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## OUTSIDE THE LINES: THE CASE FOR SOCIOECONOMIC INTEGRATION IN URBAN SCHOOL DISTRICTS

In 1954, the Supreme Court declared that racially segregated public schools are inherently unequal, and therefore unconstitutional.<sup>1</sup> Fifty years later, in September of 2004, I began my first day as a fourth-grade teacher at PS 28 in the Bronx, New York City. Of the 952 students enrolled that year, 98 percent were black or Latino, and 90 percent qualified for a free or reduced-price lunch.<sup>2</sup> This is a school that looks like *Brown* never happened.

PS 28 represents the norm in urban school districts. Most minority students go to schools that are majority-minority. Most poor students go to schools where the majority of students are poor.<sup>3</sup> Urban school districts look today as if *Plessy v. Ferguson*<sup>4</sup> is still good law (and wealthy suburban districts often look that way too). After several decades of attempting to define the remedies *Brown* required, federal courts began to back away from a commitment to court-ordered desegregation, and the progress that had been made toward more diverse schools began to erode.<sup>5</sup> Then in 2007, in *Parents Involved in Community Schools v. Seattle School District No.1*, the Supreme Court struck down two districts' voluntary racial integration plans, restricting the kinds of tools available to local officials to continue the struggle toward racially inclusive public schools.<sup>6</sup>

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1. *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483, 493 (1954).

2. NEW YORK STATE SCHOOL REPORT CARD, 2005–2006 ACCOUNTABILITY REPORT, PS 28X, available at <http://www.nystart.gov/publicweb-rc/2006/4/AOR-2006-320900010028.pdf>.

3. GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, HISTORIC REVERSALS, ACCELERATING RESEGREGATION, AND THE NEED FOR NEW INTEGRATION STRATEGIES 19–21 (2007), [http://www.civilrightsproject.ucla.edu/research/deseg/reversals\\_reseg\\_need.pdf](http://www.civilrightsproject.ucla.edu/research/deseg/reversals_reseg_need.pdf).

4. 163 U.S. 537 (1896).

5. ORFIELD & LEE, *supra* note 3.

6. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 711 (2007).

As the judicial commitment to racial integration in schools has waned, education reformers have focused on other strategies for closing the persistent achievement gap between minority students and their white counterparts. Education advocates shifted the focus of their litigation strategy towards seeking equitable school financing rather than integration, and such lawsuits have occurred in nearly every state.<sup>7</sup> Policy makers have emphasized the need for class size reduction, standards-based curriculum, higher-quality teachers, and universal pre-kindergarten. These are strategies that accept the inevitability of racial and socioeconomic separation, and focus energy instead on raising the quality of education provided to poor and minority students. These reforms are important, but require time and huge investments of resources, and have thus far done little to close the achievement gap. In this article, I argue that the promise of *Brown*—a commitment to integrated schools—must not be abandoned.

Given the tortuous history of court-ordered school desegregation and the Roberts Court's invalidation of race-based integration plans, socioeconomic integration strategies offer the best hope for achieving "not separate" schools. Because there is a frustrating and persistent correlation between poverty and race, students' socioeconomic status serves as a fairly reliable proxy for race, without raising the same constitutional objections. It is also an end in itself, because socioeconomic integration can improve academic achievement. There is extensive data showing that poor students in middle-class schools outperform their peers in high-poverty schools, and that socioeconomic integration does not hurt the academic performance of middle-class students.<sup>8</sup> There are many examples of school districts, such as Wake County in North Carolina, which have successfully maintained racial diversity and raised student achievement by deliberately eliminating concentrations of high-poverty students. Because of these dual effects—increasing diversity and improving student performance—it is likely socioeconomic school integration will be an important trend in education reform in the wake of *Parents Involved*.

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7. See, e.g., Molly McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334 (2004). See also James Ryan, *Schools, Race and Money*, 109 YALE L.J. 249 (1999).

8. See *infra* notes 41–44 and accompanying text.

But to work, these plans have to operate in school districts where the majority of students are not poor. Socioeconomic school integration is only possible in districts with somewhat economically diverse student populations—such as Wake County, which encompasses both the city of Raleigh and the surrounding suburban and rural areas.<sup>9</sup> The demographics are vastly different in the nation's big cities. In the urban districts that serve the most poor and minority students, like New York, Chicago, and Los Angeles, socioeconomic integration plans that have been successful elsewhere could not presently work because the majority of the students across the district are poor.<sup>10</sup> Advocates for socioeconomic integration have largely ignored or glossed over this problem.<sup>11</sup>

This paper will attempt to fill that void. It will imagine new ways to organize urban school districts, a necessary preliminary step toward socioeconomic integration. As they are currently drawn, school district boundaries in big cities perpetuate inequality. In nearly every large city, the city lines and the school district lines are the same. This is often the case because older cities such as New York and Boston started systems of public schools before statewide education bureaucracies were in place, and once states got organized, they left those existing urban school systems in place. As a result, the processes of suburbanization that created social and fiscal inequalities between wealthier suburbs and poor central cities during the twentieth century also created vast socioeconomic disparities between school districts.<sup>12</sup> Yet this

9. RICHARD KAHLENBERG, THE CENTURY FOUNDATION, RESCUING *BROWN V. BOARD OF EDUCATION*: PROFILES OF TWELVE SCHOOL DISTRICTS PURSUING SOCIOECONOMIC SCHOOL INTEGRATION 9–13 (2007), <http://www.tcf.org/publications/education/districtprofiles.pdf>.

10. NATIONAL CENTER FOR EDUCATION STATISTICS, COMMON CORE OF DATA, PUBLIC ELEMENTARY/SECONDARY SCHOOL UNIVERSE SURVEY 2007, <http://nces.ed.gov/ccd/bat/> (when building a table and selecting columns, choose “students in special programs” and “total free and reduced lunch students”).

11. See, e.g., KAHLENBERG, *supra* note 9; McUsic, *supra* note 7; Emily Bazelon, *The Next Kind of Integration*, N.Y. TIMES, July 20, 2008, (Magazine), available at <http://www.nytimes.com/2008/07/20/magazine/20integration-t.html?pagewanted=all>.

12. For example, in *Milliken v. Bradley*, the plaintiffs brought claim against officials in Detroit and Michigan, alleging the segregation in the metropolitan Detroit area violated the Equal Protection clause. *Milliken v. Bradley*, 418 U.S. 717, 722 (1974). Justice White's dissent noted: “The percentage of Negro pupils in the Detroit student population rose to 64.9% in 1971, to 67.3% in 1972, and to 69.8% in 1973, amid a metropolitan school population whose racial composition in 1970 was 81% white and 19% Negro.” *Id.* at 765 n.1.

historical fact need not be a prescription for the future. Today, under a doctrine of local government law known as the “state creature” idea, states have plenary power over their school districts. State legislatures have the power to create, abolish, or alter the jurisdiction of school districts. This article will argue that states should exercise that power, because a political solution is more likely than a judicially imposed one.

In order for state lawmakers to exercise the authority they have to redraw the boundaries of urban school districts, their constituents must favor such changes. Many now assume that is not possible—that politically powerful middle-class constituencies would never support changes to a system that allows them to buy spots in middle-class schools by buying a house in the suburbs. This article will argue that those assumptions may not prove correct, or may be irrelevant, in the face of new political coalitions that can align behind a plan for reorganizing the ways children go to school in metropolitan areas.

Part I will begin by summarizing the case for socioeconomic integration, tracing the history of racial desegregation and re-segregation, and arguing that socioeconomic integration plans can achieve many of the racial desegregationists’ goals. Part II will look briefly at the nation’s three largest school districts and make the case that socioeconomic integration is currently infeasible in those districts. To introduce the changes that will need to be made in order for these large districts to adopt socioeconomic integration strategies, Part III will examine the doctrines of local government law which have framed the development of our still separate, still unequal school system. Then it will suggest that local government law nevertheless allows for the possibility of redesigning the way students go to school in large metropolitan areas, and it will offer some arguments for why states should undertake this project. Part IV will propose two different changes that envision more active participation by state legislatures in redesigning district boundary lines to allow for socioeconomic school integration. Anticipating that these suggestions will encounter resistance from those who benefit from the status quo, Part V will discuss suggestions for building political coalitions, examining possible alliances between middle-class families, teachers unions and regionalism advocates that could campaign for these changes.

## I. THE CASE FOR SOCIOECONOMIC INTEGRATION

*A. Attempts at Racial Integration Have Stalled*

In the half century since *Brown*, there has been a significant correlation between judicial commitment to integration and increased educational opportunity for the nation's most vulnerable students. When that commitment has lagged, progress has eroded. After *Brown* was decided, American public schools made significant advances toward racial integration. Up until the late 1980s, black-white segregation steadily decreased, especially in the South where most black students went to school.<sup>13</sup> But since the 1990s, when the Supreme Court sent the message that integration plans were no longer legally required, much of that progress has been lost as schools re-segregated.

Integration was initially slow. A year after *Brown*, the Supreme Court attempted to flesh out some of the legal details of the new constitutional requirement in *Brown II*, but instead only told school districts they must integrate with "all deliberate speed."<sup>14</sup> That murky standard left room for evasion and delay. Some districts voluntarily began to desegregate their students, but most federal district courts in the South did not robustly enforce the Supreme Court's rulings. By 1964, only one in eighty-five black students in the South went to an integrated school.<sup>15</sup>

But 1964 marked a turning point. Empowered with important legal tools under the newly passed Civil Rights Act, local and federal authorities began to dismantle state-sponsored desegregation.<sup>16</sup> Commitment from the political branches to enforcing *Brown* emboldened federal courts to require robust remedies in districts whose officials had long been recalcitrant. The Supreme Court also re-entered the fray, after having remained largely silent on school desegregation in the first decade after *Brown I* and *II*.<sup>17</sup> In *Green v. County*

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13. ORFIELD & LEE, *supra* note 3, at 13–14.

14. *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 301 (1955).

15. Martha Minow, *After Brown: What Would Martin Luther King Say?*, 12 LEWIS & CLARK L. REV. 599, 617 (2008).

16. *Id.* at 617–18.

