

University of Baltimore

---

From the Selected Works of Erika K. Wilson

---

August 12, 2013

# TOWARDS A THEORY OF EQUITABLE FEDERATED REGIONALISM IN PUBLIC EDUCATION: REVERSING THE ROLE OF SCHOOL DISTRICT BOUNDARY LINES IN DISMANTLING BROWN V. BOARD OF EDUCATION

Erika Wilson, *University of North Carolina at Chapel Hill*



Available at: [https://works.bepress.com/erika\\_wilson/2/](https://works.bepress.com/erika_wilson/2/)

**TOWARDS A THEORY OF EQUITABLE FEDERATED REGIONALISM IN  
PUBLIC EDUCATION: REVERSING THE ROLE OF SCHOOL DISTRICT  
BOUNDARY LINES IN DISMANTLING *BROWN V. BOARD OF EDUCATION***

ERIKA K. WILSON\*

ABSTRACT

*School quality and resources vary dramatically across school district boundary lines. Students who live mere miles apart have access to vastly different and disparate educational opportunities based upon which side of a school district boundary line their home is located. Owing in large part to metropolitan fragmentation, most school districts and the larger localities in which they are situated, are segregated by race and class. Further, because of a strong ideological preference for localism in public education, local government law structures in most states do not require or even encourage collaboration between school districts in order to address disparities between neighboring school districts. As a result, the combination of metropolitan fragmentation and staunch adherence to localism in public education leads to poor and minority students being excluded from access to high quality school districts which are for the most part clustered in more affluent and predominately white localities.*

*This Article contends that given the race and class based exclusionary effects that metropolitan fragmentation and localism have on public education, the time has come to reconsider the wholesale commitment to localism in public. It suggests that in some instances public education should be disseminated on a regional basis rather than a local basis. It examines how regionalism—a theoretical framework which advocates for the enactment of regional government or governance structures—might be enacted in public education. Borrowing from two specific theories of regionalism, equitable regionalism and federated regionalism, it proposes a framework entitled “Equitable Federated Regionalism” for disseminating public education on a regional basis.*

---

\* Assistant Professor of Law, University of North Carolina at Chapel Hill. B.A. University of Southern California; J.D. UCLA School of Law. I am thankful to have had the opportunity to present earlier iterations of this paper during the Southeastern Association of Law School Conference; the American Association of Law Schools (“AALS”) Conference on Clinical Legal Education, a University of North Carolina at Chapel Hill faculty scholarship presentation and the Northeast Regional Scholarship Conference at Albany Law School. For detailed comments on previous drafts, I am grateful to Audrey McFarlane, Tamar Birkhead, Patience Crowder, Michele Gilman, Barbara Fedders, Beth Posner and Mark Bauries. I am also thankful to Dean Jack Boger, Judith Wegner, Michele Alexandre and Jamie Lee for their willingness to serve as sounding boards for the ideas contained in this Article.

INTRODUCTION.....	3
I.    METROPOLITAN FRAGMENTATION: CAUSES AND CONSEQUENCES .....	9
A. <i>Race, Class and Metropolitan Fragmentation.....</i>	10
B. <i>The Connection Between Fragmentation, Localism and               Distributional Inequalities within Metropolitan Areas</i>	16
II.    FRAGMENTATION, EDUCATION LOCALISM AND REGIONAL DISPARITIES IN PUBLIC EDUCATION .....	20
A. <i>School District Fragmentation and Metropolitan               Fragmentation.....</i>	21
B. <i>The Significance of Regional Inequalities in Public               Education .....</i>	23
C. <i>The Role of Localism in Creating Regional Inequalities               In Public Education .....</i>	25
D. <i>Regional Inequalities Between School Districts: What               It Looks Like.....</i>	28
III.   REGIONALISM: USING CROSS-JURISDICTIONAL COLLABORATION TO AMELIORATE METROPOLITAN DISPARITIES BETWEEN SCHOOL DISTRICTS .....	33
A. <i>The Normative Argument for Shifting Away From               Localism In Public Education and Towards               Regionalism.....</i>	34
B. <i>Regionalism In Public Education .....</i>	37
1.    Forms of Regionalism.....	38
2.    The Justifications That Support Enacting Regionalism In The General Purpose Local Government Context Apply In the Education Context As Well.....	40
C. <i>Obstacles to Regionalism In Public Education ....</i>	43
D. <i>Existing Regionalist Frameworks in Public Education:               Successes and Challenges.....</i>	48
IV.   EQUITABLE FEDERATED REGIONALISM IN PUBLIC EDUCATION: A PROPOSED FRAMEWORK.....	51
A. <i>Equitable Regionalism.....</i>	52
B. <i>Federated Regionalism in Public Education .....</i>	56
C. <i>Equitable Federated Regionalism in Practice: What It               Should Look Like.....</i>	59
V.    CONCLUSION .....	61

## INTRODUCTION

*I am an ex-felon. However, I did not burglarize or assault anyone. I did not rape or steal. I was convicted [of] falsifying records about my residency so that my daughters could attend a safer, higher-performing suburban school.*<sup>1</sup>

In the American system of public education, local rather than state or even federal citizenship is paramount. Students receive vastly disparate educational opportunities depending upon which side of a school district boundary line they live.<sup>2</sup> Such disparities are legally permissible because they are viewed as race-neutral geographical distinctions beyond the remedial purview of courts.<sup>3</sup> Indeed, courts consistently find that current patterns of segregation and inequality in schools districts today are the result of private forces that shape residential location choices.<sup>4</sup> Yet, in reality, the geographic boundaries that define school districts are the products of local government law structures that foster residential segregation and exclusion on the basis of race and class.<sup>5</sup> As a result,

---

<sup>1</sup> Kelley Williams-Bolar, *I am a Criminal Because I wanted a Good Education for My Girls*, (August 20, 2012), The Skanner, available at (<http://www.theskanner.com/article/Kelley-WilliamsBolar-I-am-a-Criminal-Because-I-Wanted-a-Good-Education-for-My-Daughters-2012-08-20>).

<sup>2</sup> See e.g., Aaron J. Saiger, *The School District Boundary Problem*, 42 Urb. Law. 495, 499-501 (2010) (describing inequalities in public education along geographical lines, noting that school district boundaries allocate educational quality according to residential location and quality).

<sup>3</sup> See e.g., *Pasadena City Bd. Of Educ. v. Spangle*, 427 U.S. 424, 436 (1976) (finding that current patterns of segregation in schools is the result of “normal patterns of human migration”); *Missouri v. Jenkins*, 515 U.S. 70, 94-96 (1995) (rejecting an inter-district school desegregation plan reasoning that demographic changes independent of *de jure* segregation impact the racial composition of student assignment plans).

<sup>4</sup> See e.g., *Freeman v. Pitts*, 503 U.S. 467, 506 (1992) (“private factors have shaped school systems since the abandonment of *de jure* segregation including normal migration and white flight from the inner cities.”) but cf., Nancy Denton, *The Persistence of Segregation: Links Between Residential Segregation and School Segregation*, 80 Minn. L. Rev. 795, 812-813 (1996) (“[b]y treating school and neighborhood segregation as separate, we ignore that the original bases for neighborhood segregation were state-sponsored and state-approved.”).

<sup>5</sup> See Richard Thompson Ford, *The Boundaries of Race: Political Geography and Legal Analysis*, 107 Harv. L. Rev. 1841, 1842 (1994) (“local boundaries, once established, are difficult to alter; segregated localities form autonomous political units whose internal political processes tend to replicate existing demographics.”); Myron Orfield, *Land Use and Housing Policies To Reduce Concentrated Poverty and Racial Segregation*, 33 Fordham Urb. L.J. 877, 878 (2006) (“governmental fragmentation--the proliferation of separate political jurisdictions--facilitates structures such as exclusionary zoning laws. By prohibiting the development of housing that only the better-off can afford, these local policies effectively exclude the poor and people of color from the places that erect those policy fences.”).

race, class and geography intersect to shape the opportunities available to students and to exclude poor minority students from access to high quality schools.<sup>6</sup> The case of Kelly Williams-Bolar provides an illustrative example.

In 2011, Kelly Williams-Bolar, an African-American mother of two, was convicted of two felony counts of tampering with records.<sup>7</sup> She was sentenced to five years in prison on each count.<sup>8</sup> Her crimes consisted of falsifying her address so that she could enroll her two children in the suburban Copley-Fairlawn, Ohio, school district instead of the Akron, Ohio, school district that her daughters were required to attend based upon her actual address.<sup>9</sup> In deciding to file criminal charges against Ms. Williams-Bolar, the state reasoned that Ms. Bolar-Williams was stealing from taxpayers who paid a premium to move into the Copley-Fairlawn school district.<sup>10</sup>

Significantly, Ms. Williams-Bolar's address in Akron, Ohio is only four miles from the address that she used to obtain access to the Copley-Fairlawn, Ohio school district.<sup>11</sup> However, the Akron and Copley-Fairlawn, Ohio school districts are vastly different. The Akron school district is considered academically low achieving and has a predominately black and poor student population.<sup>12</sup> The Copley-Fairlawn school district is considered high achieving and has a predominately white and middle class student population.<sup>13</sup>

---

<sup>6</sup> See Daniel Kiel, *The Enduring Power of Milliken's Fences*, 45 Urb. Law 137, 144 (Winter 2013) (describing the role of local government law in perpetuating racial disparities in public education noting that "just as the law had once mandated separation based upon race, so too does contemporary district sovereignty, enshrined in law, mandate separation based upon geography.").

<sup>7</sup> Juliane Hiang, *Kelly William-Bolar's Long Winded Fight To Educate Her Daughters*, Colorlines, (May 16, 2012), available at [http://colorlines.com/archives/2012/05/kelley\\_williams\\_bolar\\_school\\_choice.html](http://colorlines.com/archives/2012/05/kelley_williams_bolar_school_choice.html).

<sup>8</sup> Ultimately Ms. Williams-Bolar served nine days in jail, was placed on probation for two years and required to perform eighty (80) hours of community services. *Id.*

<sup>9</sup> The address Ms. Williams-Bolar used was her father's address. Her father was also charged with aiding and abetting grand theft but the charges were ultimately dropped. *See Id.*

<sup>10</sup> In addition to the tampering with records charges, Ms. Williams-Bolar was also charged with two felony grand theft charges. The felony grand theft charges were ultimately dismissed after the jury deadlocked and was unable to reach a verdict on those charges. *See Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Akron Public Schools, *2011-2012 School Year State Report Card*, available at <http://archive.education.ohio.gov/reportcardfiles/2011-2012/dist/043489.pdf> (noting that seventy percent of the students are considered socioeconomically disadvantaged and nearly fifty percent are African-American).

<sup>13</sup> See Copley-Fairlawn Public Schools, *2011-2013 School Year State Report Card*, available at <http://archive.education.ohio.gov/reportcardfiles/2011-2012/dist/043489.pdf>

The glaring academic and demographic differences between the neighboring Akron and Copley-Fairlawn school districts, and the criminal prosecution of Ms. Williams-Bolar for attempting to obtain access to a higher quality of education for her daughters, serves as a cautionary tale regarding the role of local government law structures, specifically school district boundary lines, in fostering exclusion and inequality in public education along the lines of race and class.

With few exceptions, school district boundary lines are drawn so that students attend school where they live.<sup>14</sup> School districts are independent and autonomous local governments.<sup>15</sup> They are only responsible for providing education to the students who live within the parameters of the district's boundary lines.<sup>16</sup> Metropolitan fragmentation-- the existence of numerous local governments within a metropolitan area<sup>17</sup>-- produces high levels of race and class based residential segregation.<sup>18</sup> Because school district boundary lines are drawn so that

---

(noting that only eighteen percent of the students are considered socioeconomically disadvantaged and nearly seventy-five percent of the students are white).

<sup>14</sup> A number of school districts have inter-district open enrollment plans which allow students to attend any school within a school district. However, the inter-district plans are limited insofar as they allow the receiving school districts to turn away students if they lack the capacity to accommodate them. Other logistical challenges such as transporting students between district lines and limitations on the number of inter-district transfers a receiving district will take limits the overall effectiveness of many of the inter-district enrollment plans. See Aaron Y. Tang, *Privileges and Immunities, Public Education, and the case for Public School Choice*, 79 Geo. Wash. L. rev. 1103, 1115 - 1118 (2011) (documenting the states who have inter-district enrollment statutes and the practical impediments to effectively utilizing the inter-district enrollment options).

<sup>15</sup> Though the provision of public education is one of the powers reserved to the states under the tenth amendment to the United States Constitution, most state legislatures delegate this power to school districts. See e.g., *State ex rel, School Dist. City of Independence v. Jones*, 653 S.W.2d 178 (Mo.1983) (“[s]chool districts are bodies corporate, instrumentalities of the state established by statute to facilitate effectual discharge of the General Assembly's constitutional mandate to ‘establish and maintain free public schools for the gratuitous instruction of all persons in this state.’”); *Pocantico Home & Land Co. v. Union Free School Dist. of Tarrytowns*, 799 N.Y.S. 2d 235, 239 (2005) (“[s]chool districts in this State are creatures of statute, which can only be formed, dissolved, or altered in accordance with the provisions of Title II of the Education Law.”)

<sup>16</sup> See Richard Briffault, *The Local School District in American Law*, in Besieged: School Boards and the Future of Education Politics 24, 34 (William G. Howell ed., 2005) (“territorially the school district has authority over only the geographically defined portion of the state that falls with its boundaries.”).

<sup>17</sup> The terms “metropolitan area” or “metropolitan region” are used interchangeably throughout this article to mean “a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.” See U.S. Census Bureau definition of metropolitan area, available at <http://www.census.gov/population/metro/about/>.

<sup>18</sup> See Orfield, *supra* note \_\_\_\_ (arguing that metropolitan fragmentation results in residential segregation and concentrated poverty); George C. Gluster, *Polarization, Race*

students attend school where they live, the demographics and resources available to school districts are a function of the localities in which they are situated.<sup>19</sup>

Thus, school districts in more affluent, typically predominately white localities have more resources and can offer educational inputs that significantly enhance the quality of education students receive.<sup>20</sup> Conversely, school districts in poorer, typically predominately minority localities, have fewer resources and educational inputs to offer relative to the need of their students.<sup>21</sup> Further, owing in large part to a preference for local control of public education, local government law structures in most states do not require or even encourage inter-district collaboration in order to address disparities between neighboring school districts.<sup>22</sup> In fact, as demonstrated by Ms. Williams Bolar's case, school districts are permitted to exclude non-residents through extreme means including criminally prosecuting those who impermissibly cross school district boundary lines.<sup>23</sup>

---

*and Place*, 71 N.C. L. Rev. 142, 1432-1422 (1993) (commenting that a “notable feature of most American metropolitan areas is their jurisdictional fragmentation....[t]his fragmentation constrains minorities primarily by intensifying income-class spatial segregation and attendant fiscal disparities among jurisdictions.”). For a fuller discussion of the reasons why metropolitan fragmentation leads to race and class based residential segregation, see the text in Section I.A *infra*, and the accompanying notes.

<sup>19</sup> See Denton, *supra* note \_\_\_\_ at 815 (describing the role of metropolitan fragmentation in creating residential segregation and in turn school segregation); Saiger, *supra* note \_\_\_\_ at 502-503 (describing how school districts take on the financial and racial characteristics of the larger locality in which they are situated.).

<sup>20</sup> See e.g., Wayne Bachtis, *Urban Sprawl and the Constitution: Educational Inequality As An Impetus to Low Density Living*, 42 Urb. Law. 95, 96-97 (2010) (noting that schools and school districts evidence a “patchwork of inequality and that while some schools are distinguished by their brand new facilities, technological innovation, experienced and highly paid staff, and upper middle-class white student body, others are noted for their decaying infrastructure, antiquated textbooks, inexperienced teachers and poor minority students.”).

<sup>21</sup> *Id.*

<sup>22</sup> See Aaron Saiger, *The Last Wave, The Rise of The Contingent School District*, 84 N.C. Law. Rev. 857, 867-868 (2006) (noting that for suburbanites “educational localism provides a method for realiz[ation] of segregation by wealth and taste for education; the concomitant ability to wall themselves off from responsibility, both fiscal and political, for less fortunate school systems; and a way to capitalize their tax investments in public school into privately held home values.”); Jennifer Jellison Holme, Sarah L. Diem and Katherine Cummings Mansfield, Regional Coalitions and Educational Policy: *Lessons from the Nebraska Learning Community Agreement*, at p. 152 in Integrating Schools in a Changing Society: New Policies for a Multiracial Generation, the University of North Carolina Press (2011) (noting the lack of cooperation between school districts to address racial and economic isolation of students.).

<sup>23</sup> See e.g., Eddy Ramirez, *Schools Crack Down on Boundary Hopping*, March 2, 2009, available at <http://www.usnews.com/education/articles/2009/03/02/schools-crack-down-on-boundary-hopping> (woman in Rochester, NY arrested and charged with two felonies,



In many ways, the modern day story of inequality and exclusion in education described above is part and parcel of a broader story often told by local government law scholars about how metropolitan fragmentation, in conjunction with localism, the preference for decentralized autonomous governance structures,<sup>24</sup> creates inequalities between neighboring localities in metropolitan regions.<sup>25</sup> In the local government law literature, regionalism--loosely defined as a theoretical framework which advocates for the enactment of regional government or governance structures—is trumpeted by scholars as a potential solution to curbing the regional inequalities caused by metropolitan fragmentation and localism.<sup>26</sup> Under the umbrella of regionalism, local government law scholars advance a number of different proposals.<sup>27</sup> Although there is variance in the particulars of the regionalism proposals, almost all of the proposals recognize the importance of local governments working together to address issues on a regional level so that public goods can be disseminated more efficiently and equitably throughout metropolitan regions.<sup>28</sup>

---

third degree larceny and first degree offering of a false instrument for allegedly lying about her children's residence to send them to another school district); Mike Colombo, *Father Could Face Charges for Lying About Address to Enroll Son in Oldham Co. Schools*, August 28, 2011, available at <http://www.whas11.com/home/128543123.html>. See also John Nickerson, *Mom Accused of Stealing Education Pleads Guilty*, February 22, 2012, available at <http://www.stamfordadvocate.com/news/article/Mom-accused-of-stealing-education-pleads-guilty-3349999.php> (a mother in Bridgeport, Connecticut was charged with first degree larceny by defrauding a public community for sending her son to school in Norwalk, Connecticut instead of Bridgeport, Connecticut where she lived); Rishawn Biddle, *Time to End Zip Code Education: A Philadelphia Story*, Dropout Nation, December 6, 2012, available at <http://dropoutnation.net/2012/12/06/time-to-end-zip-code-education-a-philadelphia-story/> (Latino parents charged with third-degree felonies for sending their daughter to a school in a district where they allegedly did not live).

<sup>24</sup> See Sheryll D. Cashin, *Localism, Self-Interest, and The Tyranny of The Favored Quarter: Addressing the Barriers to New Regionalism*, 88 Geo. L.J. 1985, 1988 (2000) (defining localism as an ideological preference for decentralized local governance). Throughout this Article I adopt the same definition of localism.

<sup>25</sup> See e.g., Richard Briffault, *The Local Government Boundary Problem In Metropolitan Areas*, 48 Stan. L. Rev. 1115 (1996) (discussing the ways in which local government laws and structures breeds economic and racial disparities between cities and suburbs); Cashin, *supra* note \_\_\_\_ at 1991-1995 (noting that the segregation of the poor, affluent, white and non-white has increased along with the creation of numerous autonomous local governments).

<sup>26</sup> See e.g., See Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity and the New Regionalism*, 78 Wash L. Rev. 93 (2003); Richard Briffault, *Our Localism: Part II – Localism and Legal Theory*, 90 Colum. L. Rev. 346 (1990); Cashin, *Localism, Self-Interest, and The Tyranny of The Favored Quarter*, *supra*, note \_\_\_\_.

<sup>27</sup> See Reynolds, *supra* note \_\_\_\_ at 112-115 describing the similarities and variations in regionalism proposals).

<sup>28</sup> See Laurie Reynolds, *Local Governments and Regional Governance*, 39 Urb. Law 483, 491-493 (2007) (noting that equity and efficiency are two important ideological defenses of most regionalism proposals).



While both education law and local government law scholars recognize that territorial based fiscal and racial inequalities between neighboring school districts are a byproduct of metropolitan fragmentation and localism,<sup>29</sup> few education or local government law scholars critically examine the ways in which regionalism might be applied in the public education context.<sup>30</sup> In part, the reluctance of scholars to take on this task lies in a deep seated belief that localism in public education is so deeply entrenched that regionalism in education is politically and practically infeasible.<sup>31</sup> This article challenges that notion. It critically examines the ways in which regionalism might be applied in public education. The Article proceeds as follows:

Part I provides a brief overview of the causes of metropolitan fragmentation and the inequalities that occur within metropolitan areas as a result of metropolitan fragmentation. It then situates metropolitan fragmentation within the literature on localism, examining the benefits and costs of localism. Part II analyzes the ways in which adherence to localism in the public education context in conjunction with metropolitan fragmentation creates disparities between neighboring school districts along the lines of race and class. It then makes the normative claim that the sole reliance upon localist educational governance structures is harmful because it belies the extent to which localities within metropolitan areas are interdependent.<sup>32</sup>

---

<sup>29</sup> See e.g., Richard Briffault, *Our Localism Part I-Localism and Legal Theory*, 90 Colum. L. Rev. 346 (1990) (noting that the “the jurisdictional separation of wealth and need that results from the fragmentation of most metropolitan areas into a central city surrounded by a multiplicity of suburbs...[results in] children in poorer localities... receiving inferior educations”); Kiel note \_\_\_\_ at 146 -147 (describing the effects of education localism in creating educational disparities along the lines of race and class in a highly fragmented metropolitan area.).

