

COMMENTS

SOCIOECONOMIC INTEGRATION AND THE GREATER RICHMOND SCHOOL DISTRICT: THE FEASIBILITY OF INTERDISTRICT CONSOLIDATION

INTRODUCTION

Stark disparities in public education within the Greater Richmond area are commonplace and have been for over a century. Richmond Public Schools primarily consist of an impoverished student body attending dilapidated schools. Meanwhile Richmond's bordering suburban counties, Chesterfield and Henrico, generally enjoy state-of-the-art learning facilities attended by far more economically diverse student bodies. Today's inequities can only be understood with recognition of a history of institutionalized segregation in the Richmond area—a history that is ingrained within the municipal offices, along the public transportation system, and, especially, inside the schools. The problem is that in the Richmond area, a child's place of residence, rather than his academic aptitude, greatly determines his educational ceiling, and the setup of local governments within Virginia inflames the problem. School funding is apportioned based on property taxes, school divisions are largely drawn based on property values, and those divisions are locked in place by the Virginia Constitution.¹ These realities thus exacerbate the difficulty of low-income children's ability to achieve their academic potential. The overwhelming majority of high-poverty schools struggle to meet state standards, as students attending these schools generally receive less health care and parental support in academic af-

1. See Angela Cioffi, Note, *Shuffling the Deck: Redistricting to Promote a Quality Education in Virginia*, 89 VA. L. REV. 773, 776–77 (2003).

fairs, while experiencing more volatile living conditions.² Simply put, wealthier communities house better-resourced schools that produce more motivated and better-adjusted students.³ This disparity is particularly evident in the Greater Richmond area schools.

Natural light welcomes students inside Glen Allen High School's atrium. Built in 2010, the school is the newest of Henrico County's public high schools.⁴ In addition to the building, the sprawling campus includes two baseball fields, a football stadium, a soccer field, and an Olympic-size track. Students enjoy an open floor plan, allowing students on the second floor hallway to see their peers below. The new building offers an ideal learning environment to students residing in Henrico County. Inside the classrooms, a multitude of Advanced Placement ("AP") courses are offered—students took a total of 1055 AP exams in 2014, and scored a three or better on 62% of the tests.⁵ In Glen Allen, 82% of the 2014 graduating class planned to attend a two- or four-year college in the coming year.⁶

Just thirteen miles southeast, Armstrong High School, a non-descript brick and stone building in Richmond's East End, lies on the border of the city and eastern Henrico County. Across the street, Fairfield Court looms, one of five public housing projects within one mile of one another. These five projects make up the sixth highest concentration of public housing among cities with populations over 200,000 in the United States.⁷ All five of these projects also feed into Armstrong.⁸

2. See *infra* notes 75–77 and accompanying text. See generally Richard D. Kahlenberg, *Socioeconomic School Integration*, 85 N.C. L. REV. 1545 (2007) [hereinafter Kahlenberg, *Integration*] (arguing that socioeconomic integration is a superior method of educational equity than municipalities' traditional course of action of merely finding ways to make high poverty schools more effective).

3. See GENEVIEVE SIEGEL-HAWLEY, *EDUCATIONAL REALISM: 21ST CENTURY LESSONS FROM METROPOLITAN SCHOOL DESEGREGATION* (forthcoming 2015) (on file with author).

4. *Glen Allen High School 2014–2015 School Profile*, HENRICO CTY. PUB. SCH., <http://www.henrico.k12.va.us/Pdf/SchoolProfiles/GlenAllen.pdf> (last visited Oct. 1, 2015).

5. *Id.* A score of three is designed to reflect that the student is "qualified" for that particular course at the college level. See generally *About AP Scores*, COLLEGEBOARD, <https://apcore.collegeboard.org/scores/about-ap-scores> (last visited Oct. 1, 2015) (explaining that AP scores are a major indicator of college-level academic preparedness).

6. *Glen Allen High School 2014–2015 School Profile*, *supra* note 4.