17. One exception to the Court's silence from 1955–1965 was *Cooper v. Aaron*, in which the Court denounced in strong language state officials' attempts to deny a

*School Board of New Kent County*, the Court held that a seemingly innocuous “freedom-of-choice” plan—in which no white student chose to go to the formerly black school and 85 percent of the district’s black students still attended that school—did not fulfill the school board’s responsibility to integrate.<sup>18</sup> *Green* represented a broad interpretation of *Brown*—that the Constitution did not merely require states to strike desegregation statutes from their books and allow parents to choose where to send their children, but it imposed an affirmative duty on districts to ensure to a meaningful extent that children of different backgrounds went to school together. In *Keyes v. School District No. 1*, the Court held that although Denver, Colorado had never mandated school segregation by statute, the School Board had deliberately segregated schools in one section of the city through gerrymandered attendance zones and other indirect means. The Court also held that relief need not be limited to the neighborhood in question, but could be imposed district-wide.<sup>19</sup> In *Swann v. Charlotte-Mecklenburg Board of Education*, the Court authorized the district court to order a comprehensive desegregation plan, including busing; Chief Justice Burger said school authorities are authorized to take such measures because “[t]he objective today remains to eliminate from the public schools all vestiges of state-imposed segregation” and create a school “system in which racial discrimination would be eliminated root and branch.”<sup>20</sup> As a result of these rulings and school districts’ efforts, by 1972 Southern schools were the least segregated in the country.<sup>21</sup> After centuries of being almost completely segregated in their own schools, by 1972 almost 40 percent of black students in the South attended a majority-white school, and many more were in diverse, multi-racial schools for the first time.<sup>22</sup>

But such progress was not shared in Northern states. Many

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federal district court ruling mandating the initial integration of nine black students into Little Rock High in Arkansas. 358 U.S. 1, 15 (1958).

18. 391 U.S. 430, 441 (1968).

19. 413 U.S. 189, 212–13 (1973).

20. 402 U.S. 1, 15 (1971).

21. CHARLES T. CLOTFLETER, *AFTER BROWN: THE RISE AND RETREAT OF SCHOOL DESEGREGATION* 26 (2004).

22. GARY ORFIELD & CHUNGMEI LEE, *THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY, NEW FACES, OLD PATTERNS? SEGREGATION IN THE MULTIRACIAL SOUTH* 11 (2005), [http://www.civilrightsproject.ucla.edu/research/reseg05/reseg\\_lee05.pdf](http://www.civilrightsproject.ucla.edu/research/reseg05/reseg_lee05.pdf).

Northern and Midwestern school districts tracked municipal boundary lines, unlike many of the larger, countywide districts in the South. This meant that northern students were not segregated *within* districts, like in the South, but *between* districts. And just three years after *Swann*, the Supreme Court retreated from its call to rid schools of segregation “root and branch,” ruling instead that schoolchildren trapped in failing schools in Detroit were not entitled to an integration plan that included the better schools in the adjacent suburbs.<sup>23</sup> The Court in *Milliken v. Bradley* found that since the surrounding districts didn’t have a history of *de jure* segregation like Detroit did, they could not be part of any integration plan.<sup>24</sup> The Court did not view the interdistrict segregation as a constitutional problem, despite a documented history of local and state authorities promoting concentration of black students in the Detroit schools, and despite the District Court’s observation that “[s]chool district lines are simply matters of political convenience and may not be used to deny constitutional rights.”<sup>25</sup> Because of the *Milliken* decision, many Northern and Midwestern cities didn’t implement the kind of comprehensive, regional integration plans that many Southern districts did, and segregation persisted.

Despite the slow pace of desegregation in the North, on the whole, between 1954 and the late 1980s American school children went to increasingly racially diverse schools. It wasn’t until the 1990s, when the Supreme Court quietly allowed the federal judiciary’s oversight of desegregation to expire, that the nation’s schools began to slide back toward segregation. In 1991, the Court set the stage for the end of court-monitored desegregation plans. No longer seeking the goal of eliminating segregation “root and branch,” the Court instead instructed lower courts merely to ask “whether the vestiges of past discrimination had been eliminated to the extent practicable.”<sup>26</sup> In 1995, in *Missouri v. Jenkins*, a case involving Kansas City schools, the Court reiterated the lax “to the extent practicable” standard, and emphasized the need for local controls of the schools.<sup>27</sup> After *Jenkins*, “school districts everywhere clearly

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23. *Milliken v. Bradley*, 418 U.S. 717, 746–47 (1974).

24. *Id.*

25. *Id.*; *Bradley v. Milliken*, 484 F.2d 215, 244, (6th Cir., 1973).

26. *Bd. of Educ. v. Dowell*, 498 U.S. 237, 249–50 (1991).

27. *Missouri v. Jenkins*, 515 U.S. 70, 90, 101 (1995).

understood the Court's meaning: it was time to let school districts off the hook."<sup>28</sup>

Since then, racial re-segregation in schools has occurred at a frightening pace. Gary Orfield, one of the principal researchers of school integration trends, says, "Nearly 40 years after the assassination of Dr. Martin Luther King, Jr., we have now lost almost all the progress made in the decades after his death in desegregating our schools."<sup>29</sup> As of the 2003–2004 school year, 73 percent of blacks went to a majority-minority school, and nearly half of those students were at a school where over 90 percent of the students were minorities.<sup>30</sup> Racial isolation was slightly higher for Latinos, 77 percent of whom went to a majority-minority school.<sup>31</sup> In contrast, the average white student went to a school that was 78 percent white.<sup>32</sup>

Many school districts have fought against this trend. Although the courts have moved away from court-ordered integration, most educators recognize the social and pedagogical benefits of integration, and many districts have their own voluntary plans to keep their schools from again becoming sites of racial isolation. Two of those districts, in Louisville and Seattle, used a student's race as one "tie-breaker" in student assignment plans. Both districts aimed to achieve schools whose racial compositions were not far from the racial composition of the district as a whole. But in 2007, the Supreme Court struck down both those plans in the consolidated case *Parents Involved in Community Schools v. Seattle School District No. 1*.<sup>33</sup>

In *Parents Involved*, the plurality held that an individual student's race may never be used in a voluntary plan to assign or deny that student a school assignment if the purpose of the plan is racial integration. In the decision's most ringing phrase, Chief Justice Roberts seemed to declare the end to the half century-long project of integrating public schools: "The way to stop discrimination on the basis of race is to stop

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28. SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 216 (2004).

29. ORFIELD & LEE, *supra* note 3, at 11.

30. ORFIELD & LEE, *supra* note 22, 9–11.

31. *Id.*

32. *Id.*

33. 551 U.S. 701 (2007).

discriminating on the basis of race.”<sup>34</sup> But Justice Kennedy’s controlling concurrence blunted the effects of the plurality opinion somewhat, and said that there are some ways that school boards can pursue the goal of bringing diverse students together, suggesting “strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race.”<sup>35</sup>

In the wake of *Parents Involved*, school districts have begun the task of analyzing both Justice Kennedy’s controlling opinion and their own programs in order to determine on which side of the fuzzy constitutional line those programs fall. *Parents Involved* has further complicated their attempts to remedy, fifty-five years after *Brown*, the persistent legacy of racial segregation in the public schools.

### *B. Socioeconomic Integration Improves Racial Integration and Student Performance*

Because of the ruling in *Parents Involved*, districts lost tools to enact ambitious, comprehensive plans to try to combat racial segregation in their schools. So do we stop trying? Do we accept schools that look like PS 28 in the Bronx and hope that we can close the achievement gap without students on either side of it ever going to school together? The answers must be no, for legal and for pedagogical reasons.

By abandoning the idea of integrated schooling and focusing instead on improving the instruction of children isolated by race and poverty, “education reform is out there trying to make *Plessy v. Ferguson* work.”<sup>36</sup> But the idea that children separated across lines of race and class can receive equal educations was dismissed by Chief Justice Warren who wrote in *Brown* that “separate educational facilities are inherently unequal” and therefore unconstitutional.<sup>37</sup> Data on

34. *Id.* at 748.

35. *Id.* at 789.

36. RICHARD KAHLENBERG, ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE 4 (2001).

37. *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483, 495 (1954).

student performance confirms his intuition.<sup>38</sup> If the hard work of finally realizing the dream of *Brown* and the American ideal of equal opportunity is to be done, schools need new strategies for bringing different groups of children together. A focus on integration by socioeconomic status, instead of race, offers an opportunity to indirectly reduce racial isolation, and perhaps most importantly, improve student academic achievement.

Socioeconomic school integration can decrease racial segregation in schools without triggering the legal complications that sunk the Seattle and Louisville plans. There remains a persistent, frustrating correlation between race and poverty in the United States. In 2007, 24.5 percent of blacks and 21.5 percent of Hispanics were poor, compared to only 8.2 percent of non-Hispanic whites.<sup>39</sup> While the correlation varies by region and within regions, it is true that the schools that educate the poorest students are also usually the most racially segregated. Intensely segregated schools—schools that have over 90 percent minority students—are more than four times as likely to be predominantly poor schools than with schools with over 90 percent white students. Seventy-nine percent of white students go to a school where the majority of students are middle or upper-class. In contrast, 63 percent of black students and 64 percent of Latino students go to schools that are predominantly poor.<sup>40</sup> Given these statistics, plans that bring children of different socioeconomic status together will also bring children of different races together. Such plans can never reach as precise a racial integration goal as the one attempted by the Seattle School District, for example, but then the Supreme Court struck down that goal as failing the compelling state interest test.<sup>41</sup>

Some critics point out that socioeconomic integration cannot increase racial integration in every part of the country. For example, under the plan in Cambridge, Massachusetts, parents indicate preferences for their top three schools, and district administrators then assign students according to those

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38. See, e.g., KAHLBERG, *supra* note 36; Larry Abramson, *The Achievement Gap Gets Wider, Despite Changes*, NPR, November 15, 2006, <http://www.npr.org/templates/story/story.php?storyId=6493050>.

39. National Poverty Center, *Poverty in the United States*, available at <http://www.npc.umich.edu/poverty/#4>.

40. ORFIELD & LEE, *supra* note 3, at 21.

41. Parents Involved, *supra* note 633.

preferences with a certain percentage of the seats in each school reserved for students eligible for free or reduced price lunch, to reflect the district-wide average.<sup>42</sup> A study done by the Boston Globe in 2007 found that while the plan had improved socioeconomic integration, schools were more racially segregated than they were under the previous plan that used racial diversity targets in school assignment. The study found that at some schools, the relative percentages of white, black, Latino and Asian students have diverged further from the district averages, and white students continue to be the majority at the four schools most popular among parents of incoming white students.<sup>43</sup>

Although socioeconomic integration may not necessarily produce racial integration everywhere, in the large urban districts that are the focus of this Article, racial isolation significantly coincides with economic isolation. It is likely that for ghettoized schools in cities like New York, Los Angeles and Chicago, socioeconomic integration would reduce racial isolation more than it did in Cambridge. And even if class-based school integration turns out to be a less precise means for achieving racial integration than some would hope, socioeconomic integration is a worthy goal in its own right because of its likely effects on academic achievement.