<sup>30</sup> See e.g., Myron Orfield, *The Region and Taxation: School Finance, Cities and the Hope for Regional Reform*, 55 Buff. L. Rev. 91 (2007) (discussing the role that state equalization of funding has had on lessening the effects of localism in school funding, recognizing the role of fragmentation in creating educational inequalities and suggesting that state equalization of funding offers hope for New Regionalism theories of governance); Elizabeth Debray and Erica Frankenberg, *Federal Legislation to Promote Metropolitan Approaches to Educational and Housing Opportunity*, at pp. 281 -201 in Integrating Schools in a Changing Society: New Policies for a Multiracial Generation, the University of North Carolina Press (2011) (recognizing the metropolitan solutions are essential to decreasing levels of school segregation and proposing a regional combination of housing subsidies and inter-district school transfers as a means of addressing school segregation).

<sup>31</sup> See Jellison Holme, et al., *supra* note \_\_\_\_ (noting that regional policies in education remain few in number because they are difficult to create).

<sup>32</sup> See Janice C. Griffith, *Regional Local Governance Reconsidered*, J.L. & Pol. 505, 510-512 (2005) (noting that Americans live on a regional scale in terms of travel, shopping and recreational needs and as a result the economies and social wellbeing of localities within metropolitan regions are co-dependent upon one another).

Part III sets forth the various theories of regionalism and analyzes the ways in which regionalism could be used to eliminate regional disparities between school districts. Part IV specifically considers two forms of regionalism that could be applied in the public education context: equitable regionalism and federated regionalism. Borrowing from principles of equitable regionalism and federated regionalism, it proposes an analytical framework entitled “Equitable Federated Regionalism” that could be used as a guide in enacting regionalism in public education. Part V concludes.

## I. METROPOLITAN FRAGMENTATION: CAUSES AND CONSEQUENCES

Metropolitan fragmentation<sup>33</sup> and political decentralization<sup>34</sup> are prominent characteristics of American local government law structures. Scores of independent and autonomous local governments operate throughout most American metropolitan regions.<sup>35</sup> The highly fragmented and politically decentralized American metropolis is the result of conscience design rather than coincidence.<sup>36</sup> Metropolitan fragmentation is seen as beneficial because it purportedly results in the efficient provision of public goods by breeding competition amongst multiple localities for residents.<sup>37</sup> Political decentralization on the other hand is thought to facilitate democracy and democratic values because smaller local governments are closer to citizens and more readily allow for citizens to participate in the democracy.<sup>38</sup>

---

<sup>33</sup> This Article uses the term metropolitan fragmentation to mean the existence of several overlapping and independent local governments across metropolitan regions. *See generally*, Gregory R. Weiher, *The Fractured Metropolis: Political Fragmentation and Metropolitan Segregation*, at 4, State University Press of New York (1991) (defining and discussing the causes of metropolitan fragmentation).

<sup>34</sup> This Article uses the term political decentralization to mean the delegation of political power to subordinate unit of government. *See generally*, Edward Rubin and Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA Law Rev. 903 (1994) (noting the decentralization has many meanings and discussing the meaning of decentralization within the political context.).

<sup>35</sup> *See* U.S. Census Bureau, 2012 Census of Governments: Organization Component Preliminary Estimates (showing that as of 2012, there were a total of 89,004 local governments operating throughout the United States and a total of 12, 884 independent school districts). *See also* Laurie Reynolds, *Intergovernmental Cooperation supra*, note \_\_\_\_ at 94 (arguing that “metropolitan America remains stubbornly resistant to attempts to limit local government proliferation and the political fragmentation and territorial overlapping that it produces.”).

<sup>36</sup> Weiher, *supra* note \_\_\_\_, at 2 (noting that in other countries, even where there is suburbanization or fragmentation it serves rational public purpose of equalizing economic development).

<sup>37</sup> *See* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. Pol. Econ. 416 (1956).

<sup>38</sup> Weiher, *supra* note \_\_\_\_ at p. 2 (characterizing decentralization and fragmentation in American metropolitan regions as Jeffersonian in its’ origins because of the emphasis on

Yet metropolitan fragmentation and political decentralization come at cost, namely economic and racial segregation between localities.<sup>39</sup> This section provides a brief overview of the causes of metropolitan fragmentation and describes why metropolitan fragmentation results in racial and economic residential segregation. It also discusses how the preference for localism or decentralized governance structures, in conjunction with metropolitan fragmentation, creates inequalities between neighboring localities within metropolitan areas.

### *A.Race, Class and Metropolitan Fragmentation*

Metropolitan fragmentation is purportedly race and class neutral. Put another way, there are no laws that mandate that localities must consist of persons of a particular race or class. Nevertheless, a substantial body of research demonstrates that the more fragmented a metropolitan area is, the more racial and economic segregation is likely to exist within that metropolitan area.<sup>40</sup> There are a number of factors that lead to metropolitan fragmentation occurring along the lines of race and class.<sup>41</sup> Two factors in particular worth highlighting are: (i) the role of federal, state and local laws and policies in creating racial and economic residential segregation across political boundary lines and (ii) theories related to residential sorting. These factors are discussed in turn.

#### (1) The Role of State, Federal and Local Laws and Policies In Perpetuating Residential Segregation

A root cause of metropolitan fragmentation is state laws that make incorporation and the formation of local governments relatively easy.<sup>42</sup> States have exclusive control over the creation of local governments. In *Hunter v. City of Pittsburgh*, the Supreme Court held that local governments are merely political subdivisions of the state and that states have plenary power over local governments in every regard.<sup>43</sup> Thus, states determine whether or not local governments can be created, the

---

local governments with the understanding that local governments are supposed to be the incubators of democracy, training citizens in their rights and responsibilities.).

<sup>39</sup> See e.g., Kendra Bischoff, *School District Fragmentation and Racial Residential Segregation: How do Boundaries Matter*, Journal of Urban Affairs Vol. 44 No. 2 at p. 200 (2008)(finding support for the hypothesis that fragmentation increases residential racial segregation through the Thiel Index).

<sup>40</sup> See Bischoff, *supra* note \_\_\_\_ at 202.

<sup>41</sup> See generally, Douglas S. Massey and Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass (1998) (provided a thorough historical account of how neighborhoods came to be racially and economically segregated.).

<sup>42</sup> See e.g., Daniel R. Mandelker, *Standards for Municipal Incorporations on the Urban Fringe*, 36 Tex. L. Rev. 271 (1958) (describing various state requirements for incorporation and noting the leniency of many state incorporation standards).

<sup>43</sup> 207 U.S. 161 (1907).

amount of power they can exercise, and their relationship to other local governments within a metropolitan region.<sup>44</sup>

During the nineteenth century, state legislatures often exercised their plenary powers to require the annexation of unincorporated territories to a neighboring larger central city.<sup>45</sup> The preference for annexation during this time period reflected an underlying normative belief that larger centralized governance structures were more efficient than smaller decentralized governance structures.<sup>46</sup> However, during the twentieth century, improved suburban services along with racial and ethnic changes in the demographics of central cities, particularly an influx of European immigrants and African-American migrants from the south, caused many suburban residents to resist annexation.<sup>47</sup> As a result, state laws in relation to unincorporated suburbs began to shift their focus away from annexation and towards incorporation.<sup>48</sup> Indeed, many states significantly relaxed their incorporation requirements.<sup>49</sup>

---

<sup>44</sup> *Id.* at 178-179 (holding that municipal corporations are subdivisions of the state and that the state “at its pleasure may modify or withdraw all powers [of the corporation] hold itself, or vest in other agencies, expand or contract the territorial area, unite the whole or the part of it with another municipality, repeal the charter and destroy the corporation.”). It is worth noting that many scholars have questioned whether the Court’s description in *Hunter* of states having plenary power and absolute control over local governments is still valid since states are increasingly voluntarily relinquishing certain powers to local governments thereby allowing the local governments to exercise significant independence and not absolute control by the state. See e.g., Laurie Reynolds, *A Role for Local Government in Federal-State-Local Disputes*, 43 Urb. Law 977, 992 (2011). Nevertheless, the principle of absolute state power over local governments articulated in *Hunter* continues to define the legal relationship between state and local governments.

<sup>45</sup> See e.g., Paul Kantor, *The Dependent City Revisited*, Westview Press, Inc., at p. 55 (1995) (noting that state laws during the twentieth century ensured that almost no alternative to annexation by the central city existed for a suburb that wanted to enjoy better public services because state laws did not permit existing township and county governments to provide many public services.); See also, *Daly v. Morgan*, 69 Md. 460 (Md. 1888) (rejecting an attempt to stop Baltimore from annexing a suburban territory reasoning that “[n]one knew better than the framers of the [Maryland] constitution...that the time [would] come...when the extension of the limits of a great city like Baltimore would be absolutely necessary for its proper development and growth.”).

<sup>46</sup> See Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* at p. 144 (1985) (noting that the desire of state legislation to draft laws encouraging annexation was the belief that a larger organization was more efficient than a smaller one and that economies of scale would accrue from a larger city government.).

<sup>47</sup> See Jackson, *supra* note \_\_\_\_, at p. 150 (stating that annexation fell out of favor with suburban residents and state legislatures because of improved suburban services and sharper racial, ethnic and class distinctions in central cities).

<sup>48</sup> See Jackson, *supra* note \_\_\_\_, at p. 148- (chronicling the decline in population in major central cities in the United States during the twentieth century and suggesting that the reason for the decline was a shift from state laws favoring annexation and consolidation polices to the enactment of state laws that allowed for suburbs outside of central cities to incorporate with relative ease; Kantor note \_\_\_\_, *supra* at p. 164 (1995) (“[b]ecause state law in the twentieth century was altered to allow relatively easy

While relatively lax state laws related to local government incorporation contributed to the current state of metropolitan fragmentation that we see today in metropolitan areas, federal laws and policies contributed to metropolitan fragmentation being delineated by race.<sup>50</sup> A complete account of the role of the federal government in contributing to the racialized nature of metropolitan fragmentation has been written about extensively by other authors and is beyond the scope of this article.<sup>51</sup> Nevertheless, it is important to note that the federal government subsidized mortgages<sup>52</sup> and provided states with federal funds to build highways<sup>53</sup> that made it easier for white middle-class citizens to live in suburban outposts and to commute to central cities for work.<sup>54</sup> Significantly, at the same time federal policies were put in place to make it relatively easy for whites to move to suburban outposts, federal policies were also put in place to ensure that poor and minority residents would remain confined to central cities.<sup>55</sup> Most notably, the Federal Housing Administration (“FHA”) mortgage insurance underwriting program only underwrote loans for housing being purchased in white racially homogenous communities and explicitly encouraged the maintenance of

---

incorporation in order to prevent further annexation by central cities of suburban areas, families and businesses moving to suburbia almost universally sought municipal incorporation in order to control the development of their communities.”).

<sup>49</sup> See e.g., Thompson Ford, *supra* note \_\_\_\_ at 1863 (chronicling states that allowed incorporation if residents of unincorporated territories could show that a minimum number of their neighbors were in favor of incorporation); Mandelker, *supra* note \_\_\_\_ at 276-277 (states allowed incorporation via a showing of vague and minimal requirements such as that incorporation must be “right and proper” or “reasonable.”).

<sup>50</sup> While federal laws and policies heavily contributed to metropolitan fragmentation being racially circumscribed, state and local laws and policies also contributed to metropolitan fragmentation being racially circumscribed. See e.g., Audrey McFarlane, *Operatively White?: Exploring The Significance of Race And Class Through The Paradox Of Black Middle-Classness*, 72 *Law & Contemp. Probs.* 163, 173-174 (2009) (describing racial zoning ordinances enacting by various municipalities that explicitly dictated that areas be zoned for a particular race.).

<sup>51</sup> See e.g., MASSEY AND DENTON, NOTE \_\_\_, SUPRA AT 149 (1998); Thomas W. Hanchett, *The Other “Subsidized Housing”: Federal Aid to Suburbanization, 1940-1960’s*, in From Tenements to the Taylor Homes 163, 171-73 (John I. Bauman et al. eds., 2000); Rusk, *supra* note \_\_\_\_, at. pp. 24-25.

<sup>52</sup> More specifically, the Home Owners’ Loan Corporation (“HOLC”) was created by the New Deal legislation after the great depression in 1933. HOLC offered low-interest long-term loans to help families purchase homes. HOLC however developed residential maps to categorize the risks associated with lending money to residents interested in purchasing houses in a particular neighborhood. The HOLC maps categorized any neighborhood with Black residents as extremely high risks. As a result, Blacks were often denied loans through both HOLC and the private lending market as the private lending market also used the HOLC maps when categorizing the risks associated with issuing a mortgage to buy a house in a particular area. See Rusk, *supra* note \_\_\_\_, at 24-25.

<sup>53</sup> See e.g., McDermott, *supra* note \_\_ at 4.

<sup>54</sup> Massey and Denton, *supra* note \_\_\_\_ at 149.

<sup>55</sup> See *Id.*

residential segregation as a matter of public policy.<sup>56</sup> While the federal government ended these policies during the 1950s, it failed to enact laws and policies<sup>57</sup> to prohibit housing discrimination until nearly a decade later, by which time it had already heavily assisted in the entrenchment of racially identifiable spaces in the cities and suburbs.<sup>58</sup> Further, gaps in the enforcement of federal anti-discrimination housing laws<sup>59</sup> and resistance to affirmative suburban desegregation programs allowed white racial homogeneity outside of central cities to persist unabated well after federal anti-discrimination housing laws were enacted.<sup>60</sup>

In addition to federal laws and policies contributing to racially delineated metropolitan fragmentation, local governments enacted land use and taxation policies that also ensured that only middle-class or affluent residents would be able to move to certain localities, usually suburban localities.<sup>61</sup> Indeed, during the era of mass suburbanization, many suburban localities enacted zoning laws that precluded the poor, who were also likely to be minorities, from residing in the suburbs through

---

<sup>56</sup> See Rusk, *supra* note \_\_\_\_, at 24-25 (noting that when the FHA and the Veteran's Administration, which provided housing loan assistance to military veterans, embraced HOLC's racially discriminatory underwriting practices. The FHA encourage the use of racially restrictive covenants as late as 1950, after the Supreme Court had found such covenants unconstitutional in *Shelly v. Kramer*, 344 U.S. 1 (1948)). See also Guy Stuart, *Discriminating Risk: The U.S. Mortgage Lending Industry In the Twentieth Century* (2003) (describing the history of discrimination by the FHA in its loan underwriting program).

<sup>57</sup> The Fair Housing Act ("FHA" or "Act"), signed into law in 1968, is aimed at prohibiting discrimination in the sale, rental, or financing of housing on the basis of race, sex, gender, religion or national origin. See 42 U.S.C. § 3604 *et seq.*, (2000). Significantly, the FHA was one of the last pieces of federal civil rights legislation enacted. The Act was passed largely as a response to rioting by frustrated members of the Black community who were limited to living in segregated urban ghettos as a result of discrimination in the housing market. See 114 Cong. Rec. 2276 (statement of Sen. Mondale) ("[T]here is a substantial market of financially able Negroes prevented from buying housing of their choice because of deeply entrenched patterns of discrimination in the sale and rental of housing in our country.")

<sup>58</sup> See Ford, *supra* note \_\_\_\_ at 1848 (arguing that federal government policies defined space by race and private associations of white homeowners continued the shaping of space by race through "threatened boycotts of real estate agents who sold homes to blacks and the lobbying of city council for zoning restrictions.").

<sup>59</sup> Prior to the 1988 Amendments to the Fair Housing Act, the Act was widely viewed as ineffective due to barriers with enforcement of the Act. See *e.g.*, H.R. Rep. 100-711 at 15 (1988) (noting that although the Fair Housing Act "provides a clear national policy against discrimination in housing, it provides only limited means for enforcing the law.").

<sup>60</sup> See Erica Frankenberg and Gary Orfield, *The Resegregation of Suburban Schools: A Hidden Crisis in American Education* at 7, the Harvard Education Press (2012) (describing efforts by housing urban development ("HUD") secretary George Romney to implement a suburban housing desegregation program to reduce racial segregation in the cities and suburbs that was blocked by then President Richard Nixon).

<sup>61</sup> State governments typically delegate nearly complete authority to control land use to local governments. See Kantor, *supra* note \_\_\_\_ at 153.

the adoption of minimum lot size requirements or single family home restrictions.<sup>62</sup> Such restrictions had the effect of driving up the cost of housing so that poor people were priced out of jurisdictions that have those types of zoning laws.<sup>63</sup> Such zoning laws are still in effect today in many suburban jurisdictions and continue to have the same race and class based exclusionary effects.<sup>64</sup>

(2) Residential Sorting Theories Explain Present Day Metropolitan Fragmentation Along the Lines of Race and Class

While explicit federal, state and local laws and policies undoubtedly contributed to metropolitan fragmentation being circumscribed by race and class, the persistence of race and class delineated metropolitan fragmentation can in some ways also be explained by residential sorting theories. Two residential sorting theories that have consequences for race and class stratification between school districts are worth noting: Charles Tiebout's Theory of Local Expenditures<sup>65</sup> and Gregory Weiher's theory that political boundaries serve a recruitment function.<sup>66</sup>

With respect to the Tiebout's theory, Tiebout hypothesized that the creation of multiple local governments with the autonomy to determine the level of public services and the level of taxation to be imposed upon residents, causes inter-jurisdictional competition within a metropolitan area for residents.<sup>67</sup> The inter-jurisdictional competition consists of jurisdictions offering varying levels of a public good or service and varying levels of taxation in order to provide for that public good or service.<sup>68</sup> The differentiation in the levels of public goods, services and taxation provided by various localities allows residents, who Tiebout considers consumer-voters, to "vote with their feet" by moving to the jurisdiction that offers the mix of goods, services and taxation levels that suits the "consumer-voter's" preference.<sup>69</sup>

While Professor Tiebout's theory has been criticized on a number of grounds,<sup>70</sup> it does have implications in terms of understanding why

---

<sup>62</sup> Weiher, *supra* note \_\_\_\_ at 13; Kantor *supra*, note \_\_\_\_ at 165.

<sup>63</sup> Weiher, *supra* note \_\_\_\_ at 13 (arguing that when zoning ordinances prohibit all housing except single family dwellings it increases the price of housing effectively precluding the types of people that suburban dwellers deem undesirable from purchasing homes that comply with the zoning requirements).

<sup>64</sup> See Rusk, *supra* note \_\_\_\_\_. See also Section I.B. *infra*.

<sup>65</sup> See Tiebout, *supra* note \_\_\_\_.

<sup>66</sup> See Weiher, *supra* note \_\_\_\_.

<sup>67</sup> See Tiebout, *supra* note \_\_\_\_.

<sup>68</sup> See Tiebout, *supra* note \_\_\_\_.

<sup>69</sup> See Tiebout, *supra* note \_\_\_\_.

<sup>70</sup> Tiebout's theory is most vocally criticized for its failure to take into account the costs to "consumer-voters" of "voting with their feet." See e.g., Richard Briffault, *Our Localism Part II: Localism and Legal Theory*, 90 Colum. L. Rev. 346, 420-422 (1990)



metropolitan areas continue to be fragmented along the lines of race and class, particularly in the absence of explicit laws and policies that mandate or facilitate such racialized sorting. To the extent that residents are indeed “consumer-voters” who select the municipality in which they want to live based upon their preferences for a particular mix of public services and the municipality’s taxation rate, the municipalities that offer higher qualities of essential public goods (e.g., public education) charge more to live there.<sup>71</sup> Consequently, such municipalities often contain a larger number of affluent (and usually white) residents because poor (and typically minority) residents often cannot afford to locate to such municipalities.<sup>72</sup>

Present day race and class circumscribed metropolitan fragmentation may also be explained by Gregory Weiher’s boundary line recruitment theory. According to Weiher, boundary lines are inter-active and serve numerous functions, including a political, economic, and social function.<sup>73</sup> The interaction between the political, economic and social functions gives social meaning to the area encompassed by the boundary lines and provides critical information that helps people to realize whatever preferences they may have.<sup>74</sup>

For example, ostensibly race neutral local land use and taxation policies (the political function served by boundary lines) can often disproportionately exclude people of color from a locality.<sup>75</sup> The locality can become known for its homogeneity thereby allowing whites who do have a preference for racial segregation to move into a racially segregated

---

(emphasizing the high monetary and non-monetary costs of citizens “voting with their feet”, including the fact that poorer citizens have fewer options due to monetary and non-monetary constraints such as the lack of affordable housing in some political jurisdictions and the need to be located in close proximity to a job and/or family and friends who provide a social safety net). For other criticisms, *see Id.* at 429-430 (arguing that the fragmentation contemplated by Tiebout’s theory allows local governments to take actions without taking into account the externalities imposed upon neighboring jurisdictions); Gerald E. Frug, *City Services* 73 N.Y.U. L. Rev. 23, 28-31 (Tiebout’s theory ignores other important local government functions and trivializes humanity through its economic model of public good consumption).