7. BENJAMIN CAMPBELL, *RICHMOND'S UNHEALED HISTORY* 157 (2012).

8. See *id.* at 157, 189.

Upon entering Armstrong High School, a security guard asks a student to step out of line after a metal detector sounds off. He searches the student's bag, and after finding no weapons, contraband, or headphones, he allows the student to enter the school. Inside the building, fluorescent lights bear down on the grey-white concrete hallways, orange lockers, and a trophy case containing black and white photographs of past athletic excellence. Six security officers walk the halls daily, keeping order; Principal April Hawkins says the school is in need of two more.⁹ Principal Hawkins also says that much of the school's 97% African-American population "comes to school angry."¹⁰ Fewer than thirty of the school's 974 students will attend a four-year college.¹¹

Academic disparities between black and white, wealthy and poor, are prevalent throughout the United States. Districts have enacted countless remedies with the hopes of improving schools struggling academically, including: injecting additional municipal funding directly into underachieving institutions, race-neutral desegregation efforts seeking to improve predominantly African-American schools, and drastic redistricting and consolidation proposals intended to halt segregation.¹² However, after the Supreme Court's 2007 decision in *Parents Involved*, race-based student assignment programs are now highly impractical, if not unconstitutional.¹³ Thus, desegregation efforts must now be race-neutral, and local governments must be creative with their planning.

This article seeks to offer, at the very least, a mitigating solution to the educational inequities plaguing Richmond Public Schools—socioeconomic integration and district consolidation. Under this race-neutral school assignment proposal, desegrega-

9. Interview with April Hawkins, Principal, Armstrong High School, in Richmond, Va. (Oct. 3, 2014).

10. *Id.*

11. *Id.*; *Armstrong High Student Body*, U.S. NEWS & WORLD REP., <http://www.usnews.com/education/best-high-schools/virginia/districts/richmond-city-public-schools/armstrong-high-20601/student-body> (last visited Oct. 1, 2015).

12. *See, e.g.*, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 709–10 (2007).

13. *See id.* at 747–48; Meaghan Hines, Note, *Fulfilling the Promise of Brown? What Parents Involved Means for Louisville and the Future of Race in Public Education*, 83 NOTRE DAME L. REV. 2173, 2206–07 (2008).

tion efforts are based not on an individual's ethnicity, but socioeconomic status. The proposal seeks to have no more than 50% of a student body receiving free or reduced-price lunch in any one school in the Richmond area. However, because of Richmond Public Schools' existing high poverty rate, no socioeconomic redistricting proposal would be effective without incorporating Richmond's adjacent suburbs—Chesterfield and Henrico counties.

Part I outlines the history of segregation and previous consolidation efforts in Richmond. Part II discusses, in detail, the existing inequities between impoverished urban school districts and wealthier suburban districts across the nation, with a particular focus on the inequities that exist between Richmond Public Schools and the Chesterfield and Henrico County school districts. Part III contrasts school finance reform and socioeconomic integration and determines that socioeconomic integration is the superior method for achieving adequacy in education among all students. Part IV suggests two strategies for implementing socioeconomic integration in Richmond. The first is a litigation strategy that would allow for court-ordered consolidation of the Richmond, Chesterfield, and Henrico school districts. The second is a voluntary consolidation strategy that examines how consolidation could be beneficial for the three jurisdictions. This section also offers an analysis of Virginia's unique independent city structure, and the history of quarreling between Richmond and its surrounding suburbs as evidence that the political barriers will be the biggest impediment toward voluntary consolidation. The article concludes that, absent a redistricting plan that includes Chesterfield and Henrico, socioeconomic integration, cannot be effective in the city of Richmond. However, due to Fourth Circuit precedent and state local government laws, realizing socioeconomic integration through the courts proves implausible, as does Chesterfield and Henrico's voluntary association into any sort of social district consolidation effort in the near future. Yet educational equity in the Greater Richmond area is attainable, and the path must be forged through economic partnership between the three municipalities.

