty. Sch. Bd. v. Garris*, Order (Va. Feb. 21, 1992) (Carrico, C.J., Compton, Hassell, J.J.); *Fairfax Cnty. Sch. Bd. v. Zurita*, Case No. 101810 (Va. Sept. 28, 2010) (Kinser & Millette, J.J., and Carrico, S.J.); *Fairfax Cnty. Sch. Bd. v. Zurita*, Order (Va. Ct. App. Oct. 8, 2010) (McClanahan, J.). In *Zurita*, the Virginia School Boards Association (VSBA) remarkably intervened to file an amicus curiae brief, on behalf of all of Virginia's 134 school divisions, in support of the Fairfax County School Board. Its brief helped advance the successful cause of the Fairfax School Board before both the Virginia Supreme Court and the Virginia Court of Appeals. The VSBA contended that the Fairfax County Circuit Court had acted unconstitutionally, in violation of Article VIII, § 7, of the Virginia Constitution, arguing that:

> In this appeal, a Virginia school board finds itself in the crossfire between two parents warring over issues of custody and the school their children will attend. To get his way, one of the parents ultimately sought to have the circuit court's contempt powers wielded against the school, based on a court order in a divorce case that obviously did not involve the school board. The parent invoked that same order to have the circuit court act essentially as a super-school board not only to override uniform local attendance policy and regulations but, also by injunction, to utterly nullify the board's rules and abridge its constitutional authority and prerogatives under Article VIII, Section 7 of the Virginia Constitution.

Amicus Curiae Brief of Virginia School Boards Association at 1, *Fairfax Cnty. Sch. Bd. v. Zurita*, Order (Va. Sept. 28, 2010). The author was counsel in the three cited Section 8.01-626 proceedings which resulted in dissolution of the circuit court injunctions. Although the statute authorizes a single justice to act, the Virginia Supreme Court's more recent internal practice has been to have three justices review the petition, as occurred in those instances.

[45] In general, "We quote [opinions of the Attorney General] not as controlling authority, but rather as an aid in construing legislative intent." *Richard L. Deal & Assos., Inc. v. Comm.*, 224 Va. 618, 621, 229 S.E.2d 346, 348 (1983). The *Arlington County* case references these opinions in a way that appears to be the Supreme Court taking judicial notice of the Commonwealth's public policy. *Comm. v. Cnty. Bd.*, 217 Va. 558, 568, 232 S.E.2d 30, 36 (1977).

[46] *See, e.g., Williams v. Augusta Cnty. Sch. Bd.*, 248 Va. 124, 445 S.E.2d 118 (1994). While not apparently acknowledged explicitly by the Attorney General, in another instance the Attorney General initially issued an erroneous opinion, failing to note a controlling statute (Virginia Code Section 22.1-57.3:1(G)) and, contrary to that statute, concluded that a school division employee could serve on the school board of which he is employed. *Compare* 2010 Op. Att'y Gen. (Nutter, July 30, 2010) ("can serve") *with* 2010 Op. Att'y. Gen (Nutter, September 10, 2010) ("may not serve"). It took several contacts with the Attorney General's office to have it appreciate the error. In fairness to the Attorney General, however, this example also illustrates how some provisions are vexingly planted and obscured in the too-often dense forest of Title 22.1.

[47] *E.g.*, 2013 WL 4039924 (Va. A.G. Aug. 2, 2013) (school boards have the authority to prohibit an employee from storing a lawfully possessed firearm in

a vehicle on school property); 2011 WL 4429189 (Va. A.G. Jan. 21, 2011) (although a school board may consolidate certain functions with a city or county, it may not abrogate its duties or compromise its independence). In comparison, though, the Virginia Attorney General has declined to view as unconstitutional the General Assembly's constraint on the timing of the opening of local schools. *See* 2010 Op. Va. Att'y Gen. 111. A judgment on the strength of the analytical reasoning of the Attorney General, given Virginia Supreme Court precedent, in that opinion or in the cited, earlier 1985 opinion is left to the reader. Or was it actually a "political question" of the likes of *Arlington County*?

[48] *See* Va. Sup. Ct. R. Pt. 6, § 2 R. Prof. Conduct 1.7(a).

[49] *See generally* Sharon A. Pandak & Brandi A. Law, *The Handbook of Virginia Local Government Law*, LOCAL GOVERNMENT ATTORNEYS OF VIRGINIA, INC. Ch. 24, available at http://www.coopercenter.org/lga/handbook.

[50] *See generally* Emerson H. Tiller & Frank B. Cross, *What Is Legal Doctrine?*, 100 NW. U.L. REV. 517 (2006).

Virginia State Bar's Local Government Fellowship: The Board of Governors is pleased to announce that Michael Kaestner has been selected to be the 2013 inaugural recipient of the Virginia State Bar Local Government Fellowship. The VSB Local Government Fellowship was created in 2012 to attract promising future attorneys to the practice of local government law by providing a monetary award to an outstanding 1L or 2L Virginia law student working as a summer intern in a local government attorney's office in the Commonwealth. Mr. Kaestner is a second-year student at the William & Mary School of Law and interned this past summer at the Prince George County Attorney's Office. Prior to law school, Mr. Kaestner worked for several years as a manager of legislation and policy at the Virginia Economic Development Partnership in Richmond, Virginia. An interview with Mr. Kaestner follows. More information about the VSB Local Government Fellowship is available at http://www.vsb.org/site/sections/localgovernment-news/vsb-local-government-fellowship.