<sup>71</sup> *See* Briffault, *supra* note \_\_\_\_ at 423.

<sup>72</sup> *See* Briffault, *supra* note \_\_\_\_ at 186.

<sup>73</sup> *See* According to Weiher, Boundary lines serve a political function in that they ascribe political authority to officials to tax, spend and to regulate the land between the boundary lines. They serve an economic function insofar as businesses locate within the discrete areas circumscribed by boundary lines and the presence (or absence) of businesses within the boundary lines dictate the economic vitality of the area delineated by the boundary lines. Finally, boundary lines perform a social function insofar as they structure the interactions of the people who live within them and give a social distinctiveness to the geography between the boundary lines. Weiher, *supra* note \_\_\_\_ at 33.

<sup>74</sup> *Id.*

<sup>75</sup> For a discussion of the ways in which race neutral land use and taxation policies can exclude minority residents from a locality, *See* Section I.B., *infra*.

locality.<sup>76</sup> Similarly, even when minorities have the means to move into more affluent predominately white localities, they may also prefer to remain in racially segregated neighborhoods and the existence of discrete boundary lines gives them the information that they need to do so.<sup>77</sup> Thus, to the extent that boundary lines provide social meaning to geographic spaces, they become recruitment tools that allow residents to locate themselves in accordance with their preferences thereby allowing metropolitan fragmentation to continue occurring along the lines of race and class in the absence of explicit federal, state or local policies.<sup>78</sup>

### *B. The Connection Between Fragmentation, Localism and Distributional Inequalities within Metropolitan Areas*

The race and class based residential segregation that often accompanies metropolitan fragmentation is also a result of strong adherence to principles of localism. Localism is the ideological preference for decentralized, independent and autonomous governance structures.<sup>79</sup> Localism is the theoretical foundation that underlies the current system of local government structuring in most metropolitan areas today.<sup>80</sup> One of the central tenants of localism is that local government should “enable people who live within [...] discrete areas to organize themselves into distinct political units and give those units power to make decisions with respect to a range of public policies and services.”<sup>81</sup>

The scholarly literature on localism offers three separate and distinct arguments in support of enacting localist governance structures: efficiency,<sup>82</sup> increased citizen participation<sup>83</sup> and inculcation of a strong

---

<sup>76</sup> See Weiher, *supra* note \_\_\_\_ at 65 (presenting evidence regarding a neighborhood tipping point or process of neighborhood transition in which “substantial numbers of whites continue to prefer that their residences not be near residential concentrations of blacks.”).

<sup>77</sup> See e.g., Sheryll Cashin, *Middle Class Black Suburbs and the State of Integration: A Post Integrationist Vision for Metropolitan America*, 86 Cornell L. Rev. 729 (2001) (chronicling the development of middle-class black suburbs and noting that many are created as a result of the apathy and in some instances hostility of middle-class Blacks towards living in predominately white suburbs).

<sup>78</sup> See Bischoff, *supra* note \_\_\_\_ at 186; Cashin, *supra*, *Middle Class Black Suburbs and the State of Integration* \_\_\_\_ at 730 (noting that “racial and economic fragmentation of metropolitan regions that results from this process of locational sorting reinforces and exacerbates social differences.”).

<sup>79</sup> See Briffault, *supra* note \_\_\_\_; Parlow, *supra* note \_\_\_\_; Cashin, *supra*. *Localism, Self-Interest, and The Tyranny of The Favored Quarter*, note \_\_\_\_, *supra*.

<sup>80</sup> See Richard Briffault, *Our Localism: Part II – Localism and Legal Theory*, 90 Colum. L. Rev. 346 (1990)

<sup>81</sup> Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1115, 1115 (1996)

<sup>82</sup> See generally Tiebout note \_\_\_\_ at 418, *supra*.

sense of community amongst citizens.<sup>84</sup> Each of the justifications advanced in favor of localism has some merit. Smaller and more numerous local governments do in some sense promote efficiency. The ever-present threat of citizens leaving one locality within a metropolitan region for another creates competition amongst localities which “creates an efficient local government marketplace.”<sup>85</sup> Further, localism has also been shown to increase citizen participation. The creation of neighborhood councils within localities, for example, has proved successful in increasing civic engagement and community involvement in decision-making.<sup>86</sup> Finally, there is also support for the argument that localism helps to build a sense of community amongst residents. Smaller and more homogenous communities have shown an ability to galvanize around issues that impact their community and to agree upon collective courses of action.<sup>87</sup>

Yet for all of the positive benefits wrought by localism, localism has a number of sizable short-comings. The most comprehensive criticism of localism is “that the close association of local powers with local boundaries generates spillovers, inter-local conflicts, fiscal disparities, and exclusion of ‘undesirable’ residents.”<sup>88</sup> In a highly fragmented metropolis, localism leads to spillovers because local governments are each treated as their own “little republic.”<sup>89</sup> They have locally bounded regulatory powers that do not empower or encourage collaboration with other localities.<sup>90</sup> Thus, localities are free to make decisions related to

---

<sup>83</sup> See e.g., Gerald E. Frug, *The City as a Legal Concept*, 93 Harv. L. Rev. 1059, 1151 (1980) (arguing that small government is the best way to obtain civil engagement, to get citizens to participate in the democracy and to overall be “better republicans.”).

<sup>84</sup> Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1115, 1115 (1996); Frug, *The City as a Legal Concept*, note \_\_\_, at 1075-78 (arguing that community building and smaller local governments are intertwined).

<sup>85</sup> See Matthew Parlow, *Equitable Fiscal Regionalism*, 85 Temp. L. Rev. 49, 56 (2012) (arguing that local governments actually do compete for citizens and business or risk the consequences of an eroding tax base. The competition results in local governments being more innovative than state or federal governments.).

<sup>86</sup> See e.g., Jeffrey M. Berry et al., *The Rebirth of Urban Democracy* 10 (1993) (stating that the neighborhood offers the “possibility of face-to-face interaction, which lies at the heart of the theory of participatory democracy”); Matthew J. Parlow, *Civic Republicanism, Public Choice Theory and Neighborhood Councils: A New Model for Civic Engagement*, 79 U. Colo. L. Rev. 137, 166-187 (2008) (describing effective neighborhood councils and how they were able to increase citizen participation and engagement in communities in New York, California, Oregon and Georgia.).

<sup>87</sup> See Tyson, note \_\_\_ at p. 57, *supra*.

<sup>88</sup> Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1115, 1140 (1996).

<sup>89</sup> Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1115, 1157 (1996);

<sup>90</sup> Cashin, *Localism, Self-Interest, and The Tyranny of The Favored Quarter*, note \_\_\_ at 1998, *supra*.

land use, pollution, taxation that inevitably impact the localities that surround them but without consulting with the other localities that may be impacted and not fully absorbing the costs of their actions.<sup>91</sup>

In addition, localism also leads to inter-local competition that strengthens some localities while weakening others.<sup>92</sup> Following the Tieboutian theory of local expenditures, many jurisdictions within metropolitan regions see themselves as competitors for residents and business.<sup>93</sup> In the fierce competition for residents and businesses, localities have an incentive to enact zoning policies that restrict land development to expensive homes and certain commercial properties because the inhabitants of such properties provide more revenue and require minimal social services.<sup>94</sup> Such land use policies allows jurisdictions to define themselves in a way that makes them most attractive in the competition for so-called desirable businesses and residents.<sup>95</sup> Unfortunately, it also results in gross inter-local fiscal disparities. This is the case because jurisdictions that use exclusionary zoning policies to limit land development to expensive homes and certain commercial properties are able to obtain more tax revenue while simultaneously excluding those such as the poor and minorities who would require more social services.<sup>96</sup> Poor and minority residents are

---

<sup>91</sup> See e.g., *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 69 (“[t]he imaginary line defining a city's corporate limits cannot corral the influence of municipal actions. A city's decisions inescapably affect individuals living immediately outside its borders. The granting of building permits for high rise apartments, industrial plants, and the like on the city's fringe unavoidably contributes to problems of traffic congestion, school districting, and law enforcement immediately outside the city. A rate change in the city's sales or ad valorem tax could well have a significant impact on retailers and property values in areas bordering the city....[y]et no one would suggest that nonresidents likely to be affected by this sort of municipal action have a constitutional right to participate in the political processes bringing it about.”).

<sup>92</sup> Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1115, 1135 (1996).

<sup>93</sup> See e.g., David Rusk, *Cities without Suburbs* (3d ed. 2003).

<sup>94</sup> Notably, this type of fiscal zoning was sanctioned by the Supreme Court in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1922), where the court upheld a zoning ordinance that severely restricted multi-family housing and industrial and commercial use of land, reasoning that the restrictions were appropriate in order to maintain the preferred residential character of the area. *Village of Euclid* provided a blueprint for exclusionary zoning techniques currently used by localities to build their tax base while minimizing costs expended on social services.

<sup>95</sup> See Orfield note \_\_\_, at 92, *supra* (arguing that localities compete with each other for tax wealth and social status in the form of businesses and high-income white residents).

<sup>96</sup> See e.g., Myron Orfield, *Metropolitics: A Regional Agenda for Community and Stability*, at pp. 62 Brookings Institution Press (1997) (noting that jurisdictions compete for property wealth and that fiscal zoning allows jurisdictions to deliberately develop zoning policies that only allow for expensive homes and commercial property which enables them to “limit social need and the demand on the tax base it can engender.”).

then forced to locate to localities with weaker tax bases and an inability to meet the much needed demand for social services.<sup>97</sup>

Finally, localism through its reliance upon boundaries to allow for discrete self-governance<sup>98</sup> facilitates a perverse type of community building that breeds racial and economic exclusion.<sup>99</sup> Localities are free to build racially and economically homogenous communities that exclude poor people and people of color. This is because under the guise of localism, the Supreme Court has upheld the validity of local government land use decisions that allow localities to construct so called “desirable” communities<sup>100</sup> and to enact local land use devices that have the effect of disproportionately excluding poor and minority people from a locality.<sup>101</sup>

---

<sup>97</sup> Importantly, as local government law scholars have noted, the competition between jurisdictions for desirable businesses and residents is often not on even terms. Affluent jurisdictions are able to obtain a larger and disproportionate share of public infrastructure investments such as highways and roads that contribute to their ability to attract businesses and residents. They are also able to “garner many of the benefits of participating in a regional economy- such as access to regional labor markets and consumers [and regional highway systems] without sharing in the regional social burdens.” This results in localities not internalizing the true costs of their decisions. See Cashin note \_\_ *supra* at 2004-2005.

<sup>98</sup> See Section I.B.ii, *supra*.

<sup>99</sup> Some scholars have gone even farther, arguing that localism does not just facilitate racial segregation and concentrated poverty, but instead is a direct causal agent of racial segregation and concentrated poverty. See e.g., David D. Troutt, *Localism and Segregation*, 16 J. Affordable Housing & Community Dev. L. 323, 325 (Summer 2007) (“it is time that localism, legal and cultural, be recognized as a primary agent behind resegregation.”); powell note \_\_, *supra*.

<sup>100</sup> See e.g., *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (upholding a zoning ordinance that prohibited three or more unrelated people from living together reasoning that that to the extent the ordinance sought to create a “quiet place where yards are wide open, people few, and motor vehicles restricted,” such a purpose was a permissible objective and the ordinance was a rational means of achieving that objective.”); *Young v. American Mini Theaters, Inc.*, 477 U.S. 50, 71 (1976) (upholding a zoning ordinance that limited the places in which theaters showing sexually explicit movies could be located and in doing so reasoned that “the city’s interest in the present and future character of its neighborhoods adequately supports” the restrictive zoning ordinances.).

<sup>101</sup> See e.g., *Warth v. Seldin*, 422 U.S. 490 (1975) (holding that that low/moderate income residents of the City of Rochester, New York were “outsiders” and lacked even the standing to challenge the exclusionary effects of the neighboring suburb Penfield’s zoning ordinance that limited the amount of affordable housing that could be built in Penfield.); *Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977) (rejecting the plaintiff’s claim that it was denied a zoning variance that would have allowed it to build a low-income housing development outside of Chicago because of racial animus after acknowledging that Black people were disproportionately affected by the lack of affordable housing caused by the zoning ordinance at issue. The court rejected the plaintiff’s claim despite evidence that opponents of the zoning ordinance made reference to “what was referred to as the “social issue” the desirability or undesirability of introducing at this location in Arlington Heights low- and moderate-income housing, housing that would probably be racially integrated.” *Id.* at 257-258. ).

Disturbingly, as a result of the aforementioned costs of localism, the economic and political advantages enjoyed by predominantly white and affluent jurisdictions are now institutionalized such that most people accept them as “normal” without questioning the inequities they represent.<sup>102</sup> The history of government discrimination that aided in racially and economically delineated metropolitan fragmentation is not readily acknowledged or discussed.<sup>103</sup> Consequently, “citizens tend to view the [current] fiscal, economic and social inequality [within metropolitan regions] as reflections of private choice and merit.”<sup>104</sup> Many are also likely to view the racial and economic stratification of metropolitan areas and the accompanying inequalities as the “natural order” of things.<sup>105</sup> Indeed, citizens arguably have a difficult time imagining a different distributional order.<sup>106</sup> The end result is that citizens are less likely to question rapid inequalities within metropolitan areas, particularly to the extent that the inequalities are framed by race and class. They are also less likely to desire to take collective action to address inequalities or problems that impact the metropolitan region as a whole.

## II. FRAGMENTATION, EDUCATION LOCALISM AND REGIONAL DISPARITIES IN PUBLIC EDUCATION

Race and class delineated metropolitan fragmentation also impacts school districts. School districts are local governments.<sup>107</sup> The existence of multiple school districts within a metropolitan area is called “school district fragmentation.”<sup>108</sup> Just as local governments compete for residents, school districts also “compete for residents [who] shape their populations,

---

<sup>102</sup> See Cashin note \_\_\_\_ at 2024-2027, *supra* (arguing that metropolitan fragmentation inculcates a parochialism that not only discourages citizens from forming beneficial regional alliances but also institutionalizes the advantaged position of the wealthier usually whiter jurisdictions such that they come to believe that it is the “natural order” of things and are not inclined to question or challenge gross metropolitan inequalities.)

<sup>103</sup> See Cashin note \_\_\_\_ at 2026, *supra*. See also John A. Powell, Race, Place and Opportunity, *The American Prospect* (September 21, 2008) (suggesting that place or where one lives has important consequences for the distribution of opportunity in America and noting that “a myriad of public policies and private practices create these spatial opportunity structures and sort people into them.”), available at <http://prospect.org/article/race-place-and-opportunity>.

<sup>104</sup> See Cashin note \_\_\_\_ at 2026, *supra*.

<sup>105</sup> See Cashin note \_\_\_\_ at 2026, *supra*; cf. Powell note \_\_\_\_, *supra* (arguing that “[i]t is critically important to appreciate that [segregation and inequality] are not natural. Racial segregation was historically legislated, through direct and indirect means, into the very fabric of our communities. And its legacy continues to undermine our individual and communal choices and our capacities to elevate ourselves and our neighborhoods.”).

<sup>106</sup> See Cashin note \_\_\_\_ at 2026.

<sup>107</sup> See e.g., Charles J. Russo, *The Law of Public Education*, Foundation Press (2012) at p. 167 (school districts are “creatures of the state” designed by legislatures to carry out their constitutional mandates to educated children entrusted to their care.).

<sup>108</sup> Jennifer Jellison Holme, *School Diversity, School District Fragmentation and Metropolitan Policy*, Teachers College Record (2012) (In Press).

tax bases and programs.”<sup>109</sup> Thus, the same distributional inequities that plague general purpose local governments also plague school districts. As a result, neighboring school districts within metropolitan areas offer differing and disparate qualities of public education creating what this Article refers to as regional inequalities in public education. This Section describes the relationship between school district fragmentation and metropolitan fragmentation. It analyzes how both forms of fragmentation create regional inequalities in public education. It also discusses why such inequalities matter and analyzes how localism exacerbates the inequalities.

#### *A. School District Fragmentation and Metropolitan Fragmentation*

There are close to thirteen thousand independent school districts operating in the United States.<sup>110</sup> Levels of school district fragmentation vary substantially across geographical regions within the United States.<sup>111</sup> While school district fragmentation is present at different rates across the country, it is present at a significant enough level in every United States geographic region to raise concerns about how school district fragmentation collectively impacts educational opportunities for all students.<sup>112</sup>

For example, in a study of United States metropolitan statistical areas (“MSAs”),<sup>113</sup> researchers found that the average level of fragmentation within the MSAs studied was .72; meaning that a 72% probability existed that two randomly selected students within a metropolitan region would attend schools in different school districts.<sup>114</sup> School district fragmentation is the highest in Northeast at .862; meaning that there is an 86.2% chance that two randomly selected students within a metropolitan region in the U.S. will attend schools in different school

---

<sup>109</sup> Aaron J. Saiger, *The School District Boundary Problem*, 42 Urb. Law. 495, 500 (2010).

<sup>110</sup> See U.S. Census Bureau, 2012 Census of Governments: Organization Component Preliminary, available at <http://www.census.gov/govs/cog2012>.

<sup>111</sup> Jellison note \_\_\_\_ at 5, *supra*.

<sup>112</sup> For example, even though the South as a whole has school district fragmentation at a rate that is lower than the national average, scholars have recognized that the problems created by school district fragmentation significantly impacts educational distributional opportunities and racial segregation in Southern school districts as well. See e.g., Erica Frankenberg, *Splintering School Districts: Understanding the Links Between Segregation and Fragmentation*, *Law and Social Inquiry*, Vol. 34, No. 4, 869-909 (2009) (examining how the creating of new school districts in Jefferson County, Alabama changed the nature of school segregation from intra-district segregation to inter-district segregation.).

<sup>113</sup> An MSA is defined by the U.S. Census Bureau to mean a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core. In order for an area to be an MSA, it must have at least one urbanized area of 50,000 or more inhabitants. See <http://www.census.gov/population/metro/>.

<sup>114</sup> Bischoff, note \_\_\_\_ at 197, *supra*.



districts.<sup>115</sup> School district fragmentation was similarly high in the Midwest at .744 and lowest in the West and South at .691 and .650 respectively.<sup>116</sup>

Significantly, metropolitan regions with high levels of school district fragmentation are the most likely to have severe racial segregation in their schools.<sup>117</sup> Further, the more fragmented that general purpose local governments are within a metropolitan area, the more likely school districts within that metropolitan area are to be highly fragmented.<sup>118</sup> Moreover, “the relationship between municipal boundaries and school district boundaries has a direct bearing on the levels of school segregation and on the fiscal conditions of ... school districts.”<sup>119</sup> This is the case because the policies that are adopted by municipalities, particularly the land use policies, impact the racial composition and socio-economic status of the residents from which the school districts will draw.<sup>120</sup>

Simply put, the combination of metropolitan fragmentation and school district fragmentation within a metropolitan region increases the

---

<sup>115</sup>Bischoff, note \_\_\_ at 197, *supra*. It is worth noting that of the of all the MSAs studied, the MSA with highest level of school district fragmentation was located in the Northeast—Nassau-Suffolk, New York which had a fragmentation level of .986, meaning that there is a 98.6% chance that two randomly selected students in that area will attend different school districts.

<sup>116</sup> Bischoff, note \_\_\_ at 198, *supra*. It is worth noting that the levels of fragmentation in the various U.S. geographical regions are a product of the state laws related to government formation and in the case of the South its history of running two dual school systems due to *de jure* school segregation laws. For example, The Northeast and Midwest likely has higher levels of school district fragmentation because historically the laws regarding local government formation in those states favored incorporation of suburbs into independent municipalities with their own independent suburban school districts as well. See Jellison note \_\_\_ at 5, *supra*; Fischel note \_\_\_, at 20-21 (describing the laws related to school district formation in the northeast and Midwest and noting that the “town remains the sacrosanct atom for school districts in New England” and that the Midwest followed the New England model). The South on the other hand has county-based school systems which means less school district fragmentation because the county became the traditional unit of governance due to the racially segregated system of education implemented in the South. See Fischel note \_\_\_ at 24, *supra* (noting that after the civil-war the south set up separate sub-county districts for schools between blacks and whites.).

<sup>117</sup> See Bachtis *supra*, note \_\_\_ at 98 (summarizing the findings of a study which showed that areas with small school districts and high levels of school district fragmentation were also likely to have high levels of racial segregation in their schools.).

<sup>118</sup> See For example, states in the Northeast and Midwest have the highest levels of municipal fragmentation. Similarly, “school districts [are] more likely to be coterminous with city boundaries in the upper Midwestern states and Northeast,” and for that reason show the highest levels of fragmentation. See William A. Fischel, The Congruence of American School Districts With Other Local Government Boundaries: A Google-Earth Exploration, Dartmouth College of Economics Working Paper (last updated April 2010).

<sup>119</sup> Jellison Holme, *supra* note \_\_\_, at 11.