I. A HISTORY OF INEQUITY AND THE ROAD TOWARD INITIAL CONSOLIDATION EFFORTS

In 1954, the year that *Brown v. Board of Education (Brown I)* ended the doctrine of separate but equal in the field of public education,¹⁴ the Virginia Constitution stated, “White and colored children shall not be taught in the same school.”¹⁵ At the time, 58% of students in Richmond attended white schools, and Richmond Public Schools consisted of two white high schools and two black high schools.¹⁶ The Commonwealth also segregated tax revenues based on the race of the taxpayers; thus, black schools received significantly less funding, as they drew exclusively from the lower-earning African-American tax base.¹⁷ A segregation challenge from Farmville, Virginia was among the five cases consolidated in *Brown I*, ensuring that Virginia was at ground zero of desegregation efforts.¹⁸ The following year, the Supreme Court issued *Brown II*, holding that states must integrate their public schools “with all deliberate speed.”¹⁹

Virginia’s defiance of the Supreme Court’s decisions in *Brown I* and *Brown II* is well documented.²⁰ Initially, the Commonwealth amended its constitution to allow for state funding to go toward private school vouchers.²¹ Virginia further argued that the Court’s decisions were illegal and implemented interposition—the concept that “states could assert their own sovereignty to defend against illegal acts by the national government.”²² Instead of adhering to the Supreme Court’s decisions, Virginia asserted its sovereign right to interpret the Federal Constitution for itself.²³

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

15. JAMES E. RYAN, *FIVE MILES AWAY, A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN AMERICA* 25 (2010) [hereinafter RYAN, MILES].

16. *Id.*

17. *Id.* at 26–27.

18. *See Brown I*, 347 U.S. at 483.

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

20. *See generally* RYAN, MILES, *supra* note 15, at 35–51 (describing in detail the measures the Virginia legislature and governor’s office took in the 1950s and 1960s to combat racial integration in public schools).

21. *See id.* at 39.

22. *Id.* at 39–40.

23. *Id.*

This was the dawn of Massive Resistance, a decade-long political maneuver to avoid school integration at all cost.²⁴

Resistance initially took the form of the Pupil Placement Board, which removed control of school assignments from local municipalities in fear that certain integration-minded localities would begin assigning black students to white schools.²⁵ If a court ordered integration, the General Assembly halted all funding to that school district, effectively shutting down schools.²⁶ Closings occurred in 1958, after federal courts ordered the desegregation of the cities of Charlottesville and Norfolk and Warren County.²⁷ However, the Supreme Court of Virginia, as well as the federal district court in Norfolk, struck down the school-closing laws a few months later.²⁸ But even after courts revoked the school closings, a decade of token integration persisted in Virginia.²⁹ The Pupil Placement Board implemented a “feeder” school program, whereby white elementary and middle schools would only feed into white high schools; the same was done for black schools.³⁰ While students could apply to attend a school outside of their residential zone, the Pupil Placement Board retained broad discretion as to which students were granted access to an out-of-zone school.³¹ In effect, the Pupil Placement Board was able to reject black students’ applications to wealthier white schools for a host of different reasons.³² While the Richmond School Board maintained that the assignment program was race-neutral, its effects were obvious. In 1963, the Fourth Circuit in *Bradley v. School Board of the City of Richmond* reiterated *Brown II* and forced the Richmond School Board to dissolve its race-based assignment program.³³

24. *Id.* at 40.

25. *See id.* at 41, 48.

26. *Id.* at 41. However, due to the newly adopted voucher program, students whose schools had been shut down by the state could in turn receive state funding to attend segregated private schools. *See id.*

27. CAMPBELL, *supra* note 7, at 163.

28. *Id.*

29. RYAN, MILES, *supra* note 15, at 47.

30. *Id.* at 48.

31. *Id.*

32. *Id.*

33. 317 F.2d 429, 438 (4th Cir. 1963); *see also* RYAN, MILES, *supra* note 15, at 49–50.