Perhaps the most important argument for socioeconomic integration is its positive impact on student performance. As Gary Orfield has noted, racially separate schools are not inherently unequal because “something magical happens to minority students when they sit next to whites,” but because minority schools are so often “isolated high-poverty schools that almost always have low levels of academic competition, performance, and competition for college or jobs.”<sup>44</sup>

The most comprehensive studies of class and student

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42. CAMBRIDGE PUBLIC SCHOOLS, CONTROLLED CHOICE PLAN 7 (2001), <http://www.cpsd.us/Web/PubInfo/ControlledChoice.pdf>.

43. Tracy Jan, *An Imbalance Grows in Cambridge Schools*, THE BOSTON GLOBE, July 23, 2004, available at [http://www.boston.com/news/local/articles/2007/07/23/an\\_imbalance\\_grows\\_in\\_cambridge\\_schools](http://www.boston.com/news/local/articles/2007/07/23/an_imbalance_grows_in_cambridge_schools).

44. Richard Kahlenberg, *Socioeconomic School Integration*, POVERTY AND RACE RESEARCH ACTION COUNCIL NEWSLETTER, September 2001 (quoting Gary Orfield). There are, of course, examples of minority and high-poverty schools in which students achieve at the highest levels. These schools belie any suggestion that there is something inherently academically inferior about poor or minority children. The problem is that those schools are too rare.

performance suggest that what matters more is not the individual student's socioeconomic status, but the socioeconomic status of the majority of the student's peers. For example, on the 2005 National Assessment of Education Progress exam (often called "the Nation's Report Card") given to fourth-graders in math, low-income students attending more affluent schools scored on average twenty points higher than low-income students in high-poverty schools. That twenty-point gap translates into *two grade levels* worth of learning.<sup>45</sup> Indeed, when students whose families are low-income are given a chance to go to a predominantly middle-class school, they even outperform middle-class students in high-poverty schools by half a grade, on average.<sup>46</sup> The school environment, not the child's family's socioeconomic status, is what matters most to academic achievement.

Researchers believe this to be the case because schools with predominantly middle-class students have better-qualified and better-paid teachers, more parent involvement, and higher expectations for their students, and those characteristics create a learning environment that promotes the academic success of all the students in the school.<sup>47</sup> Notably, in integrated schools these improvements in the academic achievement of low-income students do not translate into decreased performance of middle-class students. Research suggests that so long as there remains a critical mass of middle-class students in a school, integration does not negatively affect their achievement.<sup>48</sup> That has been the case in Wake County, North Carolina, described in Part I.C, which has used socioeconomic integration to achieve the twin objectives of racial integration and improved student academic achievement.

There are reasons in addition to academic achievement why students from different backgrounds should sit together in American classrooms. Racial integration in public schools

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45. KAHLBERG, RESCUING BROWN, *supra* note 9, at 6.

46. *Id.*

47. *Id.* at 7.

48. *Id.* ("The research suggests that sprinkling a few middle-class children into a school of highly concentrated poverty may hurt their academic achievement, but so long as a critical mass of the students are middle-class (not eligible for free and reduced price lunch), middle-class student achievement does not decline with the presence of some low-income students. Studies find that integration is not a zero-sum game, in which gains for low-income students are offset by declines in middle-class achievement").

exposes children to peers with different backgrounds and prepares them to participate in a multicultural society. But since the Supreme Court has made pursuit of that goal constitutionally suspect, socioeconomic integration is the next best thing. The parents, students, and lawyers that fought for desegregation in the twentieth century were fighting for better—not just more racially integrated—schools. They sought quality educational opportunities that would allow children of color to access experiences and institutions previously foreclosed to them. Therefore, to the extent socioeconomic school integration can improve the academic fortunes of minority students and narrow the achievement gap, as data suggests it can, it is a worthy heir to the *Brown* legacy.

*C. How Socioeconomic Integration Works: A Case Study on Wake County, North Carolina*

Wake County Public School System is the twenty-first largest district in the United States, and covers urban Raleigh, as well as suburban and rural areas outside the city. In 2006–2007 the student population was 54 percent white, 27 percent African American, and 10 percent Latino, and nearly 29 percent of students received free or reduced-price student lunch.<sup>49</sup>

Wake County began a magnet school program in the 1980s in an effort to avoid court-mandated busing. But in the late 1990s, the Fourth Circuit barred the use of race in student assignment in cases involving school districts in Maryland and Virginia.<sup>50</sup> In response, Wake County officials began to consider ways of preserving the racial integration they had achieved without running afoul of the Court's decision. They discovered two criteria that had a fairly strong correlation with race: income and achievement. In 2000, the school board voted to drop a goal that each school would have a minority population no lower than 15 and no higher than 45 percent, and replace it with a goal that no school would have more than 40 percent of its student body eligible for free or reduced-price lunch, and no more than 25 percent of its student body would be reading below grade level. These goals were to be achieved

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49. *Id.* at 9–10.

50. *Eisenberg ex rel. Eisenberg v. Montgomery County Pub. Sch.*, 197 F.3d 123 (1999); *Tuttle v. Arlington County Sch. Bd.*, 195 F.3d 698 (1999).

by redrawing school attendance boundaries and by using income as a factor in magnet school admissions.<sup>51</sup>

While not all of the goals have yet been met, data from Wake County show that the socioeconomic integration plan has maintained racial integration and improved student achievement. As of 2008, 30 percent of schools still had more than 40 percent of students eligible for free or reduced-price lunch. Nevertheless, Wake County schools remain far more economically integrated than other schools in North Carolina, many of which have well above 80 percent poor students, and some, 100 percent. The new emphasis on socioeconomic integration has not sacrificed racial integration—after two years of the new program the percentage of schools deemed “racially integrated” fell only one percentage point.<sup>52</sup> Wake County has received national attention for the way it has improved the academic success of its low-income students. Sixty-one percent of poor students passed the state high school exit exams, compared with 43 percent in Durham County and 50 percent in Charlotte-Mecklenburg County.<sup>53</sup> Reflecting on the plan, Walter C. Sherlin, a former associate superintendent said, “It’s not easy and it can be very contentious in the community. Is it worth doing? Look at 91 percent at or above grade level. Look at 139 schools, all of them successful. I think the answer is obvious.”<sup>54</sup>

Wake County is the most studied example of a district that has successfully implemented a socioeconomic school integration program, but today at least 40 districts are known to use family income in school assignment.<sup>55</sup> In the wake of *Parents Involved*, the school district in Louisville, Kentucky, whose plan was struck down along with Seattle’s, revised its student assignment plan to account for socioeconomic status in addition to race.<sup>56</sup> The Supreme Court’s ruling has made it

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51. KAHLENBERG, RESCUING BROWN, *supra* note 9, at 9–10.

52. Susan L. Flinspach & Karen E. Banks, *Moving Beyond Race: Socioeconomic Diversity as a Race-Neutral Approach to Desegregation in Wake County Schools*, in *SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK?* 265 (John Charles Boger & Gary Orfield eds., 2005).

53. KAHLENBERG, RESCUING BROWN, *supra* note 9, at 12–13.

54. Alan Finder, *As Test Scores Jump, Raleigh Credits Integration by Income*, N.Y. TIMES, September 25, 2005, available at <http://www.nytimes.com/2005/09/25/education/25raleigh.html>.

55. *Id.* at 3.

56. Bazelon, *supra* note 11. The Louisville plan accounts for the average income

likely that socioeconomic school integration will become an increasingly popular trend across the country.

This Article identifies an important way in which socioeconomic integration will not yet work: helping the students isolated in the largest, worst-performing urban school districts. Unlike Wake County and Louisville which have heterogeneous populations of white, black, Latino, poor, and middle-class students, the nation's largest school districts are much more racially and socioeconomically homogenous. Their student populations are overwhelmingly black and Latino, and overwhelmingly poor. Achieving a critical mass of middle-class students would be impossible in these districts at present. After summarizing these demographics in the nation's three largest school districts, this Article will explore what will need to change so that the benefits of class-based integration can reach those schools and their students.

## II. THE CURRENT LIMITS OF INTEGRATION IN THE NATION'S LARGEST SCHOOL DISTRICTS

Proponents of socioeconomic school integration have largely ignored the problem of large, urban districts.<sup>57</sup> It seems that even the most enthusiastic economic integrationists believe ghetto schools in large cities will be forever separate, and the goal should be to make them as equal as possible with more integrated schools elsewhere. This resignation may seem initially justified when one considers the demographics of some of the nation's largest cities: Detroit (74 percent low-income students; 91 percent black), Los Angeles (77 percent low-income; 85 percent black and Hispanic), New York City (74 percent; 63 percent), Washington (64 percent; 93 percent), Philadelphia (71 percent; 79 percent), Chicago (74 percent; 88 percent) and Boston (71 percent; 76 percent). But this current state of race and class segregation in urban schools only *seems*

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level and education attainment in students' neighborhoods, and aims to evenly distribute students from the district's most disadvantaged areas, so no one school has a concentration of the poorest students.

57. See KAHLENBERG, *supra* note 9 ("Of course, in some jurisdictions (about 14 percent nationally), it will be impossible to get to the goal of 50 percent or more middle-class student populations in every school because the entire district student population is majority low-income.") See also Bazelon, *supra* note 11, ("Many big cities have a different problem. Simple demographics dictate that they can't really integrate their schools at all, by either race or class").

inevitable if one accepts the status quo of school district boundaries. In each of these large cities just listed, except Los Angeles Unified, the school district is coterminous with the city boundaries, replicating in the schools the socioeconomic stratification between central and suburban municipalities. But in other areas of the country, city and school district boundaries don't always coincide. Because the South and West urbanized later than other regions of the country, they have more countywide school districts than the North and Midwest. Instead of poor, urban districts ringed by burgeoning middle-class districts, in the South and West there are more regional districts with diverse student populations and greater control over student placement.<sup>58</sup> This Part will briefly profile America's three largest school districts—New York, Los Angeles and Chicago—to set up a discussion in the following sections about how socioeconomic integration might be possible for the millions of students these cities educate.

#### *A. The New York City Department of Education*

New York is the nation's largest public school district, with 1.1 million schoolchildren, more than the population of eight U.S. states.<sup>59</sup> It is also one of the poorest. In the 2006–2007 school year, 84 percent of the district's students qualified for free or reduced-price lunch.<sup>60</sup> Despite recent intensive efforts at reforms, the school district continues to struggle to adequately educate all of its students. In 2004, the district's graduation rate was 45 percent.<sup>61</sup> The district is surrounded by many smaller school districts in the tri-state area (of New York, New Jersey and Connecticut), and the average graduation rate in the suburban districts that surround New York City is 82 percent.<sup>62</sup>

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58. Bazelon, *supra* note 111; William A. Fischel, *The Congruence of American School Districts with Other Local Government Boundaries*, Dartmouth College Economics Department Working Paper (2007).