<sup>120</sup> Jellison Holme, *supra* note \_\_\_, at 10.

probability that school districts will be racially and economically segregated, have varying levels of student needs and disparate tax bases with which to work.<sup>121</sup> This in turn leads to regional inequalities in public education insofar as localities with more middle class and typically white students have higher tax bases to draw from, are able to offer higher qualities of education and have higher levels of academic success.<sup>122</sup> The converse is true for localities more poor and minority students which have lower tax bases from which to draw from, offer lower qualities of education and have lower levels of academic success.<sup>123</sup>

### *B. The Significance of Regional Inequalities in Public Education*

The aforementioned regional inequalities in public education matter from an economic perspective and from a social equality perspective. Economically, metropolitan regions are assuming “greater significance in state, national and even international affairs.”<sup>124</sup> Indeed, many consider regions or metropolitan areas the premier unit of competition in the new global economy.<sup>125</sup> This is the case because people today live their lives on a regional rather than local scale. They cross jurisdiction boundary lines for much of their life activities including working, shopping and entertainment.<sup>126</sup> Thus, to the extent that an educated workforce is a necessary pre-requisite for economic growth,<sup>127</sup> inequalities between neighboring school districts within metropolitan

---

<sup>121</sup> Jellison Holme, *supra* note \_\_, at 11.

<sup>122</sup> See e.g., Saiger *supra*, note \_\_\_\_ at 502-507 (describing inter-jurisdictional variation between school districts as being rooted in fiscal disparities, racial disparities and achievement disparities); Myron Orifeld, *supra* note \_\_\_\_ at 40-48 (describing the impacts of school district fragmentation in the Minneapolis region and noting how concentrated poverty and segregation in the urban schools negatively impacts student outcomes).

<sup>123</sup> *Id.*

<sup>124</sup> Kathryn A. Foster, *Regionalism on Purpose*, Lincoln Institute on Land Use Policy at 4 (2001)

<sup>125</sup> Janice C. Griffith, *Regional Governance Reconsidered*, 21 J.L. & Pol. 505, 511 (2005) (arguing that the “increasing globalization of the economy has transformed metropolitan regions throughout the world into cohesive economic units” and that “our artificial political boundaries were formed during an era in which travel times were considerably longer than at present; economic activity today cuts across these local jurisdiction lines.”); Foster, *supra* note \_\_\_\_ at 4, (noting that regions are viewed as the premier unit of competition in a global economy. ) *but cf* Richard Briffault, *Localism and Regionalism*, 48 Buff. Law. Rev. 1, 13-14 (2000) (suggesting that the argument regional units are the new unit of economic competition is controversial because “[a]lthough there is evidence that rates of regional growth are inversely correlated with the severity of intraregional disparities, correlation is not causation,” but acknowledging that the economic competitiveness argument is a significant one in the regionalism literature.).

<sup>126</sup> Griffith note \_\_\_\_ at 512 *supra*; Foster note \_\_\_\_ at 4, *supra*.

<sup>127</sup> Anthony D. Carnevale, Nicole Smith, Jeff Stohl, *Help Wanted: Projections of Jobs and Education Requirements through 2018*, Georgetown Center on Education, Work and the Workforce (June 2010) (documenting the ways in which higher levels of education will shape the job opportunities available to workers.).

areas has significant implications for the overall economic well-being of metropolitan regions.

By restricting high quality public education to only a subset of the metropolitan region, metropolitan areas breed a shallow labor pool that will in the long-run make them less competitive in the new global economy.<sup>128</sup> Indeed, scholars have noted that because “of the growing number of minority students, if existing educational trends continue, the nation risks something it has never before seen: an intergenerational decline in its educational level, a threatening outcome in a knowledge-based economy.”<sup>129</sup>

Further, continued racial and economic segregation perpetuates social inequality. The deleterious social impacts of racially and economically segregated education have been written about extensively by other scholars.<sup>130</sup> Most notably, students who attend racially and economically segregated schools receive a qualitatively inferior education which reduces their social mobility and loosens their connections to critical social networks.<sup>131</sup> As a result, such individuals are likely to be disaffected citizens who are denied the social mobility benefits of American citizenship and are therefore more likely to create social ills such as crime and malfeasance.<sup>132</sup> To that end, as the racial demographics

---

<sup>128</sup> See David D. Troutt, *Katrina's Window: Localism, Resegregation, and Equitable Regionalism*, 55 Buff. Law. Rev. 1109, 1169 (2008) (“[m]etropolitan areas that continue to embrace localism at the expense of shared regional responsibilities tend to be less competitive in attracting economic development, keeping businesses and jobs, and maintaining a deep and talented labor pool.”).

<sup>129</sup> see Brief for 553 Social Scientists as Amici Curie Supporting Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (Nos. 05-908 and 05-915), 2006 WL 2927079 (hereinafter Brief for 553 Social Scientists).

<sup>130</sup> For a comprehensive examination of the negative effects of racially and economically segregated schools, see Gary Orfield and Chungmei Lee, *Why Segregation Matters: Poverty and Educational Inequality*, The Harvard Civil Rights Project (January 2005). See also. Brief for 553 Social Scientists, note \_\_\_\_ at 10-12, *supra*

<sup>131</sup> See Amy Stuart Wells: *The Consequences of School Desegregation: The Mismatch between research and the Rationale*, 20 Hastings Const. L.Q. 771, 705-706 (2001) (describing the negative impacts of racially and economically isolated schools and noting that “educational institutions acquire their status from their students, and those that serve only high-status students are better connected to the high-status colleges and well-paying employers. This reality contributes to a vicious cycle of poverty and despair for those in low-status urban schools. It leads to the anger and violence of teenagers who consciously and subconsciously know they have been \*790 excommunicated from opportunity. It leads to the self-fulfilling prophecy of inner-city schools as a place where failure is virtually assured.”).

<sup>132</sup> See Erik Thorbecke and Chutatong Charumulind, *Economic Inequality and Its Socioeconomic Impact*, World Development. Vol. 30, No. 9 at pp. 1495 (2002) (finding that income inequality reduces social capital and increases the probability that those on the lower end of the economic spectrum will commit crime because “the alternative to crime is less attractive.... and the potential proceeds from crime are greater.” Further, [a]

shift America closer to a majority minority country,<sup>133</sup> “maintaining racially and economically segregated schools and failing to properly educate poor and minority students will be borne not only by the individual students but also by society as a whole.”<sup>134</sup>

### *C. The Role of Localism in Creating Regional Inequalities In Public Education*

As a matter of legal theory, school districts are creatures of the state.<sup>135</sup> They possess only the powers afforded to them by the state and exist to implement the “state’s education mandate locally.”<sup>136</sup> However, the actual reality of school district authority diverges greatly from the legal theory of limited school district authority. As I noted in a previous article, in practice, there is a strong preference for localism or “local control” of public education.<sup>137</sup> While scholars have long documented the nebulous manner in which local control is defined in the education context,<sup>138</sup> this Article suggests that a fair reading of term, as it is applied in case law, is that school districts are afforded broad fiscal and political autonomy. Though the amount of fiscal and political autonomy afforded school districts varies from state to state, school districts and their governing bodies, school boards, for the most part have broad authority to raise and spend revenue for the benefit of their students,<sup>139</sup> assign students to schools<sup>140</sup> and make education related policy decisions.<sup>141</sup>

---

rise in inequality may also have a crime- inducing effect by reducing the individual’s moral threshold.”).

<sup>133</sup> See Sabrina Tavernese, *Whites Account for Under Half of Births in The U.S.*, New York Times (May 17, 2012) (describing the most recent results from a U.S. Census bureau study which showed that white births are no longer a majority in the United States and noting that this demographic shift raises important policy questions including those related to education because the United States has a “spotty record of educating minority youth.”), available at <http://www.nytimes.com/2012/05/17/us/whites-account-for-under-half-of-births-in-us.html?pagewanted=all>.

<sup>134</sup> See Erika K. Wilson, *Leveling Localism and Racial Inequality in Public Education Through the No Child Left Behind Public Choice Provision*, 44 U. Mich. J.L. Reform 625, 649 (2011).

<sup>135</sup> See e.g., *Gragg v. United School Dist. No. 287*, 6 Kan. App. 1522, 156 (1981) (“A school district is an arm of the state existing only as a creature of the legislature to operate as a political subdivision of the state. A school district has only such power and authority as is granted by the legislature...”).

<sup>136</sup> See Richard Briffault, *The Local School District in American Law*, in Besieged: School Boards and the Future of Education Politics 24, 34 (William G. Howell ed., 2005)

<sup>137</sup> See Wilson, *supra* note \_\_\_\_ at 632-635 (2011) (describing the doctrinal preference for local control of schools by the supreme court.). *City of Pawtucket v. Sudlum*, 662 A.2d 40, 62 (R.I. 1995) (holding that the preservation of local control is a legitimate state interest and that Rhode Island system for financing public schools was rationally related to that legitimate interest.).

<sup>138</sup> See e.g., Briffault note \_\_\_\_ at \_\_\_\_, *supra*;

<sup>139</sup> See e.g., *Lujan v. Colorado State Board of Educ.*, 649 P. 2d 1005, 1023-1024 (Colo. 1982) (finding that the Colorado’s school financing scheme which called for forty seven percent of school funding to be derived from local property taxes was constitutional

The most significant import of the broad fiscal and political autonomy afforded school districts is that it allows them to function in practice as sovereign entities even though they are not such according to the actual strictures of state law. Put another way, in practice, local school districts—and not the state—are deemed to bear primary responsibility for educating students within their geographic boundaries.<sup>142</sup> Importantly, the practical sovereignty of school districts is reinforced by federal and state court decisions in ways that perpetuate race and class based inequalities in education.

For example, court decisions have relied upon the importance of local control and the purported autonomy of school districts in declining to abrogate school district boundary lines in order to desegregate schools. In the seminal case *Milliken v. Bradley*, the Supreme Court upheld the trial court's finding that racial segregation within the Detroit public school system was the result of intentional discrimination.<sup>143</sup> The Court also acknowledged that massive “white flight” into the Detroit suburbs had occurred and would make it difficult to integrate the Detroit public school

---

where the purpose of the legislation was to afford local control to school districts to determine “how much money should be raised for the local schools, and how that money should be spent.”); *Kukor v. Grover*, 436 N.W.2d 568, 585 (Wis. 1989) (using local control as a basis for upholding constitutionality of school financing system).

<sup>140</sup> See *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J. concurring) (noting that the broad authority that school boards have to assign students to school including strategic site selections for schools and drawing attendance zones with the racial demographics of the neighborhood in mind).

<sup>141</sup> See e.g., *Dawson v. East Side Union High School Dist.*, 28 Cal.App.4th 998, 1017-1018 (1994) (upholding the legality of a contract between the east side union high school district and a television company involving a video program shown to students in classrooms which contains commercial advertising. The court reasoned that the California “Constitution, and the Legislature itself, have ceded substantial discretionary control to local school districts.... [a]nd because of economic, geographic, physical, political, educational, and social diversity, specific choices about instructional materials need to be made at the local level”); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

<sup>142</sup> See e.g., *Bronson v. Board of Educ. Of City School Dist. of City of Cincinnati*, 578 F. Supp. 1091, 1097 (1984) (“[r]eview of the Ohio statutory provisions creating and defining the responsibilities of local school districts in Ohio....[leads] inescapably to the conclusion that the state intended to create, and in fact did create, independent locally controlled entities responsible for the education of the students within their boundaries.”); Kiel, note \_\_\_\_ at 145, *supra* (“district sovereignty as it currently functions assures that geographic residence will be the primary factor in determining which school a child attends...access to schools outside of a student’s geographic reach is limited or non-existent.”).

<sup>143</sup> See *Bradley v. Milliken*, 338 F. Supp. 582, 588 D.C. Mich. (1971) (finding that the Detroit school system “created and altered attendance zones, maintained and altered grade structures and created and altered feeder school patterns in a manner which has had the natural, probable and actual effect of continuing black and white pupils in racially segregated schools.”).

system.<sup>144</sup> The Court nonetheless relied upon the purported importance of local control and autonomy of school districts in finding that an inter-district remedy between the Detroit school system and the surrounding suburban school districts was unconstitutional.<sup>145</sup> The Court reasoned that “school district lines may [not] be casually ignored or treated as a mere administrative convenience...because [n]o single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to the quality of the educational process.”<sup>146</sup> The Supreme Court has used similar reasoning in other cases to strike down inter-district desegregation plans.<sup>147</sup>

The Supreme Court also relies upon principles of localism and school district autonomy in declining to outlaw local property tax based funding schemes that create extreme funding disparities between neighboring school districts. Most notably, in *San Antonio Independent School District v. Rodriguez*, the Court upheld the constitutionality of a local property tax based school financing scheme that resulted in gross funding disparities between neighboring school districts, reasoning that “local control means...the freedom to devote more money to the education of one's children.”<sup>148</sup> A number of state courts have followed suit also finding that local property tax based school financing schemes that result in fiscal disparities between neighboring school districts do not violate state constitutional provisions.<sup>149</sup>

From an educational equity perspective, federal and state court reliance upon education localism to reify the practical sovereignty of school districts has allowed “local rights” to replace “states’ rights” as a vehicle to preclude states from having to provide substantive educational

---

<sup>144</sup> *Milliken*, 418 U.S. at 740.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 741-742.

<sup>147</sup> See e.g., *Missouri v. Jenkins*, 515 U.S. 70 (1995) (finding that a desegregation order imposed by a District Court that sought to attract non-minority students from outside school district to schools within the district was beyond the scope of the court’s remedial authority and that the proper remedy would have been an inter -district remedy).

<sup>148</sup> 411 U.S. 1, 49-50 (1974)

<sup>149</sup> See e.g., *Hornbeck v. Somerset County Bd. Of Educ.*, 295 Md. 597, 654 (Md. 1983) (noting that the Maryland legislature shared the view of local control articulated by the Supreme Court in *Rodriguez* and *Milliken* and upholding local property tax based school financing scheme ); *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982) (upholding the constitutionality of a school financing system in which forty seven percent of the funds for public education were derived from local property taxes which created fiscal disparities between school districts with wealthier and poorer tax bases); *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E. 2d 145 (1981) (finding that spending disparities between school districts were rationally related to the legitimate governmental objective of local control.).

equality to poor and minority students.<sup>150</sup> As a result, school districts are able to function as their own fiefdoms, providing different and disparate qualities of education along the lines of race and class without consequence.<sup>151</sup>

#### *D.Regional Inequalities Between School Districts: What It Looks Like*

The combination of fragmentation and localism creates significant disparities between neighboring school district within metropolitan areas. The disparities play out in three notable ways: first, despite the moderate success of school finance litigation in some jurisdictions,<sup>152</sup> gross fiscal disparities persist between neighboring school districts.<sup>153</sup> School districts levy taxes on property that lies within their boundaries and for the most part use all of that money to fund their own schools.<sup>154</sup> The amount of money that school districts are able to raise for purposes of funding their schools is dependent upon “the tax rate levied by the school district and

---

<sup>150</sup> See e.g., Bob Herbert, *The Ugly Side of the GOP*, N.Y. Times (September 25, 2007) (documenting a speech by presidential adviser Lee Atwater in using “states’ rights” and other euphemisms as a proxy for racial discrimination and quoting Atwater as saying: [y]ou start out in 1954 by saying, “Nigger, nigger, nigger.” By 1968 you can’t say “nigger”--that hurts you. Backfires. So you say stuff like forced busing, states’ rights and all that stuff. You’re getting so abstract now [that] you’re talking about cutting taxes, and all these things you’re talking about are totally economic things and a by-product of them is [that] blacks get hurt worse than whites. And subconsciously maybe that is part of it.).

<sup>151</sup> See discussion in Section II. C., *infra*.

<sup>152</sup> School finance cases in which plaintiffs have brought suits under state constitutional provisions related to the state’s constitutionally stated obligation to provide education has in some instances proved successful in getting states to contribute more money to the funding of public schools and in increasing the amount of money spent on students in school districts with poorer tax bases. See e.g., *Hoke County Bd. Of Educ. v. State*, 358 N.C. 605 (2004) (finding that state’s method of funding and providing for individual school districts was such that it did not afford all students their state constitutional right to opportunity to obtain sound basic education.). For a comprehensive account of school finance litigation and its impacts on school equity see generally, Michael Heise, *Equal Educational Opportunities Hollow Victories and the Demise of School Finance Equity: Theory: An Empirical Perspective and Alternative Explanation*, 32 Ga. L. Rev. 543 (1998).

<sup>153</sup> See e.g., James E. Ryan, *Five Miles Apart: One City, Two Schools and the Story of Educational Opportunity in Modern America*, Oxford University Press (2010) at p. 127 (noting that “the disparities in spending [between school districts] has traditionally been severe, with some districts spending two, three of even ten times more per pupil than others.”); Laurie Reynolds, *Skybox Schools: Public Education as Private Luxury*, 82 Wash. U. L.Q. 755 (2004) (chronicling the funding disparities between wealthy and poor districts).

<sup>154</sup> See Saiger note \_\_\_\_ at 502; cf Reynolds, *supra* note \_\_ at 788 (describing school funding statutes known as “Robin hood” statutes in Vermont and Texas in the which the states “explicitly seize property tax revenues and redistribute them (or force the local school district itself to distribute them) to districts with less property wealth...in both statutory schemes the poorer districts’ enhanced state aid comes directly from the wealthy districts, with no substantial additional state aid.”).



the value of the property within the taxing district's boundaries.”<sup>155</sup> School districts that encompass higher valued property can levy taxes at a lower rate yet still collect large sums of money while school districts that encompass lower valued property must levy taxes at a higher rate but still collect less money, thereby allowing fiscal disparities between districts to persist.<sup>156</sup> Further, even when state courts require equalization of funding across school districts, they also leave local school districts with the authority to tax themselves at higher rates and to provide funding at levels about the state mandated equalized level, thereby allowing fiscal disparities between poor and wealthy districts to persist.<sup>157</sup> Significantly, financial disparities between school districts matter. Although the relationship between school funding and academic achievement is undoubtedly complex and subject to much debate,<sup>158</sup> a consistent body of research has shown that school districts with more money are able to provide more challenging curriculum and other educational inputs that significantly impact student achievement.<sup>159</sup>

Second, adherence to localism in education incentivizes a perverse type of community building that allows high quality school districts to exclude minorities and poor students through race and class-neutral means. While general purpose local government boundary lines are racially stratified, racial stratification along school district boundary lines is particularly acute.<sup>160</sup> Indeed, since the Court’s decision in *Brown* outlawing segregation in schools, “the territorially sovereign district, responsible only for its own resident students and not those nearby, has become a preeminent tool for resisting racial integration of schools.”<sup>161</sup>

---

<sup>155</sup> Reynolds note \_\_\_\_ at 757, *supra*.

<sup>156</sup> Reynolds note \_\_\_\_ at 757, *supra*.

<sup>157</sup> See Ryan, *supra* note \_\_\_\_ at 128-129 (describing state funding equalization methods and focusing on a funding mechanism known as the foundation program. Through the foundation program states determine a minimum amount of money per pupil required to provide students with an adequate education and determines how much each district is required to pay towards the foundation amount. The state contributes some portion of the foundation amount and determines the tax rate each district will assess in order to meet its’ required portion of the foundation amount. However, states also allow districts to levy a higher tax rate and to spend more per pupil than the foundation program minimum floor.).

<sup>158</sup> See e.g., Elliot, Marta, *School Finance and Opportunities to Learn: Does Money Well Spent Enhance Student Achievement*, Journal of Sociology and Education (1998) (finding that per-pupil expenditures indirectly increase students’ achievement by giving them access to educated teachers who use effective pedagogies in the classroom.) *but cf*,

<sup>159</sup> See e.g., Center for American Progress Report: Return on Educational Investment, available at <http://www.americanprogress.org/issues/education/news/2011/01/19/8878/return-on-educational-investment-background-info/>.

<sup>160</sup> See Saiger note \_\_\_\_ at 506; Kiel note \_\_\_\_ at \_\_\_\_.

<sup>161</sup> Saiger note \_\_\_\_ at 50, *supra*. See also Batchis, note \_\_\_\_ 98-99 (describing the connection between local control and resistance to school desegregation efforts).

The race-neutral land use policies that result in racial and economic stratification of metropolitan areas results in similar stratification along school district boundary lines.<sup>162</sup> In the school district context, race neutral land use policies are used to create homogeneous school districts that the court in *Brown* outlawed. While many parents profess a desire to send their children to racially and economically diverse schools, at the same time they fervently defend localist policies that maintain neighborhood schools and resist efforts to disrupt the connection between housing and schools.<sup>163</sup> Thus, while one of the virtues of localism is that it facilitates community building, in the education context, localism is also used to build school communities that are racially (and economically) homogenous.

Finally, inter-local competition for residents strengthens wealthy white school districts while weakening poorer minority districts. Simply put, “because a municipality’s property taxes play a significant role in funding education, jurisdictions with higher property values...are much better positioned,” to compete for middle-class students.<sup>164</sup> The parents of white, middle class or upper-class students are the most likely to be in a position to exercise their Tieboutian choice to locate to a municipality with high property values and a tax base sufficient enough to fund a high-quality school district.<sup>165</sup> Conversely, poor and minority parents are unlikely to be able to change residence in order to change the quality of education their children are receiving.<sup>166</sup> As a result, school districts situated in municipalities with high property values and an ample tax base have a significant advantage in the race to lure middle-class students to their schools.<sup>167</sup>

Further, the congregation of predominately middle-class or upper-class students in one district and low-income students in another school districts creates qualitative disparities between school districts. A significant achievement gap exists between low-income and middle-class

---

<sup>162</sup> See Section II.B.ii, *supra*.

<sup>163</sup> See Jellison, *Buying Homes, Buying Schools* note \_\_\_\_ at 204-206, *supra*.

<sup>164</sup> Wayne Batchis, *Urban Sprawl and the Constitution: Education Inequality As An Impetus To Low Density Living*,” 42 Urb. Law. 95, 97 (2010).

<sup>165</sup> Saiger note \_\_\_\_ at 506, *supra*.

<sup>166</sup> Wilson note \_\_\_\_, *supra*.

<sup>167</sup> Indeed, the status associated with the amount of money per pupil a school district spends on its students combined with the type of students the district serves, heavily influences parents decisions about where to locate for purposes of sending their children to school. See Jellison, *Buying Homes, Buying Schools*, note \_\_\_\_ at 180, *supra* (finding that “parents [in the study] assumed that schools serving the children of high-status parents were superior to those serving the children of lower-status parents—the assumed quality of the schools was directly associated with the status of the families they served.).

or upper-middle class districts.<sup>168</sup> Poor, predominately minority school districts are more likely to have a plethora of schools that are deemed failing and in which students are unable to meet minimum state testing requirements.<sup>169</sup> Scholars have demonstrated that part of the reason for this is that middle-class and upper-class students are a valuable resource that enhances the learning environment for all students.<sup>170</sup> Because of the environment from which they come, “middle- and high-income students tend to bring more educational capital to school and, thus, elevate the learning of those around them.”<sup>171</sup> Poor, predominately minority school districts are denied this resource. Middle and upper-class parents recognize this and therefore seek to enroll their children in school districts that have a plethora of middle and upper class students.<sup>172</sup> Thus, more affluent districts therefore have yet another advantage over poorer districts in the inter-local competition for students.

Notably, some scholars suggest that the primacy of localism and practical school district sovereignty in perpetuating educational inequalities may be eroding.<sup>173</sup> In making this suggestion, they point to various education reforms such as greater accountability measures being imposed on local school districts by the federal No Child Left Behind Act (“NCLB”) and by states through the enactment of rigorous academic standards and harsh penalties for failing to meet those standards, including

---

<sup>168</sup> Rothwell, note \_\_\_, at 14, *supra* (finding that “variation in metropolitan income inequality and demographic diversity contributes to the variation in school test-score gaps across metro areas and that metro areas with high income inequality and high median incomes tend to have significantly larger test-score gaps.”).

<sup>169</sup> See James E. Ryan, *Five Miles Away, A World Apart: Once City, Two Schools, and the Story of Educational Opportunity in Modern America* at pp. 157-158, Oxford University Press (2010) (“high-poverty schools, especially high-poverty urban schools, almost always have lower levels of academic achievement than low-poverty schools, regardless of funding levels.”).

<sup>170</sup> See e.g., Derek Black, *Middle-Income Peers As Educational Resources And The Constitutional Right To Equal Access*, 53 B.C. L. Rev. 373 (2012) (putting forth a theory of equal access to quality education for poor students through economic desegregation efforts on the grounds that access to middle-class peers are an educational resource that poor students need in order to excel academically).

<sup>171</sup> *Id.* See also, Ryan, note \_\_\_ at 165, *supra* (describing research that demonstrates that the socio-economic status of a student’s peers heavily influences student academic performance and noting that students conform to the dominant culture within the school. Schools that are majority poor and urban lack the influence of middle-class students who bring a culture of achievement. They instead are dominated by a culture in which expectations and motivations for academic success are lower.).

<sup>172</sup> See Jellison, *Buying Homes, Buying Schools* note \_\_\_ at 201-202, *supra*.

<sup>173</sup> See Richard Briffault, *The Local School District in American Law*, in *Besieged: School Boards and the Future of Education Politics* 24, 39 (William G. Howell ed., 2005) (“recent developments have challenged local control and the status of local school boards”); See Saiger note \_\_\_ at 873-888 (arguing that while local power remains substantial, school districts have lost their power to state agencies, the federal government and constituent schools within the school districts.).

state take-over or closures of failing schools.<sup>174</sup> They also point to the success of adequacy based school finance litigation in getting states to increase their share of public education funding in order to eliminate wealth disparities between school districts.<sup>175</sup> Finally, they note that the proliferation of private market forces such as vouchers and charter schools enables parents to select schools and therefore lessens the importance of school district boundary lines in determining what school a student attends.<sup>176</sup>

To be sure, federal and state education reforms have in some ways lessened the practical sovereignty of school districts. School districts no longer have a complete monopoly on determining educational content and are being held accountable for failing to meet standards set by the state and federal government.<sup>177</sup> Yet, increased state and federal accountability has not for the most part improved the academic plight of poor, urban districts.<sup>178</sup> Instead, poor, urban districts are more likely to be penalized for failing to meet federal NCLB or state standards and are more likely to have schools closed down or be taken over by the state.<sup>179</sup> Thus, to the extent that federal and state accountability measures are eroding the practical sovereignty of school districts and the primacy of localism in public education, it is an uneven erosion with salience of localism diminishing in poor, predominately minority urban districts while the autonomy of middle-class, predominately white districts remains unchanged.<sup>180</sup>

Further, although successful school finance litigation caused many states to provide a higher share of public education funding, increased stated funding has not ameliorated fiscal inequalities between school districts. As noted earlier in the Article, this is because even when courts require equalized state funding of schools, they have also permitted local districts to tax and spend above any basic level of funding provided by the state.<sup>181</sup>

---

<sup>174</sup> See *Id.*

<sup>175</sup> See *Id.*

<sup>176</sup> See *Id.*

<sup>177</sup> See *Id.*

<sup>178</sup> See e.g., Danielle Holley-Walker, *Educating at the Cross roads: Parents Involved, NCLB and School Choice*, 69 Ohio St. L.J. 911, 932 (2008) (noting that the majority of schools sanctioned under NCLB are predominately minority and low-income and in metropolitan areas with high numbers of racially isolated schools).

<sup>179</sup> See *Id.*

<sup>180</sup> See Saiger, note \_\_\_\_ at 921 (acknowledging that accountability measures result in distressed districts losing autonomy while the autonomy of suburban districts remains unchanged.).

<sup>181</sup> For example, in *Rose v. Council For Better Education*, 790 S.W. 2d 186(1989), the Kentucky Supreme Court held that Kentucky's system of common schools violated the Kentucky state constitution. The court reasoned that the state failed to provide enough

Finally, similar to federal and state education reforms, the proliferation of market based options for parents has weakened the impact of localism primarily for poor, predominately minority urban schools, not suburban schools.<sup>182</sup> Market based options such as school choice, vouchers and charter schools are primarily used by minority students stuck in failing districts not suburban students.<sup>183</sup> Though localism in education is being challenged, it is not being challenged in ways that thwart disparities race and class based inequalities between school districts. Consequently, adherence to education localism still remains a key component in the creation of regional inequalities in public education.

### III. REGIONALISM: USING CROSS-JURISDICTIONAL COLLABORATION TO AMELIORATE METROPOLITAN DISPARITIES BETWEEN SCHOOL DISTRICTS

As discussed in the previous two sections, inequalities between neighboring localities and school districts are in many ways a result of the preference for decentralized autonomous local governance structures. Indeed, because of the locally bounded nature of the powers of general purpose governments and school districts, such entities often act in a silo, neglecting to appreciate the economically and socially inter-dependent nature of the metropolitan region as a whole.<sup>184</sup>

In order to correct this deficiency, local government law scholars look to a theory of governance called regionalism as a possible solution for general purpose governments but not school districts.<sup>185</sup> This section suggests that regionalism should also be looked to as a solution to remedy distributional disparities in public education between school districts. It

---

funding to the common schools to ensure that children were receiving an adequate level of education and ordered the state legislature to provide funding "sufficient to provide each child in Kentucky an adequate education." *Id.* at 211-212. Significantly, however, the court also held that school districts were free to "assess local ad valorem taxes on real property and personal property at a rate over and above that set by the General Assembly to fund the statewide system of common schools." Courts in other jurisdictions have made similar findings. *See e.g., Roosevelt Elementary School Dist. No. 66 v. Bishop*, 877 P.2d 806, 814-185 (Az. 1994).

<sup>182</sup> *See e.g.,* Julie Schwekenberg and James VanderHoff, *Why Do Charter Schools Fail: An Analysis of Charter School Survival in New Jersey*, Rutgers University, Newark Working Paper #2013-002, (March 2013) (noting that poor minority students are more likely than white students or middleclass students to attend charter schools in New Jersey); Brian Gill et. al, *Rhetoric versus Reality: What We Know And What We Need To Know About Charter Schools And Vouchers*, at pp. 157, The RAND Corporation (2007)(conducting an extensive study of the demographics of voucher holders and charter school attendees and noting that "[i]n most cities, minority racial/ethnic groups have been heavily represented in voucher programs.").

<sup>183</sup> *Id.*

<sup>184</sup> *See* Richard Briffault, *The Local Government Boundary Problem*, 48 Stan. Law Rev. 1115, 1129-1130 (1996) (describing the ways in which local government regulatory powers and service provision requirements are confined within the localities borders.).

<sup>185</sup> *See*

examines the broader regionalism doctrine and takes the position that metropolitan fragmentation and sole reliance upon localist educational governance structures create serious race and class based inequalities in public education that will persist if we continue to allow public education be disseminated solely on a local basis rather than a regional basis.

*A. The Normative Argument for Shifting Away From Localism In Public Education and Towards Regionalism*

Public education plays a critical role in the maintenance of the American democracy.<sup>186</sup> To that end, localism or local control of education is primarily advanced on the same democracy related grounds used in support of the broader localism doctrine: citizen participation and community building.<sup>187</sup> The argument with regard to citizen participation is that a more centralized system of disseminating public education is undesirable because it would be bureaucratic, and as a result, less responsive to the needs and desires of parents within the local community.<sup>188</sup> A more decentralized system of public education on the other hand, is purportedly geographically and politically closer to the people, more responsive to their needs, and therefore increases citizen participation in educational matters.<sup>189</sup> In addition to the citizen participation rationale, localism in public education is also defended on the grounds that it facilitates a type of community building that is

---

<sup>186</sup> See Saiger, *The School District Boundary Problem*, note \_\_ at 522 (“many political theorists understand education and self-government as symbiotic processes by which people create and maintain good societies.”)

<sup>187</sup> See Pedro A. Noguera, *City Schools and the American Dream: Reclaiming the Promise of Public Education*, at 84-85, Teachers College Press, Columbia University (2003) (citing the prevalence of local control and decentralization of public education in the United States as rooted in a perception that such a governance structure is inherently more democratic than a centralized system of education.). Efficiency is also used as a justification for local control of schools, particularly that allowing parents to “shop” for localities that offer educational services that meets their needs breeds competition amongst school districts which makes school districts more efficient. See Rodriguez, 411 U.S. 1, 50 (asserting that local control of schools breeds efficiency because “by allowing ‘[e]ach locality... to tailor local programs to local needs...[p]luralism affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence.”); but cf Wilson note \_\_\_ at 633-634 (describing the efficiency justification for localism in public education as flawed because of the lack of mobility of poor parents and their inability to actually exercise any real choice because they cannot afford to change residences as a means of “shopping” for locality that best meets their children’s educational needs.”).

<sup>188</sup> See Mcdermott, note \_\_ at pp. 16 (positing that “support for local control of education is motivated by a belief that decisions made closer to schools and classrooms are better than those made and implemented by a hierarchal bureaucracy.”); Noguera, note \_\_\_ at 85 (“local governance of public schools ostensibly serves as a means to ensure that schools are responsive and accountable to the communities they serve.”)

<sup>189</sup> See Mcdermott note \_\_ at 124 (noting that because local institutions are closer to the people geographically and that the smaller the decision-making body, the larger the number of people who will be involved in state or citywide school governance.”).

purportedly essential to building the type of social capital and networks that are necessary in a successful democracy.<sup>190</sup>

Yet, the value of localism in public education, particularly with respect to its capacity to enhance democracy through citizen participation and community building is overstated.<sup>191</sup> Despite the smaller and geographically closer units of school governance, the levels of participation in school governance, including election of school board members, and participation in school board meetings, is low.<sup>192</sup> Moreover, even when citizens do attempt to participate in board of education meetings, many board meetings are structured such that the opportunity for public discussion is limited and any public discussion that does occur typically does not relate to or influence board decisions.<sup>193</sup> Most importantly, as critics of the citizen participation justification for the broader localism doctrine have pointed out, citizen participation is rendered meaningless if the citizens within a locality lack the financial or political wherewithal to translate citizen participation into policy that meets the citizens' needs and desires.<sup>194</sup>

With respect to the community building rationale, the community building that localism facilitates is neither broad nor inclusive.<sup>195</sup> Instead, because of the racially and economically stratified nature of the larger

---

<sup>190</sup> See e.g., *Milliken*, 418 U.S. 717 at 742 (“local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.”); McDermott, note \_\_\_\_ at 121, *supra* (conceding that local administration of public education reinforces a sense of community.); Saiger, *The School District Boundary Problem*, note \_\_\_\_ at 519-520 (describing the importance of local control in building social networks and capital in a community because of the high level of interactions that parents and students have with school teachers and administrators.).

<sup>191</sup> See Wilson, note \_\_\_\_ at 633-634 (debunking the notion that decentralization leads to higher levels of citizen participation in public school governance).

<sup>192</sup> See McDermott, note \_\_\_\_ at 55 (finding that in many communities, school board candidates are elected unopposed and that turnout in school board is as low as if not lower than other local elections.); Noguera *supra* note \_\_\_\_ at 85 (noting that low levels of community participation in schools follows trends that are similar to other forms of public engagement.).

<sup>193</sup> *Id.* at 60-67 (studying the structure of board of education meetings in various communities and concluding that most of the deliberations on substantive education policy issues occurs in special meetings, leaving larger meetings open to the public largely for ceremonial functions. The study also noted that that most of the people who attended and commented at meetings open to the public were school principals or other school district employees and that the public comments made at the meetings rarely related to the items actually on the Board agendas)

<sup>194</sup> See Wilson note \_\_\_\_ at 635; Noguera, note \_\_\_\_ at 83 (“concentrated poverty and racial segregation limit the ability of parents to exert control over the schools that serve their children and educational leaders in such communities often lack the resources to take on the task themselves.”).

<sup>195</sup> See Section II, *supra*.

localities in which school districts are situated, the sense of community that educational localism breeds is “quite narrow both geographically and politically.”<sup>196</sup> Indeed, the community building rationale for localism allows residents who live in high quality school districts to develop a very narrow sense of the purpose of public education. They come to view public education as just another consumable good for those who can afford to move into a high quality school district.<sup>197</sup> In conceptualizing public education as a consumable good, as demonstrated by the Williams-Bolar case, they believe they have the right to exclude “non-payers” or non-residents from consuming the same public education that they paid to consume.<sup>198</sup> This type of community building stratifies rather than enhances democracy.

Thus, in practice, the democratic based rationales for the strong ideological commitment to localism in education do not completely bear out. Instead, the strong ideological preference for localism is arguably a post hoc rationalization for discrimination and exclusion.<sup>199</sup> Put another way, localism in education is in many ways nothing more than a rhetorical device used to enable localities to legally maintain racially and economically homogenous schools notwithstanding the Supreme Court’s decision in *Brown*.<sup>200</sup> This point is particularly poignant given the stark resistance to school desegregation post-*Brown*,<sup>201</sup> and the ostensibly politically motivated decision in *Milliken* to preclude inter-district desegregation plans, which was a sharp departure from the Court’s previous rulings on school desegregation.<sup>202</sup>

---

<sup>196</sup> McDermott, note \_\_ at 121.

<sup>197</sup> See Batchis, note \_\_ at 98, *supra*; Erika K. Wilson, *The Privatization of Public Education Through School District Boundary Lines* (manuscript on file with the author).

<sup>198</sup> See e.g., Jennifer Steinhauer, *Beverly Hills Schools to Cut Nonresidents*, N.Y. Times, Dec. 21, 2009, at A16 (quoting Beverly Hills school board vice president Lisa Korbakov on the Beverly Hills School District’s decision to eliminate slots in the school district for students who did not reside in the district as saying Membership has its privileges...[b]ut anyone can be a member. I made a choice to spend more to live in a home here when I could have spent less on a bigger home in another area.... city services...be they fire, police, schools, are reserved for residents and their children.”), available at <http://www.nytimes.com/2009/12/21/education/21beverly.html?pagewanted=all&r=0>.

<sup>199</sup> See generally, Troutt, *Katrina’s Window: Localism, Resegregation, and Equitable Regionalism* (suggesting that localism generally is invoked as subterfuge for racial exclusion and protection of white privilege).

<sup>200</sup> 347 U.S. 483 (1954). See also McDermott, *supra* note \_\_ at 16 (noting that support for local control of education is at times motivated by wealthier localities desire to not have to deal with the problems facing poorer districts.)

<sup>201</sup> See e.g., Erwin Chemerinsky, *The Segregation and Resegregation of American Public Education: The Court’s Role*, 81 N.C. Law Rev. 1592, 1603 (2003) (describing resistance to desegregating schools after *Brown* and noting that ten years after the decision only 1.2% of Black students in the South attended integrated schools.”).

<sup>202</sup> See James E. Ryan, *Brown, School Choice and the Suburban Veto*, 90 Va. L. Rev. 1635, 1645 (2004) (suggesting that the Court’s decision in *Milliken* to deviate from its previously aggressive interpretation of the remedial scope of the court’s powers in school



To be fair, localism in education should not be rejected all together. Localism has positive benefits such as making it geographically easier for citizens to be involved in their children's education and to respond to citizen preference.<sup>203</sup> Thus, localism in and of itself is not problematic. Rather it is the imbalance and sole reliance upon localism as a defensive mechanism to prevent an equitable and efficient sharing of educational opportunity and resources that is problematic. In some instances, shifting away from a sole reliance upon localism and integrating regionalism in the form of inter-district collaboration will more evenly distribute educational opportunities, increase diversity in schools and create efficiency. As racial segregation in schools reaches pre-*Brown* levels, and economic segregation in schools similarly intensifies,<sup>204</sup> the time has come to re-conceptualize our vision of public education in America. Regionalist governance structures offer one such possibility for doing so. The sections that follow demonstrate the possibilities for integrating more regionalist frameworks in public education.

### *B.Regionalism In Public Education*

Regionalism is loosely defined as a theory that advocates for the creation of "regional [government] or governance structures that wield powers over policy areas that transcend local borders"<sup>205</sup> This Article takes the position that in the education context, regionalism offers an attractive possibility for increasing efficiency and equity in public education. Notably, regionalism in public education offers the most promise for improving efficiency and equity in highly fragmented metropolitan areas with urban cores, rather than rural districts. This section examines the broader theories of regionalism and examines the possibilities and obstacles to implementing regionalism in public education, particularly in highly fragmented urban metropolitan areas.

---

desegregation cases may have been a result of political influence and reasoning that "public sentiment at the time was strongly opposed to cross-district busing...., president Nixon delivered a televised address specifically to denounce cross-district busing, and politicians from both sides of the aisle introduced measures, prior to Milliken, to prohibit it.).

<sup>203</sup> See McDermott, *supra*.note \_\_ at 122.

<sup>204</sup> See e.g., Gary Orfield et al., *Miles to Go: A Report on School Segregation in Virginia* (March 13, 2013) (describing the increasing racial diversity of Virginia public schools but also noting the more than fifty years after *Brown v. Board of Education*, black students in Virginia are enrolling in schools that are intensely racially and economically segregated), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/miles-to-go-a-report-on-school-segregation-in-virginia-1989-2010/siegel-hawley-miles-to-go-2013.pdf>.

<sup>205</sup> See Cashin note \_\_\_\_ at 2033, *supra*.

## 1. Forms of Regionalism

Two distinct doctrinal branches of regionalism exist: traditional regionalism and new regionalism. Traditional regionalism advocates for the centralization or consolidation of government authority into a regional government.<sup>206</sup> More specifically, traditional regionalism calls for shifting much of the power currently enjoyed by local governments into a regional government.<sup>207</sup> Traditional regionalism is rooted in skepticism of local government autonomy, particularly in the face of metropolitan fragmentation that is delineated by race and class.<sup>208</sup> Advocates of traditional forms of regionalism believe that the centralization of government powers throughout metropolitan regions is necessary in order to eliminate distributional inequalities between local governments caused by localism and decentralization.<sup>209</sup> They reason that a centralized regional government can operate more efficiently, has the ability to pool tax resources and to regulate in a manner that takes into account a region as a whole, not just the individual localities within a region.<sup>210</sup> Traditional forms of regionalism, however, have fallen out of favor and are viewed as politically untenable due to their preference for centralized government and displacement of local government autonomy.<sup>211</sup>

---

<sup>206</sup> See Parlow note \_\_\_\_ at 64, *supra*.

<sup>207</sup> See Parlow note \_\_\_\_ at 64, *supra*.

<sup>208</sup> See H.V. Savitch and Ronald K. Vogel, *Paths to New Regionalism*, State and Local Government Review, Vol. 32, No. 3 at pp. 162 (Fall 2000 (describing traditional forms of regionalism as being based upon the premise that the primary ills of local government stem from fragmentation)).

<sup>209</sup> See *Id.* at 162 (noting that those in favor of consolidation or traditional regionalism believe that consolidation will “bring about social justice and equity between different jurisdictions by merging them into one grand public enterprise.”).