59. New York City Department of Education, About Us, <http://schools.nyc.gov/AboutUs/default.htm>.

60. NATIONAL CENTER FOR EDUCATION STATISTICS, *supra* note 10.

61. CHRISTOPHER B. SWANSON, EDITORIAL PROJECTS IN EDUCATION RESEARCH CENTER, *CITIES IN CRISIS* (2008). That this index represents the percent chance that the average student who entered the district in ninth grade had of graduating from high school. Swanson's index does not always equal the districts' self-reported graduation rates.

62. SWANSON, *supra* note 61, at Table 3.

The school district is part of city government, and the district lines are coterminous with the city boundaries, but the district has a history of experimenting with organizational structures. The city formalized the operations of the school district in the mid-nineteenth century, but in 1969, amidst cries that the district was failing to provide an adequate education, the state legislature ended mayoral control of the schools by creating a Board of Education and 32 separate community school districts with elected school boards.<sup>63</sup> In 2002, Mayor Bloomberg successfully fought to regain mayoral control, abolished the Board of Education, and consolidated the separate community school districts into ten "Regions." Only five years later, as part of a plan to create greater autonomy and accountability for principals, the Regions were abolished and the organizational structure of community districts was partially revived. The state legislature in Albany considered whether or not to extend Mayor Bloomberg's control of the district in the summer of 2009.<sup>64</sup> This history reveals that Albany has been willing to alter the legal framework in which the district operates to improve student achievement.

### *B. Los Angeles Unified School District*

Los Angeles Unified is the second-largest district in the country, serving over 700,000 students. Like New York, the majority of its students, 73 percent, are eligible for free or reduced-price lunch and its graduation rate is approximately 45 percent.<sup>65</sup> Unlike New York City schools, though, L.A. Unified is not coterminous with the city of Los Angeles. Twenty-seven other cities and unincorporated portions of Los Angeles County send students to schools within Los Angeles Unified.<sup>66</sup> There are also small schools districts that are islands unto themselves within L.A. Unified, including Inglewood Unified, Culver City Unified, Santa Monica-Malibu Unified, and Beverly Hills Unified. The graduation rates for these small

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63. DIANE RAVITCH, *THE GREAT SCHOOL WARS: A HISTORY OF THE NEW YORK CITY PUBLIC SCHOOLS* 386–387 (1974).

64. Jennifer Medina, *Debate on Mayoral Control of Schools is Renewed*, N.Y. TIMES, January 29, 2009, available at <http://www.nytimes.com/2009/01/30/education/30control.html>.

65. See NATIONAL CENTER FOR EDUCATION STATISTICS, *supra* note 10.

66. Joel Rubin and Richard Fausset, *A Far-Reaching District*, L.A. TIMES, available at <http://www.latimes.com/media/acrobat/2005-12/20824580.pdf>.

districts are 65, 75, 83 and 93 percent, respectively.<sup>67</sup> Students going to school blocks away from each other have vastly different odds of getting a high school diploma.

Like in the New York City public schools, district leaders have historically experimented with a variety of organizational structures. The elementary and high schools were originally run as separate districts, but were consolidated in 1961 to form L.A. Unified.<sup>68</sup> From 1977 until 1982 the district was under a desegregation plan mandated by the state Supreme Court.<sup>69</sup> During the 1990s, the district was separated into eight smaller sub-districts, and in 2008, Mayor Villarigosa made an unsuccessful attempt to gain mayoral control.<sup>70</sup> These historical cycles of centralization and decentralization, like those in New York City, suggest that school officials are willing to reconsider lines of authority and bureaucracy to try and improve student academic outcomes.

### C. Chicago Public Schools

Chicago is the third-largest school district in America. It enrolls over 400,000 students, approximate 75 percent of whom are eligible for free and reduced-lunch.<sup>71</sup> Its graduation rate is approximately 51 percent, making it the only district out of these three in which a student is more likely than not to complete a high school education.<sup>72</sup> Like New York, the boundaries of the school district coincide with the city boundaries.

The tumultuous history of public education in Chicago echoes the histories of New York and Los Angeles. After U.S. Secretary of Education William Bennett called Chicago's schools the worst in the nation in 1987 and teachers went on strike for 9 days, corporate leaders and grass-roots organizations drafted legislation to present to the Illinois

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67. EPE Research Center, Graduation Rates Map, <http://apps.arcwebservices.com/edweekv3/default.jsp>.

68. Los Angeles County Superintendent of Schools, LA City Schools Creation, <http://web.archive.org/web/19991103074756/www.lausd.k12.ca.us/lausd/history/schoollist.html>.

69. David S. Ettinger, *The Quest to Desegregate Los Angeles Schools*, LOS ANGELES LAWYER, March 2003, at 55–67.

70. *Id.*

71. *Id.*

72. SWANSON, *supra* note 61, at Table 2.

legislature. The bill passed in 1988 and created elected, local school councils with significant power, including hiring principals. But mismanagement, budget crises, and disputes with the teachers' union continued as another generation of kids missed out on an adequate education. By 1995, the state legislature abolished the school board and gave Mayor Daley mayoral control, which remains in place.<sup>73</sup>

As these snapshots show, demographics would suggest that socioeconomically integrating these historically failing districts is impossible. You could shuffle poor kids around, but most schools would still have a majority of poor children and never achieve a critical mass of middle-class students. Yet the histories of these districts also suggest that in times of crisis, and when different local groups form coalitions for reform, state legislatures have been willing to redraw lines of authority and accountability to try and improve the educations of the cities' students. A comparison of these three districts also reveals the falsity of the common intuition that school district boundaries must track city lines. That is the case in New York and Chicago, but not Los Angeles or many other districts in America. If school district lines were redrawn in these three metropolitan areas, new districts would encompass more socioeconomically diverse student populations, and the tools for improving student achievement and racial integration available to Wake County and other districts would be made available to the students who need it the most.

Part III will explore the historical trends and doctrines of local government law that have shaped school districts and who goes to school in them, and present an argument for decoupling school districts from municipalities in metropolitan areas.

### III. WHY SCHOOL DISTRICTS ARE WHERE THEY ARE AND WHY THEY SHOULD BE MOVED

Why is there an assumption that school districts' boundaries should be equivalent to city boundaries? Perhaps the intuition exists because the earliest examples of organized public schooling in America occurred in large, older cities like

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73. Catalyst Chicago, Reform History, <http://www.catalystchicago.org/guides/index.php?id=104>.

New York and Boston. Perhaps the recent popularity of mayoral control by Mayor Bloomberg in New York and Mayor Daley in Chicago has reinforced the conception that governing school districts is a task for city government. But the intuition doesn't reflect the reality. In a study using the software Google Earth to overlay municipal boundaries lines and school district boundaries, Dartmouth economist William Fischel found that only twenty-four percent of cities have boundaries coterminous with their the school districts.<sup>74</sup> In this Part I will briefly explore the historical reasons why cities have their own school districts in certain regions of the country, but show that this is not the case for most American cities. Then, I will describe the doctrines of local government law that govern the creation and alteration of school districts. Finally, I will offer arguments for why large urban school districts should be redrawn.

### *A. Historical and Legal Background*

Where school districts are coterminous with municipalities, it is a historical tradition, not a legal requirement. Many large cities began formalizing the organizations of their schools in the 19<sup>th</sup> Century as the idea of universal public education became more and more widespread, and the American population became increasingly urbanized. Impressed by the structure and efficiencies of new factories and industries like the railroads, leading educators wanted to apply similar principles to systems of urban schools. In the middle of the 19<sup>th</sup> Century, states began to take more centralized control, establishing state departments of education and regulating school finance, teacher certification and textbooks. As states began to organize their education bureaucracies, they often left existing administrative structures in place.<sup>75</sup> This explains the correlation between school district lines and city lines in the North and Midwest, where many cities had large populations and organized schools by the 1850s. In states that were still predominantly rural and did not have such developed local educational structures by the middle of the 19<sup>th</sup> Century, school

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74. Fischel, *supra* note 588. Fischel looked at all 661 municipalities in the United States with more than 50,000 population in Census 2000. *Id.*

75. *See, e.g.*, CYRUS DRIVER, VICTORIA THORP & VICTOR KUO, STANFORD UNIVERSITY NATIONAL CENTER FOR THE ACCELERATE SCHOOLS PROJECT, SUSTAINING SCHOOL RESTRUCTURING BY REFORMING SCHOOL DISTRICTS (2007); DAVID TYACK, THE ONE BEST SYSTEM: A HISTORY OF AMERICAN URBAN EDUCATION (1974).

organization was more likely to be subdivided along county lines. This explains why Fischel found that in the South, only 18 percent of cities were coterminous with their school districts, and in the West, that percentage dropped to 8.<sup>76</sup>

So although school districts have traditionally tracked cities in some regions of the country, there is no legal requirement that be the case. Instead, school districts are considered “creatures” of the state. The “state creature metaphor” was first articulated by the Supreme Court in 1907 in *Hunter v. City of Pittsburgh*, when it held that “municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them.”<sup>77</sup> The court envisioned municipalities and other public authorities as administrative conveniences, analogous to a state agency like a department of Transportation or Health, set up to ease the delegation of state power to different actors but not creating any separately enforceable legal rights for those who fall under the municipal entity’s domain. Since *Hunter*, the Supreme Court’s understanding of the political rights of municipalities has evolved somewhat,<sup>78</sup> but states have consistently maintained their plenary authority over education.<sup>79</sup> Each state, then, has the power to create, destroy or alter school district boundaries as it wishes.

Regardless of how district lines originally came into being, every state now has statutes that provide procedures for the consolidation, annexation or dissolution of school districts. The

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76. Fischel, *supra* note 588.

77. 207 U.S. 161, 178 (1907).

78. *See, e.g.*, *Romer v. Evans*, 517 U.S. 620, (1996); *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, (1982).

79. *See* McQuillin, *The Law of Municipal Corporations* § 46.02 (3rd ed.). (“The power, and, as sometimes expressed, the duty, to establish public schools and school districts and to enact laws for their government, is a government or state function, and is vested in the state legislature, and its power relating thereto is plenary and unlimited, except as restricted by the constitution. But such power is frequently delegated to some extent to quasi-corporations known as school districts, school boards and boards of education, or to counties, or to municipal corporations, when it may become a function and a department of the local government, including the establishment of colleges or universities. Generally, however, the common or free school system of education in this country has been organized and supported by constitutional provisions and legislative enactments as a primary and distinct function of the state and held under state control. It is not a part of the local self-government inherent in the town, township or incorporated community, except insofar as the legislature may choose to make it such”).

procedures are often lengthy and complicated, and depend on which kinds of districts are seeking a change. Any district reorganization is overseen by the state Department of Education, and ultimately rests on state approval, but state statutes detail procedures for local participation. New York, California, and Illinois each allow residents of the affected districts some kind of participation in the reorganization process.<sup>80</sup> Each of those states requires either a vote or petition signatures from registered voters, along with the approval of the relevant school boards, before a change in district boundaries.<sup>81</sup> So while public participation is a shared feature in many states' redistricting processes, democratic procedures are bequeathed by state legislatures, and are not constitutionally protected.