<sup>210</sup> See Savitch and Vogel note \_\_\_\_ at 162, *supra* (theorizing that centralized regional governments are “able to deal with segregation, income disparities and [problems associated with sprawl] by pooling tax-resources to build integrated housing, redistribute wealth and regulate land use.”). Limited forms of traditional regionalism structures were enacted in the 1960’s and 1970’s as part of federal grant programs involving housing, transportation and urban development. Specifically, federal housing and transportation agencies required urban metropolitan areas to form regional governing bodies that had central planning authority and governance responsibilities as a condition for receiving federal housing and transportation grants. See Lisa T. Alexander, *The Promise and Perils of “New Regionalist” Approaches to Sustainable Communities*, 38 Fordham Urb. L.J. 629, 542-643 (2011) (describing traditional forms of regional governments that were enacted as a requirement for receiving federal grants for housing through the Housing and Urban Development Act of 1965).

<sup>211</sup> See e.g., Anthony Downs, *New Visions for Metropolitan America* at pp. 170 (1994) (arguing that regionalist proposals to completely displace suburban government are doomed and politically unfeasible). Some forms of traditional regionalist governments still do exist however but their success in eliminating distributional inequalities and creating more efficient structures of government is debatable. See e.g., Savitch and Vogel note \_\_\_\_ at 162, *supra* (describing traditional regionalism government structures in the form of central city consolidations that have taken place in Jacksonville, Florida, Indianapolis, Indiana and Nashville, Tennessee and questioning whether or not

In contrast to traditional regionalism, new regionalism seeks to maintain existing local government structures while at the same time advocating for the enactment of regional governance structures that recognize and address the ways in which localities within a metropolitan region are connected.<sup>212</sup> The most significant difference between traditional regionalism and new regionalism is that new regionalism rejects the idea of having classical government structures replace local governments.<sup>213</sup> Instead, new regionalism proponents endorse limited metropolitan governance arrangements or various forms of voluntary intergovernmental cooperative agreements between local governments.<sup>214</sup> New regionalism is seen as a preferable approach to addressing inequalities within metropolitan areas because it recognizes the strengths of powerful local governments while at the same time acknowledging the need for local governments to work together on some issues that impact the metropolitan region as a whole.<sup>215</sup>

In a nutshell, the new regionalism theory “ offers a middle ground [in] the dispute over the allocation of state and local government power” by recognizing the strengths and political necessity for local government authority while at the same time acknowledging the need for localities to act in concert on some occasions to increase efficiency and to eliminate regional inequalities.<sup>216</sup> As discussed in further detail below, new regionalism offers promise for increasing efficiency and eliminating inequalities in public education.<sup>217</sup>

---

they have actually been successful in eliminating distributional inequalities and operating efficiently.).

<sup>212</sup> See Parlow note \_\_\_\_ at 64-65, *supra*.

<sup>213</sup> As described by Savitch and Vogel note \_\_\_, at 161 *supra*, government entails formal institutions and elections along with established decision-making processes and administrative structures. Traditional regionalism favors formal government structures insofar as it seeks to displace local governments and to enact a centralized system of government.

<sup>214</sup> See Savitch and Vogel note \_\_\_, at 161 *supra* (noting that governance structures rely on the idea that existing institutions can be harnessed in new ways and recognizes that localities can enter into inter-jurisdictional agreements to provide services to one another without establishing a classical government structure).

<sup>215</sup> See Alexander note \_\_\_\_ at 641-643 *supra* (describing new regionalism as retreat from the unsuccessful attempts at displacement of local government powers favored by traditional regionalism and noting that new regionalism instead favors promotes inter-local cooperative agreements and limited-purpose metropolitan governments.); Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity and the New Regionalism*, 78 Wash. L. Rev. 93, 112 (2003) (new regionalism “notes the repeated failure of local government consolidation efforts in major metropolitan areas and stresses the permanence of existing multi-purpose local governments.”).

<sup>216</sup> Reynolds note \_\_\_\_ at 113, *supra*.

<sup>217</sup> The new regionalism literature contains several proposed policy approaches. For example, the “linked functions” new regionalism policy proposal suggests that localities

## 2. The Justifications That Support Enacting Regionalism In The General Purpose Local Government Context Apply In the Education Context As Well

Supporters of regionalism, particularly new regionalism proposals, advance four primary justifications for enacting regional governance structures: (i) increasing efficiency; (ii) recognition of the economic interdependence of localities within metropolitan regions; (iii) increasing citizen participation and (iv) reducing inter-regional inequalities.<sup>218</sup> These justifications used in support of enacting new regionalism in the general local government context apply with equal, if not greater force, in the context of public education.

With respect to efficiency, in the general local government context, localism and the proliferation of independent autonomous localities arguably increases public infrastructure costs and creates inefficiencies.<sup>219</sup> Regionalism, by virtue of increasing the governance base while at the same time keeping the size of the base small enough to be manageable, is increasingly seen as a way to increase the efficiency in the provision of public goods.<sup>220</sup> In the education context, increasing the territorial base of governance through some forms of regional governance structures could streamline operational expenses for neighboring school districts.<sup>221</sup> It could also result in critical information sharing between districts thereby triggering an efficient mechanism to “distribute intangible educational

---

should enter into inter-local service agreements for discrete services such as solid-waste disposal or economic development that potentially have inter-jurisdictional effects. Similarly, the “complex networks” proposal suggests that localities should enter into a number of voluntary inter-local agreements in which “numerous jurisdictions with overlapping services...allow citizens [to] seek out the most optimal arrangement for [their] particular circumstance.” Finally, the “multi-tiered” proposal essentially advocates keeping local governments in-tact but adding an additional metropolitan or regional tier of government provide public services that have inter-jurisdictional effects or require redistribution to ensure regional equity. See Savitch and Vogel note \_\_, at 162-164.

<sup>218</sup> See Reynolds note \_\_ at 113, *supra*.

<sup>219</sup> See Briffault, *Localism and Regionalism*, note \_\_ at 8, *supra* (suggesting that existing local governance system exacerbate urban sprawl by “creating a demand for expensive new infrastructure--highways and streets, sewage treatment facilities, fire stations, schools--in growing communities on the urban fringe.”);

<sup>220</sup> See Laurie Reynolds, *Local Governments and Regional Governance*, 39 Urb. Law. 483, 491 (2007) (noting that even staunch supporters of localism admit that regionalist governance structures would enlarge the territorial base thereby distributing infrastructure costs more efficiently.); Kathryn A. Foster, *Regionalism on Purpose*, Lincoln Institute of Land Policy (2001) (noting that by virtue of their scale regions have the potential to address sprawl and equity issues wrought by metropolitan fragmentation.).

<sup>221</sup> See e.g., Kiel note \_\_ at 161 (describing how the involuntary merger of the Memphis city school district and the Shelby county school district provided opportunity for costs savings via reducing expenses incurred by both districts and allowed for the pursuit of operational efficiencies.).

resources” such as effective teaching techniques and ways to innovate curriculum.<sup>222</sup>

In terms of appropriately recognizing the inter-dependent nature of jurisdictions within metropolitan areas,<sup>223</sup> economic growth within metropolitan regions is viewed as contingent upon the health of the individual cities and suburbs within the region.<sup>224</sup> As such, it is in the self-interest of poorer cities and more affluent suburbs to ensure that each locality is functioning well.<sup>225</sup> This justification has particular force with respect to disparities in education. Education is a key driver of economic health and growth.<sup>226</sup> Recent research has shown that concentrated poverty and low quality public education limits economic mobility within metropolitan regions and has a harmful impact on the economic vitality of metropolitan regions as a whole.<sup>227</sup> To the extent that regional governance structures can more evenly allocate public education resources to ensure that more students within a metropolitan region at least have access to high quality education, enacting regional governance structures in education could help to buttress the economic vitality of metropolitan regions.

Further, just as proponents of localism suggest that localism enhances democratic values, regionalism proponents also make this claim.<sup>228</sup> Proponents of regionalism suggest that because localities within metropolitan areas are intimately connected but locally bounded in terms of their authority, individuals do not have a say in addressing critical issues that cross boundary lines such as sprawl and economic development.<sup>229</sup> Regionalism it is posited would increase democratic

---

<sup>222</sup> See *Id.*

<sup>223</sup> Reynolds, *Intergovernmental Cooperation, Metropolitan Equity and the New Regionalism*, note \_\_ at 113, *supra*; Briffault, *Localism and Regionalism*, note \_\_ at 12, *supra* (documenting an increasing interest in regionalism due to a belief that a regionalist governance structures are a necessity because of the new global economy which primitizes the region as the unit of economic competition).

<sup>224</sup> See Reynolds, *Local Governments and Regional Governance* note \_\_ at 491 (documenting the “interdependence” argument in support of regionalism which finds that suburban economic health is co-dependent upon a strong central city and for reasons therefore rooted in self-interest affluent segments of metropolitan areas should support regional redistribution efforts.). Griffith note \_\_ at 512-513, *supra*

<sup>225</sup> See Griffith note \_\_ at 512-513, *supra*

<sup>226</sup> See Carnevalle note \_\_, *supra*.

<sup>227</sup> See Chetty *et al.*, *The Economic Impacts of Tax Expenditures*

*Evidence from Spatial Variation Across the U.S.*, (July 2013) (documenting the impacts spatial variation in taxes and income across metropolitan regions on economic mobility and the health of metropolitan regions.), available at [http://obs.rc.fas.harvard.edu/chetty/tax\\_expenditure\\_soi\\_whitepaper.pdf](http://obs.rc.fas.harvard.edu/chetty/tax_expenditure_soi_whitepaper.pdf)

<sup>228</sup> See Briffault, *Localism and Regionalism*, note \_\_ at 21-24, *supra*.

<sup>229</sup> See Briffault, *Localism and Regionalism*, note \_\_ at 21 *supra* (“local issues like sprawl, the adequacy of local tax bases to local service needs, and economic development may not be capable of successful resolution at the local level. The individual may have a

participation by “widening the scale of participation to include all of those affected by local actions.”<sup>230</sup> In the education context, research has shown that while participation in school governance is low, participation increases when citizens have access to resources that enable them to actually make positive changes in school structure or governance.<sup>231</sup> Thus, the enactment of regional governing bodies that could ensure a more equitable distribution of public education resources has the potential to increase citizen participation.<sup>232</sup>

Finally, one of the foremost justifications for enacting regionalism is to eliminate inequalities equity between neighboring metropolitan jurisdictions. Under this rationale, proponents of regionalism advise that localist governance structures are in many ways rooted in racism and intentionally perpetuate race and class based disparities.<sup>233</sup> From this perspective, localist governance structures create social and economic disparities between localities by, among other things, allowing localities to enact exclusionary zoning policies which results in localities having disparate financial bases from which to draw upon.<sup>234</sup> The social costs of poverty are therefore borne exclusively by poorer usually central city or inner-ring suburbs while more affluent typically suburban localities are allowed to enjoy the benefits of being geographically situated within the metropolitan region without absorbing any of the social costs.<sup>235</sup> For

---

larger role in the formulation of local policies, but in the metropolitan context purely local decisions may be powerless to solve many critical problems.”).

<sup>230</sup> Briffault, *Localism and Regionalism*, note \_\_\_\_ at 21-22, *supra*.

<sup>231</sup> See Noguero *supra* note \_\_\_\_ at 101-102 (describing how increased access to resource and power increase parental participation in schools).

<sup>232</sup> See Section IV, *supra*.

<sup>233</sup> See e.g., Troutt, *Localism, Resegregation, And Equitable Regionalism*, note \_\_\_\_ at 1171 (arguing that “the re-entrenchment of racial and economic segregation was facilitated by this country's legal and ideological commitment to localism” and advocating for regionalism in order to restore racial and economic justice.); John A. Well, *What we Need to Do About The Burbs, Colorlines* (September 15, 1999) (stating that “today, metropolitan regions are divided racially and spatially into largely white and affluent suburbs and largely non-white and poor urban centers. These dynamics are at the heart of racial inequality today. If this inequality is to be effectively fought, suburban sprawl and political fragmentation must be combatted by movements for regional and metropolitan equity.”), available at [http://colorlines.com/archives/1999/09/what\\_we\\_need\\_to\\_do\\_about\\_the\\_burbs.html](http://colorlines.com/archives/1999/09/what_we_need_to_do_about_the_burbs.html).

<sup>234</sup> See Georgette C. Poindexter, *Towards a Legal Framework for Regional Redistribution of Poverty-Related Expenses*, 47 Wash. U.J. Urb. & Contemp. L.3, 16-17 (1995) (describing how exclusionary zoning policies create fiscal disparities between localities with the city typically having lower tax revenue available to it and higher spending needs in the form of social support and infrastructure that is used by city and suburban residents.).

<sup>235</sup> See Cashin note \_\_\_\_ at \_\_\_\_ (describing the benefits enjoyed by the “favored quarter” without having to absorb their fair share of the costs of poverty within the metropolitan area.”); Poindexter note \_\_\_\_ at 15 (“[e]xclusionary zoning allows municipalities to take a

these reasons, regionalism is seen as necessary to more fairly allocate the costs of metropolitan poverty and to lessen the current stark fiscal and social inequalities that exist between neighboring localities.<sup>236</sup>

In the education context, the reduction of regional inequalities offers the most attractive rationale for enacting regionalist governance strictures in public education. In particular, imposing regionalist structures may discourage the hoarding of quality educational resources and instead facilitate the process of metropolitan residents recognizing the ways in which the health of urban schools is relevant to suburban schools and the overall wellbeing of the metropolitan region as a whole.<sup>237</sup> To the extent that regionalist structures can increase the permeability of school district boundary lines and allow for a more equitable sharing of resources, including money, between school districts, such structures also offer hope for reducing the gross fiscal and academic achievement disparities between neighboring school districts.<sup>238</sup>

### *C. Obstacles to Regionalism In Public Education*

“[A]lmost no one favors metropolitan government except a few political scientists and intellectuals.”<sup>239</sup>

While the justifications for enacting regionalism are plentiful, resistance to regionalism is strong. The primary obstacle to regionalism is a philosophical one: America has long been committed to decentralized government due to its purported benefits of enhancing democracy and promoting efficiency.<sup>240</sup> This is particularly true with respect to public education. Calls for regionalism are routinely rejected as an infusing an unnecessary level of government and overriding the will of the people to locate themselves for governance purposes as they see fit.<sup>241</sup> Further,

---

“free ride” on the payment of poverty-related expenditures at the expense of other communities in the region.”).

<sup>236</sup> See Poindexter note \_\_\_\_ at 27-28 (advocating for direct or indirect taxation on suburban residents in the name of regional equity.).

<sup>237</sup> See e.g., Susan Heaton, Learning Community Nebraska Program Brings Diversity to Highly Segregated Public Schools, Huffington Post, (January 28, 2013), available at [http://www.huffingtonpost.com/2013/01/28/learning-community-nebras\\_n\\_2568475.html](http://www.huffingtonpost.com/2013/01/28/learning-community-nebras_n_2568475.html) (describing the benefits of the inter-district collaboration wrought by the Nebraska learning plan.).

<sup>238</sup> See Section IV.C., *infra*.

<sup>239</sup> Downs note \_\_\_\_ at 70.

<sup>240</sup> See Section II.B., *supra*.

<sup>241</sup> See e.g., Gerald E. Frug, *Against Centralization*, 48 Buff. L. Rev. 31, 32-33 (2000) (decrying calls for centralization in the form of regional levels of government implies a level of coercion and usurping of citizen choice and is therefore politically unpopular and impracticable.); Richard C. Shragger, *The Limits of Localism*, 100 Mich. L. Rev. 371, 425 (2001) (“[a]ny proposed limiting principle on local power must differentiate between local decisions to exclude and local choices to instantiate a way of life, which are often one and the same.”).

regionalism proposals are also philosophically rejected because of fears that centralization of government powers will result in bureaucracy, particularly a loss of participatory and responsive democratic governance structures that localism enables.<sup>242</sup>

In addition to philosophical resistance to regionalism, there is also significant political resistance to regionalism. The political resistance to regionalism is undoubtedly intertwined with the American philosophical commitment to localism. To be sure, much of the political resistance to regionalism is rooted in self-interest.<sup>243</sup> Residents who live in “favored quarters” benefit from insulating themselves from the social costs attached to living in a metropolitan region while at the same time benefiting from their geographic positioning within a metropolitan region.<sup>244</sup> As a result, they fervently resist regionalist governance proposals in order to forestall a redistribution of resources and to protect the status quo which favors them.<sup>245</sup> Similarly, people who live in the “non-favored quarter” also rejects regionalism, particularly minority communities, due to a desire to maintain control over their own communities and fears that regionalism will result in them being politically usurped by people who live in more affluent localities.<sup>246</sup>

---

<sup>242</sup> See Richard Ford Thompson, *Beyond Regional Borders: A Partial Response to Richard Briffault*, 48 Stan. L. Rev. 1173, 1184 (1996) (taking a position against centralization in the form of certain proposals for regionalism reasoning that “we will lose the opportunities for participatory, or at least responsive, democratic government, effective place based political initiatives, and civic interaction and identification with the public sphere. Meanwhile government will become more distant, more bureaucratic and less responsive.”); Clayton P. Gillette, *Regionalization and Inter-local Bargains*, 76 N.Y.U. L. Rev. 190, 208 (2001) (“it is by no means clear that centralization translates into a greater likelihood that those affected will receive representation.”).

<sup>243</sup> See e.g., Briffault, *Localism and Regionalism*, note \_\_ at 27, *supra* (“the resistance to regionalism in the political process is largely a matter of the self-interest of those who benefit from the status quo, such as local elected officials, land developers, corporations that are the subjects of inter-local bidding, and the businesses and residents located in the high-tax base localities of the metropolitan area.”).

<sup>244</sup> See Cashin note \_\_ at 2030-2031 (“in most metropolitan regions the collective well-being of the region is not being pursued, primarily because of the aggregate spillover effects of local power being exercised by scores of autonomous localities, each without consideration of the impact of local decisions on the entire region.”); Briffault, *Briffault, Localism and Regionalism*, note \_\_ at 27, *supra* (

<sup>245</sup> See Poindexter note \_\_ at 521 (arguing that the favored quarter embraces localism because it allows them to segregate themselves in small homogenous communities without having to pay for their fair share of the resources needed for regional infrastructure and social welfare programs.).

<sup>246</sup> See Frug, *Against Centralization*, note \_\_ at 33, *supra* (“[m] any African-American mayors of declining central cities have become equally enamored of local power, preferring to run their cities in their own way rather than submit to centralized control.”); Cashin, *Middle Class Black Suburbs and the State of Integration*, note \_\_ at 734 (“African-American economic or fiscal self-interest lies with integration but for many black suburbanites the psychic benefits of “being with one's own” may be worth the costs of segregation.”).



In attempting to enact regionalism in public education, the greatest obstacles are undoubtedly the philosophical commitment to localism and the political resistance to regionalism. In order to muster the political will necessary to enact regionalism in public education, middle-class and suburban voters must understand how regionalism would benefit them. One way to cultivate the political will might be to demonstrate to suburban residents both the benefits of moving towards regionalist education structures and the perils of not doing so.

In terms of the benefits, research suggests that the overall economic health of metropolitan areas suffers when the workforce within the area is poorly educated. In particular, crime increases as does the costs of social welfare programs when large blocks of students are inadequately educated.<sup>247</sup> Enacting regionalist governance structures in public education would allow more citizens to become better educated thereby increasing the economic vitality of metropolitan regions as a whole and reducing crime and other social costs associated with an inadequate education.<sup>248</sup>

Further, the problems associated with racial and economic segregation in the central city urban schools are steadily arising in the suburbs as well.<sup>249</sup> This is the case because of demographic shifts in school age population, more minority parents and students residing in the suburbs, and an economic recession which has seen loss of jobs and tax base for once privileged suburban areas.<sup>250</sup> Thus, given that the same problems that plague predominately minority and poor urban districts are now migrating to the suburbs, it would behoove suburban residents to become invested in solutions that improve the lot of everyone rather than utilizing an exit strategy.<sup>251</sup> Indeed, research has shown that communities that embrace solutions that seek to effectively integrate an influx of

---

<sup>247</sup> See Henry M. Levin, *The Social Cost of Inadequate Education*, The Campaign For Educational Equity (October 24-25, 2005) (describing the threat of inadequately educating children as children being more likely to be arrested, become pregnant, use drugs, experience violence, require public assistance, diminishment of the competitiveness of America's current and future workforce. And they are a civic threat, because our children's overall enfranchisement—their personal stake in society—so clearly mirrors their educational levels.).

<sup>248</sup> *Id.*

<sup>249</sup> See Gary Orfield and Erica Frankberg, *The Resegregation of Suburban Schools: A Hidden Crisis in American Education*, Cambridge: Harvard Education Press (2012).

<sup>250</sup> *Id.*

<sup>251</sup> *Id.* (noting that at some point, given the demographic shifts, exit to another locality will no longer be a viable options for middle-class white parents).

minority and poor students into an existing system rather than allowing white flight are able to maintain stability and cultivate student success.<sup>252</sup>

With respect to the perils, importantly a fair number of urban districts are in such distress that they are unable to sustain their existence and are either closing schools or being taken over by the state.<sup>253</sup> Such actions by urban school districts have negative implications for the region as whole. For example, in Memphis, Tennessee, the Memphis schools went into such a state of financial distress, the Memphis city school board voted to voluntarily surrender their charter to the state.<sup>254</sup> As a result, the Memphis City schools and the Shelby County schools were effectively dissolved into one school district,<sup>255</sup> effectively creating a “forced” regional school district.<sup>256</sup> Further, state takeovers or increased state roles in schools have social and financial costs that are ultimately borne by all state taxpayers.<sup>257</sup> These perilous examples can be used to demonstrate to suburban residents why adopting regionalism is in their best interest. Simply put, regionalism, if enacted properly, will allow them to maintain some of the strengths of local control of education while at the same time having a voice in helping to improve public education for the region as a whole.<sup>258</sup>

---

<sup>252</sup> See e.g., Heather Schwartz, *Housing Policy Is School Policy*, RAND Corporation (2010) (describing the efforts in Montgomery County, Maryland to successfully integrate an increasing number low-income and minority students into the predominately white an affluent school system through inclusionary zoning programs and policies aimed at fostering racial and economic integration.), available at <http://tcf.org/assets/downloads/tcf-Schwartz.pdf>; Orfield and Frankenberg, *Resegregation of Suburban Schools*, note \_\_\_\_ *supra*, (“schools and neighborhoods...could be strengthened and other diverse areas stabilized if meaningful regional policies designed to support such areas were put in place.”).

<sup>253</sup> See e.g., Valerie Strauss, *How School Closing Hurts Neighborhoods*, *The Washington Post*, March 6, 2013; Issue Brief, *School Closings Policy*, Pacer Research for Action (March 2013).

<sup>254</sup> See Daniel Kiel, *Memphis Dilemma: A Half Century of Public Education Reform in Memphis from school desegregation to consolidation*, 41 U. Mem. L. Rev. 787, 824-833 (2011).

<sup>255</sup> Kiel note \_\_\_\_, *supra*.

<sup>256</sup> See Michelle Wilde Anderson, *Making a Regional District: Memphis City Schools Dissolves Into Its Suburbs*, 112 Colum. L. Rev. Sidebar 47 (March 21, 2012) (arguing that the Memphis forced consolidation into Shelby County amounted to a forced regionalization of the Memphis and Shelby county school districts).

<sup>257</sup> See Emily Richmond, *What Would Happen If the State Took Over Your District*, *The Atlantic*, (April 1, 2013) (describing the social and fiscal consequences of the increasing number of state takeovers of failing urban schools or increased state involvement in cities such as Cleveland, Detroit, and Camden) available at <http://www.theatlantic.com/national/archive/2013/04/what-would-happen-if-the-state-took-over-your-school-district/274527/>.

<sup>258</sup> See Section IV, *supra*.

Lastly, enacting regionalism in public education also faces the practical obstacle of existing state and local government law structures. Regional governance frameworks are not part of most state constitutions.<sup>259</sup> As a result, the creation of regional governance frameworks would require complex reworking of and integration of regional frameworks into existing state legal schemes.<sup>260</sup> In the education context, unlike general purpose local governments, school districts are true creatures of the state and are heavily regulated by the state. For example, states have the authority to define school district boundaries,<sup>261</sup> are responsible for financially supporting school districts,<sup>262</sup> and have the ability to set educational policy such as curriculum standards and graduation requirements.<sup>263</sup> Further, consistent with the high level of regulation of school districts by the state, school districts generally are not afforded the broad discretion of Home Rule authority that is afforded to general purpose local governments.<sup>264</sup> Because states have plenary power over school districts,<sup>265</sup> as a matter of law, it is possible for states to enact regionalist frameworks to govern the dissemination of public education.

---

<sup>259</sup> See Poindexter note \_\_\_\_ at 520-521 (describing the challenges that exist to integrating regional frameworks because of existing state construction and state legal regimes which for the most part do not contemplate regional government.) *but cf* Oregon State Constitution amended to afford Portland Metro regional government Home Rule charter. See Carl Abbott and Mary Post Abbott, *Metro, People, Places and Open Spaces: A History of Metro* (May 1991), available at [http://library.oregonmetro.gov/files/abbott-a\\_history\\_of\\_metro\\_may\\_1991.pdf](http://library.oregonmetro.gov/files/abbott-a_history_of_metro_may_1991.pdf)

<sup>260</sup> See Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, note \_\_\_\_ at 119-121 (describing the existing state enabling authority that would allow for inter-municipal agreements regarding the provision of public services.); Poindexter note \_\_\_\_ at 520-524 (“because lawmakers have not meshed metropolitan governments into state constitutions and legal frameworks, an attempt to fit them into the existing government setup faces innumerable hurdles.”).

<sup>261</sup> See e.g., *Sherwood School Dist. 88J v. Wash County Educ., Service Dist.*, 167 Or. App. 372, 383 (2000) (a necessary incident of the legislature’s authority to establish a uniform and general system of common schools is the authority to establish or change the boundaries of school districts.).

<sup>262</sup> See e.g., *Butt v. State of California*, 842 P. 2d 1240, 1249 (Cal. 1992) (finding that the California state legislature was required to provide financially distressed school districts with funds so that it would not be forced to close six weeks prior to the end of the school year, reasoning that the state of California “has broad responsibility to ensure basic educational equality under the California Constitution.”).

<sup>263</sup> See e.g., *Hancock v. Commissioner of Educ.*, 822 N.E. 2d 1134 (Mass. 2005) (finding that state legislation which set curriculum and established minimum standards for receiving a high school diploma were constitutional under Massachusetts constitution education clause.).

<sup>264</sup> See Richard Briffault, *The Local School District in American Law*, in Besieged: School Boards and the Future of Education Politics 24, 34 (William G. Howell ed., 2005); Aaron Saiger, *The Last Wave: The Rise of The Contingent School District*, 84 N.C. L. Rev. 857, 866 (noting that school districts have no parallel constitutional protections such as the home rule protections afforded general purpose local governments).

<sup>265</sup> See the text of Section II.B and the accompanying notes.

#### *D.Existing Regionalist Frameworks in Public Education: Successes and Challenges*

The ideological preference for localism in public education is so deeply entrenched that there are few examples of regionalism in American public education. In the elementary and secondary public education context, the closest parallels to regionalism in public education are voluntary choice-based inter-district desegregation plans.<sup>266</sup> Such plans have been enacted in eight U.S. metropolitan areas: Minneapolis, Minnesota;<sup>267</sup> Palo, Alto, California;<sup>268</sup> Hartford, Connecticut;<sup>269</sup> St. Louis, Missouri;<sup>270</sup> Rochester, New York;<sup>271</sup> Boston, Massachusetts;

---

<sup>266</sup> For a detailed overview of some of the more comprehensive of the voluntary choice-based inter-desegregation plans that exist, see Amy Stuart Wells, *Boundary Crossing For Diversity, Equity and Achievement: Inter-district School Desegregation and Educational Opportunity*, Charles Hamilton Institute For Race and Justice, Harvard University (November 2009).

<sup>267</sup> Minneapolis has three large-scale multi-district collaborations: the West Metro Education Program (WMEP), the East Metro Integration District (EMID), and the Northwest Suburban Integration School District (NWSISD). The collaborations are authorized by Minnesota state law under a joint powers agreement and expanded after the settlement of a lawsuit brought by the Minnesota branch of the NAACP alleging that the Minneapolis public schools were segregated by race and class and that the students were not receiving a similar education to students in neighboring districts that had fewer minorities and low-income students. See Myron Orfield, *Regional Strategies for Integration of Schools and Housing Post-Parents Involved*, 29 Law & Ineq. 149 (Winter 2011).

<sup>268</sup> See

<http://www.smcoe.k12.ca.us/InstructionalServicesDivisionISD/ess/Pages/tinsley.aspx> -- Crafted by lawyers as part of the 1986 settlement of a desegregation lawsuit, the Tinsley Voluntary Transfer Program permits up to 1,000 students of color from East Palo Alto's Ravenswood school district to enroll in seven nearby districts: Palo Alto, Menlo Park, Portola Valley, Las Lomas, Woodside, San Carlos and Belmont-Redwood Shores.

<sup>269</sup> In response to the Connecticut Supreme Court's decision in *Sheff v. O'Neil*, 238 Conn. 1, 617 A.2d 1267 (1996), in which the Connecticut Supreme Court found that poor and minority public school students had been denied equal educational opportunities, the state created the Hartford Open Choice program which allows students to voluntarily transfer between the Hartford public schools and neighboring suburban schools. The program also established an Inter-district magnet school which established 50 magnet schools that are open to students from districts throughout the metropolitan region. See Robert Biffulco et al., *Can Inter-District Choice Boost Student Achievement? The Case of Connecticut's Inter-District Magnet School Program*, Center For Policy Research, Syracuse University (2002); Casey Cobb et al., *Legally Viable Desegregation Strategies: The Case of Connecticut*, in *Integrating Schools In A Changing Society* (edited by Erica Frankenberg & Elizabeth DeBray), UNC-Chapel Hill Press (2011) (analyzing Connecticut Inter-District and Open Choice plans ).

<sup>270</sup> See The U.S. Court of Appeals ruled in 1980 that the St. Louis Public School Board of Education and the State of Missouri were responsible for maintaining a segregated school system. In 1981, the Appeals Court directed that a voluntary inter-district plan be worked out between the city and the county schools. See *Lidell v. Board of Education City of St. Louis*, 693 F.2d 721(8<sup>th</sup> Cir. 1981). There are 17 participating school districts. A Voluntary Inter-district Coordinating Council, which oversaw implementation of the 1983 Settlement Agreement, became a non-profit corporation in 1999, and was renamed

Milwaukee, Wisconsin<sup>272</sup> and Omaha, Nebraska.<sup>273</sup> The central goal of all of these programs is desegregation- namely to achieve greater levels of racial integration between school districts in light of the geographic limits placed on inter-district desegregation remedies by the Court in *Milliken*.<sup>274</sup> Most of the programs consist of student transfers from city school districts to suburban school districts.<sup>275</sup> Others include inter-district magnet schools that draw students from both city and suburban school districts.<sup>276</sup> All of the programs are voluntary as students must choose to enroll in them and cannot be compelled to do so.<sup>277</sup>

These regionalist-like inter-district desegregation programs have achieved moderate success most notably in reducing racial segregation between school districts and offering students access to high-performing suburban schools that they otherwise would not be able to attend.<sup>278</sup> Further, they have also succeeded in helping to close the academic achievement gap between minority and non-minority students enrolled in the programs, improved racial attitudes amongst students and parents within the collaborating districts, particularly white parents, and increased

---

the Voluntary Inter-district Choice Corporation (VICC). Each of the 17 participating districts has a vote in VICC business in proportion to the number of voluntary transfer students they serve. Only 3 of these 17 districts have a voting share greater than 10 percent. See <http://www.choicecorp.org/HistBack.htm>.

<sup>271</sup> Rochester has an urban-suburban inter-district transfer plan (“USIDP”). The USIDP developed as a result of a call in 1963 by New York’s Education Commissioner for districts to consider what could be done to reduce the racial imbalance and improve the educational opportunities for disadvantaged students. See Kara S. Finnegan, *Inter-district Choice as a Policy Solution: Examining Rochester’s Urban-Suburban Inter-District Choice Policy*,

Prepared for School Choice and School Improvement: Research in State, District and Community Contexts Vanderbilt University, October 25-27, 2009.

<sup>272</sup> See <http://legis.wisconsin.gov/lrb/pubs/budbriefs/99bb18.pdf>.

<sup>273</sup> See Jennifer Jellison Holme, Sarah L. Diem and Katherine Cummings Mansfield, *Regional Coalitions and Educational Policy: Lessons from the Nebraska Learning Community Agreement*, note \_\_\_, supra (describing the Omaha, NE Learning Community inter-district desegregation plan).

<sup>274</sup> See Section II, *supra*.

<sup>275</sup> Amy Stuart Wells et. al., *Boundary Crossing for Diversity, Equity and Achievement: Inter-District School Desegregation and Educational Opportunity*, Charles Hamilton Houston Institute for Race and Justice (November 2009).

<sup>276</sup> Amy Stuart Wells et. al., *Boundary Crossing for Diversity, Equity and Achievement: Inter-District School Desegregation and Educational Opportunity*, note \_\_\_, *supra*.

<sup>277</sup> *Id.*

<sup>278</sup> See e.g., Myron Orfield, *Regional Strategies for Integration of Schools and Housing Post-Parents Involved*, 29 Law & Ineq. 149 (Winter 2011) (documenting the successes of the Minneapolis programs).

the likelihood that minority students would go on to obtain education beyond high school.<sup>279</sup>

Nevertheless, despite their successes, as other scholars have noted, they also have a number of practical challenges that limit their overall effectiveness. First, their scope is often limited.<sup>280</sup> They serve a small number of students relative to the number of students in the metropolitan areas in which they operate.<sup>281</sup> They also lack governing bodies with proportionate representation and with the authority to make policy decisions beyond the desegregation goal of the districts.<sup>282</sup> For example, the desegregation programs in Hartford, Connecticut and Minneapolis, Minnesota have regional governing bodies which consist of one representative from the participating school districts without regard for the size of various districts that make up the regionalist governing bodies.<sup>283</sup> The lack of proportional representation makes it likely that the interests of the larger districts which are typically poor and minority may not be adequately addressed by a regionalist governing body.<sup>284</sup>

Moreover, the inter-district plans all lack comprehensive and effective funding schemes to address fiscal disparities between participating districts.<sup>285</sup> Instead, the inter-district plans for the most part rely upon voluntary funding or state per-pupil allotments that do not adequately address the fiscal disparities between the participating

---

<sup>279</sup> See Amy Stuart Wells *et. al.*, *Boundary Crossing for Diversity, Equity and Achievement: Inter-District School Desegregation and Educational Opportunity*, Charles Hamilton Houston Institute for Race and Justice (November 2009).

<sup>280</sup> See James E. Ryan and Micheal Heise, *The Political Economy of School Choice*, 111 Yale L.J. 2043, 2071 (2002) (surveying the voluntary inter-district desegregation programs in Massachusetts, Missouri and Connecticut and positing that the programs are intentionally limited in scope to in order to prevent large numbers of urban students from transferring into the suburban districts.).

<sup>281</sup> See Jellison Holme, *School Diversity, School District Fragmentation*, note \_\_\_, *supra* at pp. 22 (noting that the only 450 students in Rochester utilized the inter-district desegregation plan, 5,800 in St. Louis and 7,000 in Hartford); Casey Cobb *et al.*, note \_\_\_ at 134, *supra* (examining the Connecticut inter-district magnet program and finding that they provide access to less isolated learning environments for only a small number of students of color).

<sup>282</sup> See Jellison Holme, *School Diversity, School District Fragmentation*, note \_\_\_, *supra* at pp. 30 (acknowledging that the voluntary inter-district plans are the closest parallel to regionalism in public education but noting that most “have no authority beyond the inter-district transfer programs: they don’t address other fragmentation-related inequities, such as the redistribution of revenue to member districts.”).

<sup>283</sup> See *Id.* at 27.

<sup>284</sup> See *Id.* at 28.

<sup>285</sup> See Erica Frankenberg and Geneive Siegel-Hawley, *Choosing Diversity: School Choice and Racial Integration in The Age of Obama*, 6 Stan. J. Civ. Rts & Civ. Liberties, 219, 238 (2010) (describing the funding deficiencies of most of the inter-district desegregation plans and noting that most have faced difficulties in funding the administrative and transportation costs of the programs).

districts.<sup>286</sup> Significantly, with the exception of an inter-district plan in Omaha, Nebraska, discussed in further detail *infra*, none of the inter-district plans have revenue sharing plans that would require the redistribution of tax revenue to poorer school districts that participate in the inter-district programs.<sup>287</sup> Finally, all of the inter-district programs are voluntary.<sup>288</sup> This is the case primarily because the political will to enact regionalism in public education is weak at best. Thus, the few regionalist public governance structures that exist in public education are small in scope and voluntary such that they do not challenge the dominant localist refrain in public education. Yet the successes of the inter-district plans should not be minimized or overlooked and instead suggest that an expansion of regionalism in public education at least warrants serious consideration.

#### IV. EQUITABLE FEDERATED REGIONALISM IN PUBLIC EDUCATION: A PROPOSED FRAMEWORK

The inter-district school desegregation plans described in Section III provide a blue-print as to the possibilities for enacting regionalist governance structures in public education. However, they also provide a window into the challenges or limitations that exist in enacting regionalism in public education. This section examines what a more expansive system of regionalism in public education might look like. Using the successes and pitfalls of the inter-district desegregation plans as a guide, this section proposes a theoretical framework that could be followed in order to effectively enact regionalism in public education. The theoretical framework proposed by this article is entitled “Equitable Federated Regionalism.” It borrows from principles of equitable regionalism and federated regionalism which are each described *infra*. The framework responds to the equity and efficiency issues that plague urban metropolitan areas and would be most useful when applied to the urban metropolitan context.

---

<sup>286</sup> For example, the Hartford, Connecticut CREC is by voluntary funding in the form of state and federal grants and private funds. In addition, local school districts become members of CREC with an annual fee of 20 cents per pupil. See <http://www.crec.org/crec/about/index.php>. See also, Jellison Holme note \_\_\_, *supra* at pp. 28 (noting that all most all of the inter-district desegregation plans lack revenue sharing and/or redistribution of revenue between participating school districts.).

<sup>287</sup> See Jellison Holme, *School Diversity, School District Fragmentation*, note \_\_\_ at pp.30, *supra* (describing a tax base sharing scheme in the Nebraska inter-district desegregation plan). See also, section IV. C., *infra*, describing in additional detail the Nebraska desegregation plan and tax base sharing scheme.

<sup>288</sup> See Ryan and Heise note \_\_\_, *supra*; Jellison Holme, *School Diversity, School District Fragmentation*, note \_\_\_ at pp.30, *supra*

### *A. Equitable Regionalism*

Equitable regionalism is a form of new regionalism that responds to the exclusionary aspects of localism and decentralized governance structures—namely concentrated poverty and racial segregation.<sup>289</sup> Proponents of equitable regionalism suggest that the resistance to regionalism is a reflection of structural racism.<sup>290</sup> In particular, they suggest that the “preference for localism is rooted in preserving racial segregation and perpetuating its corresponding economic advantages and disadvantages that fall mainly, but not exclusively, along racial lines.”<sup>291</sup> Thus, localities will not voluntarily cooperate in addressing certain issues, even when to do so would be in the best interest of the locality and the metropolitan region as a whole.<sup>292</sup>

For example, issues with distinct equity implications such as affordable housing, public housing and public education, to name a few, are issues that given the impact that they have on metropolitan regions as whole, should be amenable to regional cooperation but are not due to the strong preference for localism.<sup>293</sup> Notably however, goods with equity implications such as housing and education implicate private associational preferences. Thus, the strong ideological commitment to localism may not truly reflect a desire for small level government and decentralization but might instead be a reflection of a strong resistance to racial and economic integration.<sup>294</sup> Indeed, as suggested by Gregory Wheir’s boundary recruitment theory, to the extent that boundary lines have social meaning and help people realize particular racialized preferences, regionalism disrupts those preferences.<sup>295</sup> People are therefore unlikely to voluntarily agree to engage in regionalism, particularly in areas such as housing and education where regionalism may result in racial and economic integration.

---

<sup>289</sup> See David Troutt, *Katrina's Window: Localism, Resegregation, And Equitable Regionalism*, 55 Buff. L. Rev. 1109, 1172 (2008).

<sup>290</sup> See David Troutt, *Localism and Segregation*, 16-Sum J. Affordable Housing and Community Dev. L. 323 (2007).

<sup>291</sup> *Id.* at 325. See also Richard Briffault, *Localism and Regionalism*, 48 Buff. Law. Rev. 1, 27 (2000) (describing the preference for localism and ardent resistance to localism in most metropolitan areas as a function of self-interests, namely preserving existing political control over resources and shielding wealthier localities from having to share responsibility in providing for the needs of the socio-economically disadvantaged in poorer localities.”).

<sup>292</sup> Troutt, *Localism and Segregation*, note \_\_\_\_ at 337 (arguing that the “legal and political deference to [localism], permits self-interested, irrational, and inefficient preferences to flourish at the expense of regions, cities, and impoverished minority communities within them.”).

<sup>293</sup> See Troutt, *Localism, Resegregation, And Equitable Regionalism*, note \_\_ at 1172, *supra* (citing affordable and public housing, revenue sharing and density control as examples of issues that should be susceptible to regional cooperation but that are not due to localist opposition.).

<sup>294</sup> *Id.* at 1172.

<sup>295</sup> See Section I.A. (ii) *supra*.



Thus, rather than relying upon organic voluntary cooperation, equitable regionalism proposes that states enact legislation to facilitate cooperation between localities on issues that are unlikely to otherwise net voluntary cooperation between localities.<sup>296</sup> Equitable regionalists envision such state legislation taking many forms including compelling inter-local cooperation or merely incentivizing cooperation.<sup>297</sup> The key is the involvement of the state in facilitating cooperation between localities rather than leaving it to localities themselves to come together to address issues that impact the region as a whole.

In the case of public education, education is undoubtedly an area in which there are immense equity concerns about the ways in which public education is disseminated throughout metropolitan regions but in which there is immense opposition to changing the localist governance structures inherent in public education.<sup>298</sup> Scholars and policymakers with experience in both voluntary and involuntary coordination between school districts, particularly urban and suburban districts, note that state leadership is a critical component to the success of any attempt to enact regionalism in public education.<sup>299</sup> Given the weaknesses inherent in voluntary attempts at enacting regionalism in public education, in some instances, states should enact legislation mandating regionalism or cooperation between neighboring school districts. The Nebraska Learning Community Legislation described in Section IV, *infra* provides a good example of the type of state legislation mandating regional cooperation between school districts that has to date been successful.