The courts in California, Illinois and New York have reaffirmed that the "state creature" doctrine applies to school districts. In 1992, a California court heard a challenge to provisions of Proposition 98, which required a statewide increase in education funding and would have allocated a specific pool of funding to a state-run program.<sup>82</sup> The California Teachers' Association filed suit, arguing that funds allocated to the state-run program were illegal, and should be allocated directly to and administered by school districts. The California court disagreed, and affirmed the primacy of the state over localities in matters of education:

[E]ducation and the operation of the public schools remain matters of statewide rather than local or municipal concern. Hence, local school districts are deemed to be agencies of the state for the administration of the school system and have been described as quasi-municipal corporations. Thus, a school district is not a distinct and independent body politic and is not free and independent of legislative control.

The Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraint. Indeed, it is said that the Legislature cannot delegate ultimate responsibility over education to other public

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80. ; CAL. EDUC. CODE § 35700-35712 (2009); 105 I.L.C.S. 5 § 11E-35 (2009); N.Y. EDUC. LAW, § 1504 3b (2009).

81. *Id.*

82. *California Teachers Assn. v. Hayes*, 5 Cal.App.4th 1513, 1521 (1992).

or private entities. . . .

The Legislature, in the exercise of its sweeping authority over education and the school system, has the power to create, abolish, divide, merge, or alter the boundaries of school districts.<sup>83</sup>

The courts in New York and Illinois have similarly proclaimed the plenary power of their state legislature to form, abolish or consolidate districts.<sup>84</sup> States can choose to make school districts part of city government for purposes of greater accountability, but they can also take school districts out from under mayoral control, as the State Assembly in New York considered doing in 2009.<sup>85</sup> In short, big city school districts begin and end at city lines because state legislatures allow them to. If state lawmakers wanted to decouple their lowest-performing school districts from municipal boundary lines, and try innovative ways to begin to integrate historically high-poverty, under-performing schools, they could. It is a question of political will and visionary educational leadership.

### *B. Why States Should Reorganize Failing Urban School Districts*

To overcome the inertia of the status quo and create the political will necessary for change, advocates for integrated urban schools must make legal and theoretical cases for why school district boundaries must be reorganized. Two recent state court cases have articulated theories about states' obligations to remedy interdistrict inequities, and provide persuasive arguments for reformers.

In 1989, Elizabeth Horton Sheff, an African-American community activist in Hartford, Connecticut, decided to sue Governor William O'Neill to demand that her fourth-grade

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83. *Id.* at 1524–25 (citations omitted).

84. *See, e.g.,* *People ex rel. Tuohy v. Barrington Consol. High School Dist. No. 224*, 396 Ill. 129 (1947); *People v. Rosenblum*, 54 N.Y.S.2d 295, 298–99 (1945) (“Public education is essentially a state and not a city function. The legislature, by general law, has provided for a complete system of public education, and imposed upon boards of education, as corporate bodies, separate and apart from the municipalities in which they exist, the responsibility of maintaining and administering its public school system” (citations omitted)).

85. *See* Jennifer Medina, *N.Y. Senate Renews Mayor's Power to Run Schools*, N.Y. TIMES, August 6, 2009, available at <http://www.nytimes.com/2009/08/07/nyregion/07control.html>.

daughter Milo receive a better education. At the time only 25 percent of Connecticut public school children were from minority groups, but 92 percent of Hartford students were black or Latino, and a majority “c[a]me from homes that [were] economically disadvantaged, that [were] headed by a single parent and in which a language other than English [was] spoken.”<sup>86</sup> Sheff and the other parents who joined her as plaintiffs argued that racial and economic disparities between the Hartford schools and surrounding suburban districts violated both the equal protection and the education clauses of the Connecticut state constitution. In a landmark decision seven years after the case was first filed, the Connecticut Supreme Court agreed. Noting that the state had never intentionally segregated students, the Court found that “the state has nonetheless played a significant role in the present concentration” of poor and minority students in the Hartford public school system.

Although intended to improve the quality of education and not racially or ethnically motivated, the districting statute that the state enacted in 1909 . . . is the *single most important factor* contributing to the present concentration of racial and ethnic minorities in the Hartford public school system. . . . The districting statute is of critical importance because it establishes town boundaries as the dividing line between all school districts in the state.<sup>87</sup>

Relying on precedent that had established the Connecticut legislature’s affirmative constitutional obligation to provide a substantially equal educational opportunity to all of the state’s schoolchildren, the Court held that the state’s failure to remedy the inequities caused by the districting scheme was unconstitutional.<sup>88</sup>

The court rejected the state’s suggestion that it follow federal constitutional law, and require a showing of intentional discrimination on the part of the state. The Court said that under Connecticut law,

the state action doctrine is not a defense to the plaintiffs’ claims of constitutional deprivation. The state had ample notice of ongoing trends toward racial and ethnic isolation in

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86. *Sheff v. O’Neill*, 238 Conn. 1, 8 (1996).

87. *Id.* at 10–11.

88. *Id.* at 71.

its public schools, and . . . [t]he fact that the legislature did not affirmatively create or intend to create the conditions that have led to the racial and ethnic isolation in the Hartford public school system does not, in and of itself, relieve the defendants of their affirmative obligation to provide the plaintiffs with a more effective remedy for their constitutional grievances.<sup>89</sup>

Despite the sweep of its conclusion, the court did not specify a remedy. Instead, it ordered the legislative and executive branches to figure out a solution. After years of negotiation, the plaintiffs and the state finally reached a settlement agreement in 2008. It requires the state to write a Comprehensive Management Plan to coordinate multiple desegregation programs, to create a Regional School Choice Office to oversee implementation of the plan, and to support collaboration between the state and stakeholders throughout the Hartford Region.<sup>90</sup>

*Sheff* inspired a similar suit in Minnesota. The local branch of the NAACP filed suit against the state, making arguments very similar to those made by parents in Hartford.<sup>91</sup> The state district court judge thought the claims sufficiently novel that the case should be directly decided by the Minnesota Supreme Court, but the high court refused to hear the certified questions.<sup>92</sup> Right before trial, the parties settled, and the settlement agreement reflected the state's willingness to rethink the rigidity of district boundary lines. The settlement agreement established three key programs that allowed low-income Minneapolis students to attend suburban schools, and gave low-income Minneapolis students preferred access to magnet schools within the district. The suburban enrollment plan has proved popular, and although it was set to expire at the end of the 2004–2005 school year, it was renewed.<sup>93</sup>

Although neither case resulted in revisions of the state districting statutes, they powerfully articulate the argument

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89. *Id.* at 23–24.

90. “LDF Announces Settlement Agreement in Hartford School Desegregation Case,” NAACP Legal and Educational Defense Fund, available at <http://www.naacpldf.org/content.aspx?article=1265>.

91. *Minneapolis Branch of the NAACP v. State*, No. 95-14800 Minn. Dist. Ct. (1995).

92. Myron Orfield, *Choice, Equal Protection, and Metropolitan Integration: The Hope of the Minneapolis Desegregation Settlement*, 24 *LAW & INEQ.* 269, 312 (2006).

93. *Id.* at 314.

that states must take responsibility for the interdistrict inequities that deprive poor students of adequate educations. While students would have a difficult time arguing that a substandard, segregated, urban education represents a federal constitutional violation, it may represent a state constitutional violation. Forty-nine states (not Mississippi) have clauses in their state constitutions requiring the state provide free, public education.<sup>94</sup> Although Connecticut is currently unique in that its Supreme Court has held that the state's education clause puts an *affirmative* duty on the state to provide a "substantially equal" education to all its students, trends in another area of education litigation suggest that such a construction of other states' constitutions' education clauses might be possible.

In the last three decades, litigation in many states has established that those clauses require states to ensure that school financing schemes allow for the provision of adequate education to the poorest districts.<sup>95</sup> Advocates for changing school district boundaries can argue that the current isolation of poor students in urban schools fails such an "adequacy" standard. The argument might take the following form: since schools are supposed to prepare students to compete for higher educational opportunities and jobs, an "adequate" education implies students achieve some minimal level of competitiveness compared to other students in the state. When urban students routinely fall far behind other groups of students, they are being denied an "adequate" education and equal protection of the state's laws.<sup>96</sup>

In Part IV below, I will argue that state lawmakers, not judges, should be the ones to redraw school district boundaries.

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94. William E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639, 1661 (1989).

95. See discussion *supra* at page 2.

96. See James Ryan, *Standards, Testing and School Finance Litigation*, 86 TEX. L. REV. 1223 (2008). The author suggests that comparisons and notions of rough equality may be part of an "adequacy" analysis. "In order to decide whether states are providing students the opportunity to receive an adequate education, courts need to know what an adequate education looks like. It is not at all obvious. Is adequacy measured, for example, by the mastery of certain skills and the attainment of certain knowledge, regular advancement from grade to grade, on-time graduation, preparation for the workforce or college, or perhaps all of these things? Is it an absolute standard or a relative one, such that adequacy itself requires some degree of comparison among schools?" *Id.* at 1230.

Nevertheless, the arguments articulated in *Sheff* and *Minneapolis Branch of the NAACP v. State* should embolden reformers. As these cases make clear, some states are realizing statutes that use jurisdictional lines to cordon off the poorest students from middle and upper-class students don't make educational sense and might very well violate states' constitutional duties.