While mandatory legislation undoubtedly faces numerous political obstacles that may in some instances prove insurmountable, an alternative to mandatory legislation in those instances would be for states to enact legislation that includes incentives for regional coordination between school districts so as to essentially coerce cooperation between school

---

<sup>296</sup> *Id.* at 1173 (“equitable regionalism is a principle of local government law reform by which states enact legislation to compel inter-local cooperation where equity, and often efficiency, demand it.”).

<sup>297</sup> *Id.* at 1173 (“[t]he principle may take many forms, from top-down to bottom-up, voluntary and compulsory, population cutoffs—or locality size—for participation requirements, commission-driven, and/or legislative.”).

<sup>298</sup> See Section II.C., *supra*.

<sup>299</sup> See Kiel *supra*, note \_\_\_\_ at 17 (describing the merger of the urban Memphis school district and urban Shelby County school district and how the state’s role can either assist or undermine regional efforts); McDermott *supra*, note \_\_\_\_ (suggesting that instead of purely localist systems of public education distribution, the state should be responsible for maintaining equity in public education with assistance from regional organizations.).

districts.<sup>300</sup> For example, several states have adopted financial incentive programs to reward teachers and students for academic performance with moderate success.<sup>301</sup> Similar financial incentive programs could be adopted via state legislation to encourage school districts to participate in regional plans that coordinate actions between school districts on key issues such as student enrollment.

Further, the content of such state legislation mandating or incentivizing cooperation between neighboring school districts should broadly speaking include the following four types of provisions: first, legislation should define a geographic region in which cooperation between school districts within that region will be required or encouraged. The process of defining the region should not be static but should instead take into account the geographic proximity of localities within the region and the ways in which they are socially and economically inter-dependent.<sup>302</sup> One suggestion for defining the region is to adopt the definition of the metropolitan statistical area (“MSA”) set forth by the U.S. Census Bureau.<sup>303</sup> While such a definition would not work in all cases,<sup>304</sup> it could work in many cases and is an easily definable parameter.

---

<sup>300</sup> In terms of incentivizing regional cooperation, one potential effective incentive could come by way of the federal government rather than the state government. In the words of education professor Jennifer Jellison-Holme:

One possible source for incentives could be the federal government, which is currently using an incentive-based approach to stimulating educational reform in states and districts through the Race to the Top and Investing in Innovation programs. The federal government may also consider providing some exemptions to--or special provisions in-- federal accountability requirements as an incentive for greater cooperation to improve cross-district diversity.

<sup>301</sup> See generally, Eric A. Hanushek, *Outcomes, Costs, and Incentives in Schools, in Improving America's Schools: The Role Of Incentives* 29, 31 (Eric A. Hanushek & Dale W. Jorgenson eds., 1996).

<sup>302</sup> See e.g., Gerald E. Frug, *Beyond Regional Government*, 115 Harv. L. Rev. 1763, 1834-1835 (2002) (commenting that the definition of a region for purposes of establishing any type of regional should accommodate as many of those affected by regional decisions as possible.).

<sup>303</sup> See U.S. Census Bureau definition of metropolitan statistical area, *supra* note \_\_\_\_.

<sup>304</sup> In some cases the MSA used by the U.S. Census Bureau encompasses portions of several states. For example the Washington D.C. MSA used by the U.S. Census Bureau encompasses Washington D.C. and parts of Virginia, Maryland and West Virginia. See Washington DC Economic MSA, available at [http://www.census.gov/econ/census/snapshots\\_center/dc.html](http://www.census.gov/econ/census/snapshots_center/dc.html). In such a case, the MSA would not provide a useful guideline for establishing a region for purposes of facilitating regional cooperation amongst school districts. Instead, a more flexible definition that takes into account geographic proximity and practical interactions between the localities should be adopted.

Second, the legislation should include provisions that increase the permeability of school district boundary lines so that students are not limited to only attending schools in their school district. Increasing the permeability of school district boundary lines *must* be a critical component of any plan to enact regionalism public education.<sup>305</sup> One of the most detrimental impacts of the strong preference for localism in public education is the way in which it legally perpetuates racial and economic segregation in schools.<sup>306</sup> Legislation that requires school districts within a defined region to engage in regionalist mobility strategies like the voluntary inter-district student assignment plans or strategically sited magnet schools like that plans already in existence in places like Connecticut and Minnesota would be one way to increase the permeability of school district boundary lines.<sup>307</sup> School district boundary permeability could also be increased if legislation required school districts within the region to enact open enrollment across all of the districts within the defined region, meaning that a student is entitled to enroll in any school district within the metropolitan region.

In addition, in order to ensuring that schools within a metropolitan region at least work towards achieving diversity, the legislation should require that there be regional diversity goals that the school district members of the region collectively meet. Of course, in keeping with the Supreme Court's admonition in *Parents Involved in Community Schools v. Seattle School District No. 1* that school districts look to race-neutral alternatives to obtaining diversity<sup>308</sup>, any such diversity goals should be broadly defined to focus on race-neutral factors that have proven effective in increasing racial and economic diversity. Such factors might include geography and class in the form of preferences for students seeking to transfer from a high poverty urban school district to a low poverty suburban school district and vice-versa.

Finally, the legislation should require resource-sharing between school districts in the form of a tax base sharing plan in order to ameliorate the fiscal disparities in public education caused by tax base inequality.<sup>309</sup> The specifics of any tax base sharing plan would be limited by the strictures of state laws pertaining to school finance. Nevertheless, funds from the tax base sharing plan should then be redistributed on a needs basis so that poorer school districts within the region can improve their schools via an "in-place" strategy.

---

<sup>305</sup> See Wilson, note \_\_ *supra*.

<sup>306</sup> See Section II.D., *supra*.

<sup>307</sup> See *e.g.*, the discussion on the Nebraska Learning Community in Section IV.B., *infra*.

<sup>308</sup> 551 U.S. 701, 733-35 (2007) (finding two voluntary school district desegregation plan unconstitutional where the school districts failed to demonstrate that they made a good faith effort to use race neutral alternatives to obtaining diversity.).

<sup>309</sup> See *e.g.*, the discussion on the Nebraska Learning Community in Section IV.B., *infra*.

### *B. Federated Regionalism in Public Education*

Just as predominately white and affluent localities remain resistant to regionalist solutions, many poor, predominately minority localities resist regionalist solutions as well.<sup>310</sup> Minority resistance to regionalism is primarily rooted in fears that regional governance structures will result in cultural dilution and loss of political power.<sup>311</sup> With respect to cultural dilution, many regional proposals advance mobility strategies aimed at de-concentrating minority populations so as to move them towards housing, job or education opportunities and to remove the geographic barriers to opportunity.<sup>312</sup> Mobility strategies are seen as culturally diluting because they require assimilation on the part of minorities without a reciprocal embrace of minority cultures and values by predominately white communities to which they are dispersed.<sup>313</sup>

Regional mobility strategies are also viewed as potentially diluting minority political power because they often disperse minorities throughout the metropolitan region.<sup>314</sup> Further, even when regionalism does not encompass a mobility strategy and instead incorporates a regional governance structure of some sort, there is fear that the regional governance structure will not be responsive to the needs of minority communities.<sup>315</sup> Thus, many minority communities reject regionalism, particularly regionalist proposals that call for mobility and instead advocate for “in-place” strategies that focus on bringing more resources to

---

<sup>310</sup> See John A. Powell, *Addressing Regional Dilemmas for Minority Communities*, at 228-229 in *Reflections on Regionalism*, edited by Bruce Katz, Brookings Institution Press (2000) (detailing minority resistance to regionalism and noting that despite the potential economic benefits of regionalism, “given the history of urban renewal and racism in general there is a strong concern that regionalism would deal with concentrated poverty by dispersing the inner-city minority community.”).

<sup>311</sup> *Id.* at 229-230

<sup>312</sup> See e.g., Wilson note \_\_\_ *supra* (proposing a regional mobility strategy through the No Child Left Behind Act public choice provision to allow urban minority students to cross jurisdictional boundary lines to enroll in high performing schools); Debray and Erica Frankenberg, note \_\_\_ at pp. 281 *supra* (proposing increasing federal housing voucher program to de-concentrate residential poverty and segregation in urban areas.); Mark Shroder, *Moving to Opportunity: An Experiment in Social and Geographic Mobility*, *Cityscape* Vol. 5, No. 2, Housing Policy in the New Millennium (2001), pp. 57-67 (Research (2001) (describing a Housing and Urban Development (“HUD”) program which enables low-income individuals who receive public assistance in housing to have portable vouchers which allows them to move to middle-class neighborhoods throughout metropolitan areas.).

<sup>313</sup> See Powell, note \_\_\_ *Addressing Regional Dilemmas for Minority Communities*, at 230, *supra* (arguing that integration through regional mobility programs can fragment a minority community by requiring assimilation and dilution of minority culture and values.).

<sup>314</sup> *Id.* at 230

<sup>315</sup> *Id.* at 231.

minority communities without dispersing minority community members.<sup>316</sup>

Federated regionalism is advanced as an appropriate framework to address these concerns. The quintessential feature of the framework is that it integrates regional cooperation while at the same time preserving local autonomy.<sup>317</sup> Under a federated regionalism scheme, “a regional authority controls access to the opportunities that have regional dimensions,” but local authorities control other matters, particularly those that call for political and cultural empowerment.”<sup>318</sup> Put another way, a new level of regional government is added to metropolitan regions and acts to supplement rather than supplant local governments.

Examples of federated regionalism in action include the regional governing bodies in Minneapolis<sup>319</sup> and Portland<sup>320</sup> which allow for regional policymaking and planning on important issues that transcend local borders such as housing, transportation and land-use planning, while at the same time keeping power vested in local governments to deal with local matters and implementation of regional goals.<sup>321</sup> In addition, another example of federated regionalism in practice is the tax base sharing plan in Minneapolis, Minnesota that requires localities within the Twin Cities to contribute forty percent of their commercial-industrial tax

---

<sup>316</sup> *Id.* at 233.

<sup>317</sup> *Id.* at 232 (“federated regionalism requires entities within a metropolitan region to cooperate on some levels and leaves them relatively autonomous on others.”).

<sup>318</sup> *Id.* at 232.

<sup>319</sup> The Minnesota state legislature enacted a regional governing body for the Twin Cities, known as the Metropolitan Council (“Met Council”). The Met Council is empowered to review all comprehensive plans of localities within the seven county Twin Cities area ensure that they conform to regional goals. *See* Minn. Stat. Ann. § 473.173 (2012) (“[t]he council shall review all proposed matters of metropolitan significance to be undertaken by any private organization, independent commission, board or agency, local governmental unit, or any state agency.”).

<sup>320</sup> The Oregon state legislature in conjunction with local referenda created the Portland Metro (“Metro”) which is a regional government that covers three counties and twenty four municipalities. The Metro has responsibility for planning, policy making, and public service provision on a regional level. *See* Oregon Stat. Ann. § 197.005 (2012) (establishing the Metro). *See also* <http://www.oregonmetro.gov/index.cfm/go/by.web/id=24201> (describing the Metro as an elected regional government that “serves more than 1.5 million residents in Clackamas, Multnomah and Washington counties and the 25 cities in the Portland region.”); David Rusk, Growth Management: *The Core Regional Issue*, in *Reflections on Regionalism* 78, 99-100 (Bruce Katz ed., Brookings Inst. Press 2000) (describing the Metro regional government.).

<sup>321</sup> Powell note \_\_\_\_ at 241-242, *supra*.

revenues to a regional fund.<sup>322</sup> The proceeds from the fund are distributed across the region on according to need.<sup>323</sup>

In addition to seeking to balance local autonomy and regional interests, an effective system of federated regionalism should have voting schemes that allow for representatives to the regional layer of government to be elected through a cumulative voting model.<sup>324</sup> Such a model would allow minorities to preserve the strength of their voting block without requiring them to remain geographically static.<sup>325</sup> Thus, under a system of federated regionalism, minorities could chose to remain in their neighborhoods and still have access to regional power and resources because of the regional level of government that would exist. Conversely, they could also relocate to another locality within the region but with the aid of a cumulative voting system, without risking political dilution.<sup>326</sup>

In the case of public education, federated regionalism should be enacted in the sense that a regional governing body should be constructed that coordinates activities between all of the school districts within a metropolitan region. Significantly, the regional body should be directly elected through means such as a cumulative voting system that would increase the likelihood of significant minority representation in the regional governing body.<sup>327</sup>

The regional governing body could have policy making authority regarding issues such as school diversity, the use of funds obtained from a tax-sharing plan and educational programming aimed at reducing

---

<sup>322</sup> See The Metropolitan Fiscal Disparities Act, Minn. Stat. Ann. 473F.01 (2012).

<sup>323</sup> See Myron Orfield and Nicole Wallace, *The Minnesota Fiscal Disparities Act of 1971: The Twin Cities Struggle and Blueprint for Regional Cooperation*, 33 Will. Mitchell L. Rev. 591, 592 (under the tax sharing plan, [m]unicipalities are assigned a portion of [the regional pool] based on population and the ratio of the total market value of property per capita in the jurisdiction to the average market value of property per capita in the region. The formula assigns a share of the pool that is greater than a locality's population proportion to municipalities with lower-than-average market value per capita; whereas high-market-value localities receive a lower portion than their population share.”).

<sup>324</sup>

<sup>325</sup> *Id.* at 233. For an overview of the ways in which cumulative voting schemes help to enhance minority voting strength See generally, Lani Guinier, *Group Representation and Race Conscious Distinctions: A Case of The Emperor's Clothes*, 71 Tex. Law Rev. 1589, 1632-1633 (“[u]nder a modified at-large system [of cumulative voting], each voter is given the same number of votes as open seats, and the voter may plump or cumulate her votes to reflect the intensity of her preferences. Depending on the exclusion threshold, politically cohesive minority groups are assured representation if they vote strategically.”).

<sup>326</sup> Notably however, the effectiveness of cumulative voting in ensuring that minority political power is not diluting presumes cohesion of interests amongst minority groups. See Guinier note \_\_\_\_ at 1633, *supra*.

<sup>327</sup> See Jellison Holme, *School Diversity, School District Fragmentation*, note \_\_\_, *supra*.

achievement gaps within the metropolitan area.<sup>328</sup> Importantly, a federated system of regionalism in public education would allow school districts to retain significant autonomy over critical issues such as the day to day operations of the school district (e.g., the school district budget, inter-district student assignment, school activities and curriculum).<sup>329</sup> At the same time however, the existence of a regional governing body that had policymaking authority to address issues of regional diversity in schools and distribution of funds received from a tax-base sharing plan, could ensure that students who would otherwise be confined to school districts with concentrated racial segregation and poverty have the opportunity to access a high quality school.

### *C. Equitable Federated Regionalism in Practice: What It Should Look Like*

As noted by education scholar Jennifer Jellison-Holme, a modern day example of a system of regional governance that incorporates federated regionalism exists in Omaha, Nebraska.<sup>330</sup> A closer viewing of the program also demonstrates that it also incorporates equitable regionalism. Thus, the Omaha, Nebraska plan is worth highlighting as an example of how federated regionalism might work in practice.

The Omaha, Nebraska Metro Area Learning Community (“Learning Community”) was created “in an effort to resolve educational and boundary issues among several school districts in the Omaha metropolitan area.”<sup>331</sup> It contains three central elements that exhibit the promise of regionalism in public education and more or less demonstrates what this Article’s proposed Equitable Federated Regionalism could look like.

First, it was created by Nebraska state legislation.<sup>332</sup> Because the state mandated the regional efforts, school districts in the Omaha metropolitan area are *required* to participate in the Learning Community thereby increasing the scope of the program. Moreover, the legislation

---

<sup>328</sup> See Jellison Holme, *School Diversity, School District Fragmentation*, *supra* note \_\_ at

<sup>329</sup> *Id.* at \_\_\_\_.

<sup>330</sup> *Id.* at \_\_\_\_.

<sup>331</sup> See [http://www.governor.nebraska.gov/news/2007\\_05/24\\_learning.html](http://www.governor.nebraska.gov/news/2007_05/24_learning.html). The legislation was a

<sup>332</sup> See Neb. Rev. St. 79-2102 (“A learning community shall be established for each city of the metropolitan class and shall include all school districts for which the principal office of the school district is located in the county where the city of the metropolitan class is located and all school districts for which the principal office of the school district is located in a county that has a contiguous border of at least five miles in the aggregate with such city of the metropolitan class.”). Notably, the legislation was enacted after the Omaha Public School System (“OPSS”) threatened to utilize a statute that allowed OPSS to annex suburban school districts. As a compromise and in lieu of OPSS utilization the annexation provision, the Nebraska state legislature enacting legislation creating the Learning Community. See Jellison Holme *et al.*, *supra* note \_\_ at 155.

created a regional governance council called the Learning Community Coordinating Council (“LCCC”).<sup>333</sup> The LCCC encompasses eleven school districts across two counties.<sup>334</sup> Significantly, LCCC consists of a twenty one member board of individuals who are directly elected.<sup>335</sup> Twelve members of the LCCC are elected through a through “limited voting designed to increase minority representation.”<sup>336</sup> Six members are elected through a caucus of school board members and represent the interests of local school boards.<sup>337</sup> The final three members are appointed by school boards of any districts that fail to win a seat through the election or caucus process.<sup>338</sup> This proportional voting scheme, along with the allowance for direct representation, at least offers the promise that minority voices will be represented on the regional governance council which addresses the potential concern for political and cultural dilution that regionalism often evinces with minority communities.

Second, the legislation created a mandatory tax-base sharing plan for the eleven school districts within the Learning Community.<sup>339</sup> A levy is assessed across the property tax of all eleven school districts.<sup>340</sup> The funds from the levy are then redistributed to individual school districts based upon their level of need according to a formula generated by the state.<sup>341</sup> Notably, the tax-sharing plan was subject to much political resistance and ultimately a legal challenge. Nevertheless, the legal challenges to the tax-base sharing plan were not sustained<sup>342</sup> and despite political opposition, the tax-sharing plan was recently reauthorized by the Nebraska state legislature in 2013.<sup>343</sup>

---

<sup>333</sup> See Jellison Holme, *School District Diversity*, note \_\_ at 30, *supra*.

<sup>334</sup> *Id.*

<sup>335</sup> See Neb. Rev. St. 32-546.01 (Each learning community shall be governed by a learning community coordinating council consisting of eighteen voting members, with twelve members elected on a nonpartisan ballot from six numbered sub-council districts... and with six members appointed from such sub-council districts pursuant to this section.”).

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> See Jellison Holme, *School District Diversity*, note \_\_ at 153, *supra*

<sup>339</sup> See Neb. Rev. St. 79-2104 (as amended by 2013 *Nebraska Laws L.B. 585*) (*gives the* (Gives cording council the authority to levy a common levy for the general funds of member school districts; levy for early childhood education programs for children in poverty; adopt, approve, and implement a diversity plan which shall include open enrollment.); Neb. Rev. St. 77-3342 (b) (“for each fiscal year, learning communities may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one hundred dollars of taxable valuation of property subject to the levy.”).

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> See *Sarpy County Farm Bureau v. Learning Community of Douglass and Sarpy Counties*, 283 Neb. 212, 808 N.W. 2d 598 (2012).

<sup>343</sup> See Nebraska Legislative Bill 58, available at <http://nebraskalegislature.gov/FloorDocs/103/PDF/Intro/LB585.pdf>.



Finally, and significantly, the legislation requires the learning community to create a desegregation plan to ensure socio-economic and racial diversity across the eleven school district boundary lines.<sup>344</sup> Students may attend schools within the Learning Community across school district boundary lines and transportation is provided in most instances.<sup>345</sup> This ensures that school district boundary lines are permeable and gives students who would otherwise be denied access to high quality educational opportunities.<sup>346</sup>

## V.CONCLUSION

The combination of metropolitan fragmentation and localism creates race and class based disparities between neighboring localities within metropolitan areas. Because school district boundary lines are drawn so that students go to school where they live, localism and fragmentation create similar race and class based segregation and inequality between neighboring school districts.

In this Article I have argued that in order to ameliorate the race and class based disparities between neighboring school districts caused by metropolitan fragmentation and localism, some forms of regionalism should be applied to public education governance structures. Given the equity issues present in public education, the Article specifically suggests that equitable regionalism, or regionalism in which the state requires or heavily incentivizes cooperation between local school districts, is necessary. The Article further suggests that any such legislation should include provisions that require or encourage school district within metropolitan regions to adopt enrollment plans that allow students within metropolitan regions to cross school district boundary lines to attend school. The Article also proposes that school districts within metropolitan regions be required or encouraged to share financial resources through the enactment of a regional tax base sharing plan.

Finally, the Article recommends that elements of federated regionalism also be incorporated into public education governance structures. Incorporating elements of federated regionalism would consist of putting in place a school district regional governing body that is directly elected through some form of proportional voting. The school district regional governing body would not displace local school districts, rather the governing body would supplement local school districts by having policy making authority to address regional equity issues such as regional diversity in schools and the sharing of resources. Enacting a combination of equitable and federated regionalism, or what this Article calls

---

<sup>344</sup> See Neb. Rev. St. 79-2102.

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

“equitable federated regionalism,” would ensure that poor minority parents like Ms. Williams-Bolar would be able to obtain access to a high quality education for their children without having to violate the law and become felons in order to do so.