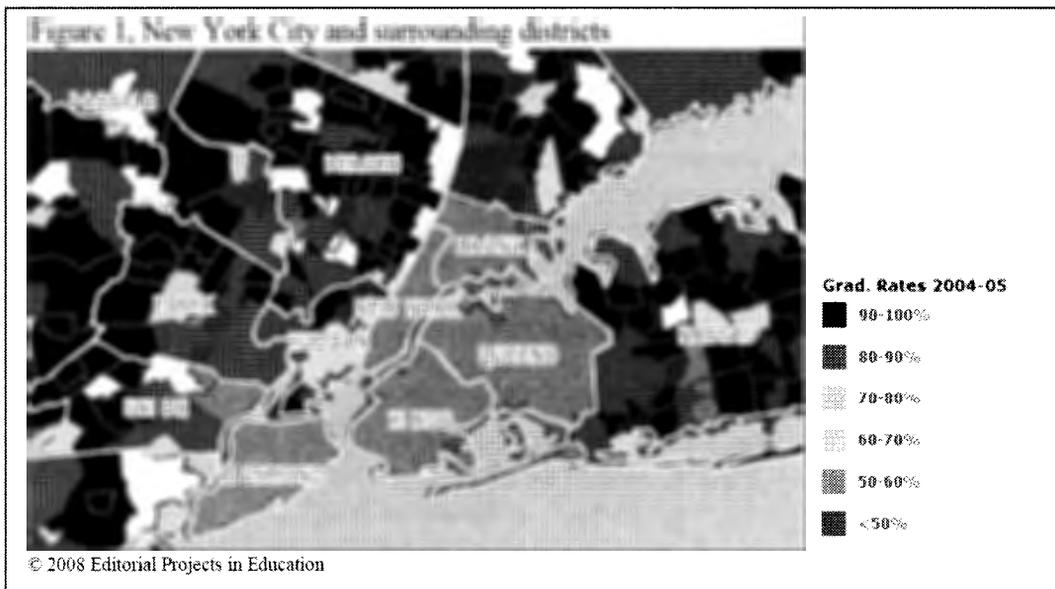
#### IV. HOW TO BEGIN SOCIOECONOMIC INTEGRATION OF URBAN STUDENTS

In this Part, I'll describe two proposals—one more concrete, one more theoretical—for reorganizing large urban districts in ways that would create more socioeconomically diverse student populations. Once formed, these new districts could begin to implement socioeconomic integration strategies to eliminate clusters of high-poverty schools and raise academic achievement for traditionally under-served students. Finally, I'll address some of the practical concerns that such proposals might raise. Who might support and who might oppose such plans will be addressed in Part V.

##### A. "Flower Petal" Districts

Once lawmakers understand that the correlation between municipal boundary lines and school district boundary lines are historical legacies but not legal necessities, they could begin to experiment with district reorganization. Dividing up urban districts and consolidating them with surrounding middle-class districts would create opportunities for socioeconomic integration. By arranging these new districts like flower petals emanating out from the center of the city, the distances students and teachers would have to travel if they were assigned to a new school could be kept reasonable. This Part uses New York City as an example to show how current boundary lines segregate students, and how those lines might be redrawn.

Figure 1 below shows a map of the New York City Department of Education and surrounding districts. The map is shaded to represent the graduation rates of the central urban district and surrounding districts.

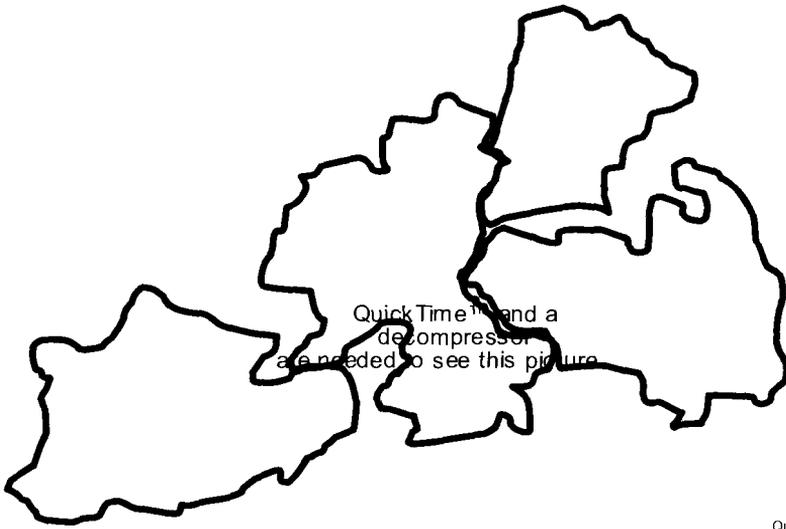


When viewed this way, it becomes clear that the current organization of school districts may promote administrative efficiencies, but it does not promote the best interests of students. If the high school student in Queens who now has about a 50 percent chance of graduating could just go to a school over that bright white line in Nassau County, she'd be among college-bound peers and taught by teachers who are preparing students for college. The quality of the education she would receive, and her understanding of the opportunities it might provide, would change in important ways. This view also makes clear what an anomaly the New York City district is. It calls into question the intuition that the district naturally belongs to and with the city, and leads one to wonder why such

a different looking district, getting noticeably poorer results than its neighbors, is not reconsidered. But the map is also a reminder of the vast scale of the New York metropolitan area and its overlapping hodgepodge of municipal, county and state jurisdictional lines. Such a legal web has entrapped the status quo.

Figure 2 below is an attempt to illustrate how reorganized districts might cut across current local governments to more integrated student populations. The bold, black lines represent the boundaries of “flower-petal” districts in one possible scheme.

Figure 2, A Reorganization of Metropolitan New York Schools



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decompressor  
are needed to see this picture.

QuickTime™ and a  
decompressor  
are needed to see this picture.

Conceding that the districts do not in fact look much like flower petals, this figure illustrates that smaller districts could be drawn in the New York metropolitan area to facilitate

socioeconomic integration. Take for example the new district that might be formed with the Queens portion of the New York City Department of Education and 18 districts in Nassau county (on the right in Figure 2).<sup>97</sup> Approximately 68 percent of students in Queens are eligible for free or reduced lunch, while only 23 percent of the students in the Nassau county districts are eligible.<sup>98</sup> Therefore, in the new, combined district, a carefully tailored student assignment plan could aim to have each school reflect the more diverse demographics of the new district's jurisdiction.<sup>99</sup>

This figure is not meant to represent an exact solution, and many complicated issues would need to be addressed before such a plan could be realized. For example, the first and second districts from the left in the figure above, as drawn here, encompass schools in both New York and New Jersey. Given the state's role as the primary guarantor of public education, it may be infeasible to create districts that span state lines. Nevertheless, the image suggests that a little creativity might go a long way to improving educational opportunities for students in New York.

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97. In Figure 2, the 18 districts from Nassau County included in the new district are East Rockaway Union Free School District, Garden City Union Free School District, Glen Cove City Union Free School District, Great Neck Union Free School District, Hempstead Union Free School District, Herricks Union Free School District, Hewlett-Woodmere Union Free School District, Island Park Union Free School District, Lawrence Union Free School District, Lynbrook Union Free School District, Malverne Union Free School District, Manhasset Union Free School District, Mineola Union Free School District, Oceanside Union Free School District, Port Washington Union Free School District, Rockville Centre Union Free School District, Roslyn Union Free School District, Sewanhaka Union Free School District, and Valley Stream Union Free School District. See EPE Research Center, Graduation Rates Map, <http://apps.arcwebservices.com/edweekv3/default.jsp>.

98. See NATIONAL CENTER FOR EDUCATION STATISTICS, *supra* note 10.

99. *Id.* In the 2006–2007 school year (the latest for which data is available at the National Center for Education Statistics) New York City schools in Queens enrolled 208,492 students, of whom 141,730 were eligible for free or reduced lunch. The 18 districts in Nassau County listed above enrolled 83,565 students, of whom 19,220 were eligible for free or reduced lunch. Thus in the new, combined district that I created in Figure 2, 55% of the students would be eligible for free or reduced lunch. Richard Kahlenberg has argued that to maximize the benefits of socioeconomic integration, each school should retain a critical mass (50%) of middle-class students. See discussion *supra* Part I.B. If this hypothetical new district wanted to achieve that goal, a few more districts from Nassau County with higher proportions of middle-class students would need to be incorporated.

*B. Statewide Districts*

A common argument for maintaining the current system of rigid district boundary lines that track municipal lines is the importance of neighborhood schools. As this argument goes, students have always been able to go to school near where they live and should always continue to do so. To send children away from their neighborhood for school would be costly and complicated. Perhaps this argument made sense in the days when students would walk home for lunch, or in the days when most children had a mother in the house who didn't want them to be too far away. But that argument seems less persuasive in a society where most parents work, and many urban schools provide child care in the afternoon and evenings. For families in which parents leave in the early hours of the morning to get to work, and then do not arrive home until late in the evening after having worked a second job or made a long commute, having children in school near home may not be the most convenient option. If school enrollment laws allowed families to pick quality schools in locations near where parents worked, metropolitan areas might be able to achieve more socioeconomically integrated schools.

Thus a second way to reorganize district lines would be to make them completely porous. Districts, to the extent they would continue to exist, may remain organized as administrative entities, supporting the adults in the system—for things like payroll, procuring supplies, etc.—but students would be able to go to any school in the state. If many parents chose to drop kids off at a school near where they worked, school demographics would no longer mirror patterns of residential segregation. A mother who lives in the Bronx but works as an assistant in an office on Wall Street could commute with her children, and put them in a school with her colleague's children. A father who lives in East Los Angeles but works at a restaurant in Santa Monica could enroll his children there.<sup>100</sup> While such a plan would probably not result in students traveling across an entire state to find a better school, it likely would result in new patterns of school attendance in large, metropolitan areas where concentrations of poor

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100. For further discussion about neighborhood schools and the distances students may travel under this proposal, see the discussion *infra* Part IV.C.

students are highest.

This vision for district reorganization is an extension and synthesis of the reform proposals of several groups of education advocates and thinkers. It draws upon, but goes further than other proposed versions of school choice. The school choice movement includes support for programs like charter schools, vouchers to allow some students to attend private schools, and controlled choice plans like the one in Wake County, North Carolina.<sup>101</sup> Like school choice advocates, this statewide district plan assumes that parents have a right to choose the best educational opportunities for their children, but unlike most school choice models, this plan would eliminate district lines all together.

This model is also a variation on proposals made by local government theorists. In his book *CITY MAKING*, Gerald Frug imagines communities in which boundary lines do not perpetuate unequal distributions of resources and segregation.<sup>102</sup> He acknowledges that in modern society, it makes less sense than it once did (if it ever did) to link one's representation in a metropolitan area exclusively to where one lives. At another time in American history, families may have lived, shopped, worked and socialized in the same town or city, but now many people cross municipal boundary lines every day to do each of those activities. Yet they may vote, and for the most part send their children to school, only in the locality where they live. As a response, Frug imagines a plan where everyone gets five votes they can cast in whichever local elections they feel affect their interests. For example, workers may feel strongly about the need for economic development around their office building because they want more places to go out to lunch and safer places to park their cars. In Frug's proposal, those workers would be able to vote for city council in the town in which they work, even if they live across city lines.

Though it raises lots of practical questions, Frug's proposal reflects the current dissonance between the way people experience their communities and the way they are represented in them. That insight is equally applicable to the

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101. See, e.g., George F. Will, *A Tide for School Choice*, WASHINGTON POST, Feb. 1, 2007, at A15; Heritage Foundation, *Types of School Choice*, available at <http://www.heritage.org/research/education/schoolchoice/typesofschoolchoiceRD.cfm>.

102. GERALD FRUG, *CITY MAKING* (1999).

way students are educated. If the concept of the neighborhood school was once the most logical way to distribute educational resources and assign children, it probably is not anymore, at least for many families and many metropolitan areas. In the system of statewide districts, some parents may continue to choose to send their child to the nearest school, but no one must.

### *C. Responding to Practical Concerns*

Such proposals obviously raise a host of questions about funding and logistics. To effectively implement socioeconomic integration plans in newly created districts or state-wide districts—without resorting to mandatory busing of students across long distances—will require additional resources devoted to urban schools. For example, in the hypothetical Queens-Nassau County district described above, new programs, curricular offerings, or specialized facilities might be necessary to lure middle-class students who live in Nassau County to choose to cross into Queens for school. Such changes would also likely lure teachers from suburban schools to urban schools, reducing or reversing the current flow of the most qualified teachers out of cities into suburbs, further increasing the attractiveness of city schools to parents and students from across county lines. Innovative, cooperative local governments might also provide other, non-educational incentives for parents, perhaps by offering vouchers for public transportation, or a tax benefit to those who verify that they send their children to an integrating school.

Once metropolitan areas were able to incentivize parents to send their children further away to school, they would likely face criticism that increasing the distance travelled to school carries too many environmental costs for metropolitan areas. Many environmentalists and urban planners are advocating for a greater focus on density in metropolitan areas, and for rethinking distribution networks to reduce the distances that goods and people have to travel in an age of climate change.<sup>103</sup>

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103. See, e.g., Christopher B. Leinberger, *The Next Slum?*, THE ATLANTIC, March 2008, available at <http://www.theatlantic.com/doc/200803/subprime> (arguing that far-flung suburbs are the next slums, and that walkable urban neighborhoods will be the future of development); Michael Pollan, *An Open Letter to the Next Farmer in Chief*, N.Y. TIMES, October 9, 2008, available at <http://www.nytimes.com/2008/10/12/magazine/12policy-t.html> (arguing for “reregionalizing the food system”).

It is true that the proposals I suggest run counter to those trends, because given the fact of residential segregation along lines of race and class, students inevitably would have to travel greater distances to get to integrating schools. A different kind of planning problem may arise if states allow parents to enroll their students in schools near where they work. Conceivably such a plan may increase congestion in downtown commercial centers, as more schools were built in those areas and children swelled the commuter ranks.

While redrawing or eliminating urban districts will likely require more travel for more students at first, that need may reduce over time. It is possible that socioeconomic school integration may plant the seeds for more socioeconomic residential integration. Sheryll Cashin has explored the feedback loops between residential and education integration, and suggests that one can lead to the other.<sup>104</sup> If integrated schools with significant populations of middle-class students were available in urban areas, parents who preferred an urban lifestyle over a suburban one would not have to move out of the city to live near middle-class schools. Suburbs which had significant numbers of poor students attending their school might build more affordable housing to accommodate those families. Thus, if socioeconomic school integration reduced residential segregation in these ways, the “neighborhood” school might eventually become an integrated one. Students could go to school close by and still find a diverse group of classmates.

If the reorganization or elimination of urban districts are not ideas that can be implemented easily in the short-term, they are ideas that nevertheless question assumptions about the ways schools have been organized, and whose interests are served and whose are overlooked by the current system. The complications these proposals create may be significant, but I believe they are more tolerable than those created by an urban education system that continues to fail half its students.

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104. See Cashin, *supra* note 288, at 229–36. (“In a well-integrated school system, one where every school has a majority middle-class population and no school is overwhelmed by poverty, parents of all races would not have to worry so much about the quality of education their child is receiving. In an economically integrated system, white parents would have much less to fear about the risks of public schools. They might be willing to live in multicultural settings”).

## V. BUILDING COALITIONS FOR INTEGRATING URBAN DISTRICTS

Half a century after *Brown*, our schools are resegregating along lines of race and class, and many urban students still have less than a fifty percent chance of getting a high school diploma. In most metropolitan areas, the neighborhood in which a child is born still dictates to an unconscionable extent whether or not that child may attain a quality education. In her book, *THE FAILURES OF INTEGRATION*, Sheryl Cashin advocates taking the “hard path” toward creating an integrated society. As she summarizes it, the soft path is less direct and touches issues in more oblique ways that generate less controversy. But ultimately, the harder, more direct path often converts many of the soft-path advocates in support of substantive reform. “Hard path” abolitionists eventually won out over “soft path” accommodationists of slavery, and the “hard path” of racial equality advocated by W.E.B. DuBois won out over the “soft path” of separatism advocated by Booker T. Washington, forming the intellectual basis for the civil rights movement and, eventually, a national social consensus.<sup>105</sup> Breaking up concentrations of under-performing high-poverty schools in our nation’s largest cities is the hard path. This Part will identify potential political coalitions that might be able to push lawmakers and education officials in such a direction.

To many, the idea of breaking up large urban school districts as a predicate for socioeconomic integration may seem like an idea whose time has passed. Integration was a project of the 1970s and 1980s that has since been discredited, they might say. The goal now should be to make urban schools better. Suburban voters would never allow state lawmakers to change their school districts. That school district was why they spent a lot of money buying a house in the suburbs, and they’ll protect their “right” to those good schools, some might say.

While it’s easy to imagine that kind of rhetoric—advocating for the “soft path” toward separate but equal schools—there are many reasons to believe that coalitions in support of “hard path” reforms could be organized around the country. On a national level, there is greater and greater consensus that the current system of American public education is broken, and even those voters who are happy with their own children’s

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105. See Cashin, *supra* note 288, at 298–300.

schools must understand they have stakes—economic, social, and moral stakes—in the overall health of the education system. Since urban districts which fail half their students are one of the greatest threats to an educated, competitive American workforce, economically integrating those school districts is in the interests of those who don't send their children there, but whose economic interests are tied to the health of the American economy as a whole. At the state level, where lawmakers have complete control over where districts lines fall, local coalitions can be formed as well. This Part will first explore different grassroots coalitions that could be built around the idea of integrating urban districts. Those groups of voters could exert political pressure on their local and state representatives to break up high-poverty districts and set goals for socioeconomic integration. Next, this Part will examine several sets of incentives that, in addition to grassroots support, might persuade lawmakers that such reorganization is in their political self-interest.

### *A. Building Political Coalitions for Change at the Grassroots*

#### *1. Middle-class Parents*

The most common refrain to any suggestion about class-based school integration is “middle-class parents won't support it.” Whether or not the view is empirically correct, policymakers assume that without the support of middle-class suburban voters, any attempt to reorganize the patterns of school attendance will be politically unfeasible. This assumption is likely fueled by images of resistance to court-ordered desegregation in the 1970s and 80s and a legacy of “white flight” that many see as an unintended consequence of those plans. Part V.A.1. will begin with a critique of that assumption, and articulate an argument that many middle-class voters would support efforts to reorganize poor urban districts.

One group that would likely support the proposals outlined in this article is middle-class residents of urban areas. Currently, many young families in our largest cities are stuck between an economic rock and educational hard place: they feel they must choose between buying an expensive suburban home in a good school district, coming up with enough money for an expensive urban private school, or sending their children to an

underperforming urban school in which middle-class students are a small minority. During the 2008 election campaign, Sandra Tsing Loh, a middle-class mother in Los Angeles blogged about her and her friend Carolyn's situation for the *NEW YORK TIMES*:

Carolyn is not a minority, not uneducated, nor even particularly poor, in the conventional sense. Which is to say, hers is a middle-class family (remember them?). But what does that mean any more, in the big cities? Living in Los Angeles as I do, Carolyn lacks both \$1.2 million for a house in our high-scoring suburban school districts and the \$20,000 a year for private school.

Meanwhile, Carolyn's local public elementary is demographically similar to my own: 96 percent of the students are Hispanic, 80 percent qualify for subsidized lunches and 70 percent are English learners. Although this particular school's scores have been doggedly improving (both teachers and children seem to work on literacy like the dickens), they have yet to reach California's own stated baseline (an Academic Performance Index of 800), meaning the school is technically a "program improvement" school, which means Carolyn's child-to-be should be able to transfer to a better school. But to where? . . . To some place more green, more hilly, more affluent, more gentrified, more homogenously white, like Portland, Ore. or Massachusetts? . . . Too often left out in our local—and national—public education discussions are middle-class families like Carolyn's and mine. We do not dwell in any media-attention-worthy inner city "stunt" core (and every city seems to have one). No, we quietly shuffle along, free of Eli Broad and Bill Gates money, trying to make sense of a 21st-century United States public education world that looks, to parents trying to do the right thing, very, very strange.<sup>106</sup>

If the California legislature were to break up the Los Angeles Unified School District, and draw "flower petal" shaped districts around the metropolitan area, Carolyn and Sandra Tsing Loh could potentially send their children to suburban districts without having to buy that \$1.2 million dollar house. Or, they might be able to send their children to a

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106. Sandra Tsing Loh, *On the Democratic Convention: What About Us?*, *NEW YORK TIMES* available at <http://campaignstops.blogs.nytimes.com/2008/08/29/on-the-democratic-convention-what-about-us>.

neighborhood school with some of the children from that high-performing suburban school. If parents like Carolyn and Sandra Tsing Loh opt to send their kids to Los Angeles public schools, and the schools start to look more reflective of the broader community, maybe some other parents will give up on the \$20,000-a-year private school and a demographic positive feedback loop might begin.

Middle-class parents living outside city districts also have reasons to support district reorganization and socioeconomic integration. Currently, under many state school financing schemes (some of which were ordered by state courts after lawsuits challenging higher per-pupil spending in wealthy districts) suburban residents see a portion of their property taxes go to spending increases for poor schools or a cap on the amount of money their local district can spend.<sup>107</sup> If district lines were redrawn so that the new district in which they resided included schools from the former middle-class district and the former high-poverty urban district, there would be less need for redistributive financing schemes, and local property taxes could go to the new local district now educating a more integrated group of students. Socioeconomic integration might also benefit suburban families because much of the money spent on implementing the program would benefit the suburban child. In order to entice suburban families to send their children to formerly high-poverty schools under a controlled choice plan like Wake County's, the state would need to upgrade facilities, increase curricular offerings, and perhaps design magnet programs with special resources.<sup>108</sup>

While the specifics of district reorganization would vary from city to city, these arguments make clear that socioeconomic integration is not a zero-sum game. Any assumption that such plans are too ambitious or radical and would therefore encounter stiff resistance from middle-class and suburban voters is short-sighted. If creative advocates can build a coalition of middle-class voters in support of

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107. See, e.g., James E. Ryan, *Schools, Race and Money*, 109 YALE L.J. 249 (1999).

108. See discussion *supra* Part IV.C. See also McUsic, *supra* note 7, at 1362–64. It is important to note that such investments would be different from a “throw the money at the problem” approach to failing urban schools. Targeted spending to increase the likelihood that suburban children would choose to attend urban schools under controlled choice plans in newly redrawn districts has as its aim socioeconomic integration. The new mixture of students, not necessarily the additional funds, would be the tool for improving student achievement.

redesigning urban school districts, they can tie that coalition to the broader, national movement for school reform.

## 2. *Teachers and Education Reformers*

Although the current emphasis among education advocates is to raise expectations, increase accountability and improve teacher quality in urban districts,<sup>109</sup> and very few prominent voices have questioned the current policies of student assignment,<sup>110</sup> education reformers are natural allies in a grassroots effort to reorganize big city districts. As detailed in Part I, socioeconomic integration of students has been shown to improve the academic success of the most vulnerable students, without jeopardizing the learning of middle-class students. Without straying from the important message that despite the challenges poor kids face they can achieve at the highest levels, education reformers need to admit that many more kids are likely to achieve at those levels when concentrations of high-poverty students are eliminated. The reform movement must realize that the most sustainable way to maintain broad support for improving education for traditionally underserved students is to let those children go to school with traditionally well-served students.

Teachers and teachers' unions are not always in philosophical agreement with education reformers, but they too might be a powerful bloc for the coalition to economically integrate large districts. Urban districts have traditionally struggled to retain the most experienced, most qualified teachers, who often leave for suburban schools for better pay and a less challenging work environment.<sup>111</sup> In redesigned districts, or in statewide districts, the interests of urban and suburban teachers would converge, and a more cohesive, powerful bargaining unit may result. While it may be

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109. David Brooks, *Obama, Liberalism and the Challenge of Reform*, N.Y. TIMES, June 13, 2008, available at <http://www.nytimes.com/2008/06/13/opinion/13brooks.html>.

110. See The Educational Equity Project, Statement of Principles, [http://www.educationequalityproject.org/what\\_we\\_stand\\_for/principles](http://www.educationequalityproject.org/what_we_stand_for/principles) (last visited Jan. 23, 2010). The Educational Equity Project is a group co-founded by New York City Schools Chancellor Joel Klein and the Reverend Al Sharpton. While the group references *Brown* and says progress in educating black and Latino students since then has been "shameful," they do not reference integration, socioeconomic or otherwise, as a possible strategy.

111. Brian A. Jacob, *The Challenges of Staffing Urban Schools with Effective Teachers*, 17 THE FUTURE OF CHILDREN 129–53 (2007).

challenging at first for teachers to adopt their instructional practices to the new kinds of students before them in classrooms, those difficulties may be more than offset by the sense that schools and teachers across the wider region are sharing more equitably in the task of educating all their students. Teachers would benefit also from the kinds of investments that might attract support of middle-class suburban students. If, instead of throwing money at intractably underperforming schools for things like consultants and outside tutoring vendors, newly created districts were spending money to improve facilities and enhance programs to attract middle-class students to new schools, teachers would likely benefit.

### *3. Regionalism and Smart Growth Advocates*

Better schools make life better for everyone in a metropolitan area. Imagine if most parents seeking good public schools didn't flee urban centers—either because they could still send their children out to attractive suburban schools without moving there, or because a middle-class peer group they want for their child comes to the city for school. As living in urban neighborhoods became more attractive for these parents, property values in the urban core would rise, new residents would attract economic development, and a larger municipal tax base would allow the central city to offer improved city services. Slowly, the suburbs might lose the reinforcing competitive advantages they currently enjoy—good schools, low property tax rates and superior municipal services. More affordable housing may become available in the region as a result.

Regional thinkers like Gerry Frug recognize the potential power of decision making at a metropolitan level to overcome the inefficiencies and inequities caused by the current fragmentation (and sometimes antagonism) between urban and suburban localities. Sheryl Cashin recounts a compelling example of regional cooperation in Minneapolis, Minnesota that has important implications for a building a movement to redesign school districts and economically integrate schools. Despite the division of the region into seven counties and more than 188 municipalities, visionary leaders in greater Minneapolis who recognized the “debilitating effects of extremely uneven distribution of economic growth and social

service needs” painstakingly began an effort to build an inclusive, majority coalition in the state legislature. Organizers realized that an alliance between central city and older, inner-ring suburban representatives would create a slim majority at the state house. For example, politicians from working-class, mostly white suburbs were initially skeptical about a fair-share affordable housing bill. But once they realized that their towns’ obligations would not increase under the measure because they already provided a good deal of reasonably priced housing, and that the bill would open up the affluent developing suburbs to many of their constituents, they voted with representatives of the inner city to pass the law.<sup>112</sup> Cashin concludes, “the result is a fiscally healthier, more sustainable region that benefits everyone because there is much less risk of any concentrated social distress overwhelming weaker cities and hence destabilizing the region.”<sup>113</sup>

The story in Minneapolis provides a blueprint for forming coalitions to break up concentrations of high poverty schools. Just as working-class suburban residents realized they had a stake in “urban” issues in Minneapolis, working-class suburban parents who can’t afford private school or a house in the best district have an important stake in redistricting. For example, there are enclaves of working-class families on Long Island and in older suburbs like Yonkers who would greatly benefit from a New York law that redesigned the New York City Department of Education, since newly drawn urban-suburban districts would allow students in underperforming suburban districts like Hempstead or Yonkers access to high performing schools nearby in Nassau or Westchester counties. Regionalists should foster these sorts of alliances. As residents of a metropolitan area get used to sending their children across municipal boundary lines for school, or seeing parents from other cities and towns come to their neighborhood, those interactions will foster a more regional mentality in voters.

With imaginative leadership, proponents of a more equitable system of public education could begin to build a broad coalition for socioeconomic school integration in places like New York, Chicago and Los Angeles. Such a coalition would command the attention of political representatives. But

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112. Cashin, *supra* note 288, at 308–10.

113. *Id.*

in addition to the “bottom-up” pressure from their constituents, politicians may have additional “top-down” incentives for supporting socioeconomic school integration.

### *B. Additional Forces for Change*

#### *1. Regulatory Pressures from the Federal Government*

Although states have almost complete control over how they provide public education, the federal government has the power of the purse. The No Child Left Behind Act imposes a host of requirements on states that seek federal dollars. As it is currently structured, No Child Left Behind does not necessarily incentivize states to improve their lowest performing districts, but when the bill reauthorized, new requirements could make the socioeconomic integration of large urban districts an attractive policy choice to state legislatures.

As it is currently written, the law requires states to test their students each year in grades 3–12, and report the results from every school and every sub-population of students, such as African Americans, Latinos, English Language Learners, and children receiving special education.<sup>114</sup> Many critics of the law have suggested that since states may design and provide their own tests, the law has resulted in a “race to the bottom” in which states water-down the rigor of their tests so student performance looks to be improving. Additionally, this system means that states are only compared against their own previous years’ performances, since there is no standardized interstate comparison.<sup>115</sup> However, if a reauthorization of No Child Left Behind required a national test given in every state, or at the very least, similar tests which measured student performance against very similar standards, states would be compared against each other. In that case, it would not be enough for state officials in California, for example, to placate their constituents by saying “our results have gone up each of the last five years” if the national comparison revealed that an education in California was worth much less than an education in Massachusetts or North Carolina. Facing the scrutiny of a

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114. No Child Left Behind Act of 2001, 20 U.S.C.A. § 6053.

115. The National Assessment of Educational Progress (“NAEP,” commonly referred to as “the nation’s report card”) is one way of comparing states against each other, but participation is optional, and the test is not given every year.

transparent national ranking, California officials may realize that the consistently poor performance of the L.A. Unified school district is pulling down their overall state performance. Currently, state officials can just lament that L.A. Unified consistently ranks near the bottom of all districts in California, and while that may chagrin officials in Los Angeles, there is not political price for *state* officials to pay. That would change if a reauthorized No Child Left Behind Act required a nationally standardized measurement.

## 2. *Fiscal Pressures*

As states face some of the worst budgetary crises in half a century, they are looking for new, creative ways to pinch pennies. As a result, many governors have called for school district consolidation as a way to realize economies of scale. In the last several years, the governors of New Jersey, Pennsylvania, and Massachusetts have proposed that small districts join together to form larger ones, eliminating the need for each small district to pay a superintendent and a district office staff.<sup>116</sup> In general, these proposals focus on consolidating small, rural districts (some with only one or two schools). But if these plans are carried out, they would give residents and legislators an education in the flexibility of district boundary lines. Once lawmakers became more familiar with the idea of drawing school districts to promote efficient management and academic outcomes, rather than traditional ideas about where districts “should” go, they may be more open to redrawing the lines that now surround large, urban districts.

## VI. CONCLUSION

To become a nation where children from different backgrounds learn together in schools that provide them an

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116. See Tom Hester and Robert Schwaneberg, *Corzine: County Districts Could Diversify Schools*, NEWARK STAR-LEDGER, October 5, 2006; Sarah Hofius Hall, *Pennsylvania School District Consolidation Debated*, SCRANTON TIMES-TRIBUNE, February 09, 2009; The Patrick Administration Education Action Agenda *available at* <http://www.mass.gov/Eeoe/docs/ma-edplan-finalrev1.pdf>. (last visited Jan. 23, 2010). The report says one of the governor’s long-term goals is to “increase the size while reducing the number of the Commonwealth’s current school districts to streamline administration and management structures, which will expand opportunities to ensure strong oversight and leadership and improve teaching and learning.” *Id.*

opportunity to go to college and become contributing citizens, we must address the isolation of poor and minority students in failing urban schools. Advocates for these students rightly argue that they can achieve at the highest levels, and are working to make separate schools in inner cities more equal to high-performing middle-class schools. But to resign to a system of once again separate but equal schools would be a sad, dangerous end to a civil rights battle that galvanized education reformers for decades. Integrating students from different socioeconomic backgrounds is a way to stay faithful to the promise of *Brown* and raise student achievement, but it is not currently practicable in America's largest school districts. Despite the best efforts of many dedicated educators, too many children remain trapped in islands of high poverty and under-performance.

American law places the responsibility for this status quo on state lawmakers. Because they have plenary power over the placement of school districts, they could redesign districts to eliminate pockets of ghettoized schools tomorrow, if they wanted to. But it will not happen tomorrow. In order to rethink the way we assign children to schools in big cities, coalitions of parents, educators and community activists are going to have articulate their common interests and lobby for imaginative changes in their state systems of education. It is a "hard path," but one that offers hope for the millions of children still consigned to failing schools.

*Taryn Williams*