Three years later, Richmond Public Schools implemented a freedom-of-choice policy, but predictably, white students rarely, if ever, chose to attend the underfunded black schools.³⁴ Likewise, due to housing segregation, blacks rarely lived close to white schools, and the city failed to offer any free transportation options for those students who wanted to attend a school out of their home zone.³⁵ Although white schools had better equipped facilities with more well-qualified teachers and were less crowded than black schools, in the freedom-of-choice plan's first year of implementation, only 1% of black students in the city of Richmond chose to attend white schools.³⁶ When Richmond's freedom-of-choice plan was effectively deemed unconstitutional in 1968, the Supreme Court held, in *Green v. County School Board of New Kent County*, that a freedom-of-choice system could not be a legitimate response to *Brown I* or *Brown II* where the district maintained a "state-compelled dual system . . ." of education, consisting of black schools and white schools.³⁷ Rather the Court held that districts had "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."³⁸ Therefore, under the Supreme Court's decision in *Green*, Richmond, and indeed all American school districts, had to immediately adopt plans that would actually integrate the schools.

Clearly, one of the biggest impediments to integration in the Richmond area was housing. Much of this was due to discriminatory measures taken by the Federal Housing Authority that served to isolate low-income minorities in pockets of the city of Richmond, thus allowing white flight toward the more expensive Chesterfield and Henrico counties.³⁹ City ordinances in Richmond segregated residential neighborhoods, and the Supreme Court was forced on two occasions to strike discriminatory laws.⁴⁰ Public

34. See RYAN, MILES, *supra* note 15, at 50.

35. CAMPBELL, *supra* note 7, at 167.

36. RYAN, MILES, *supra* note 15, at 51.

37. 391 U.S. 430, 437 (1968).

38. *Id.* at 437–38.

39. See RYAN, MILES, *supra* note 15, at 66–68 (describing housing policies implemented by the City of Richmond in the late 1960s that exacerbated segregated neighborhoods in the Richmond area).

40. In *Buchanan v. Warley*, the Supreme Court struck a comprehensive racial zoning ordinance not because of the law's clear discriminatory character, but because it hindered the freedom of landowners to sell their property. 245 U.S. 60, 82 (1917). Thirteen years

housing, meanwhile, was built exclusively in black neighborhoods within the city.⁴¹ In the 1950s alone, in the name of urban renewal, roughly 4700 units of black housing were destroyed and replaced with a mere 1736 public housing units.⁴² Thus, as blacks were dispersed throughout the city of Richmond, the caucasian migration accelerated and moved further south into Chesterfield and west into Henrico. However, white flight was more than just racial segregation; as an influx of middle-class residents entered the suburbs, Richmond became increasingly impoverished.

Despite these obstacles, the Supreme Court's ruling in *Green* made it clear that the city of Richmond had to implement more effective integration methods.⁴³ From the late 1960s to the early 1970s, the city had 50% of the Richmond metropolitan area's poverty, an unemployment rate over 20%, and a school system with 75% of its students on free or reduced-price lunch.⁴⁴ At the time, *Time* magazine described Richmond's suburbs as a "white noose" of suburbia surrounding a black-dominated central city.⁴⁵ Further, in 1969, only one-third of students attending Richmond Public Schools were white, and the Richmond School Board recognized that ideal integration with those numbers was simply impractical.⁴⁶ Recognizing the significant impediment of housing patterns in remedying segregation in public schools, a report issued to the Richmond School Board in 1969 concluded that "Richmond's public school system must be combined in some way with those of predominantly white Chesterfield and Henrico counties."⁴⁷

The first legitimate attempt to integrate the schools was the long-anticipated busing order, issued by the United States Dis-

later in *City of Richmond v. Deans*, the Supreme Court in examined a law that prevented persons who could not legally marry to live next to each other. 281 U.S. 704, 704 (1930); *City of Richmond v. Deans*, 37 F.2d 712, 713 (4th Cir. 1930). Because blacks and whites could not legally marry in Virginia, the law acted as non-facial segregation with Richmond residential communities until it was struck by the Supreme Court. *Deans*, 281 U.S. 704 at 704.

41. CHRISTOPHER SILVER & JOHN V. MOESER, *THE SEPARATE CITY: BLACK COMMUNITIES IN THE URBAN SOUTH, 1940-1968*, at 150 (1995).

42. *Id.*

43. *See supra* notes 37-38 and accompanying text.

44. CAMPBELL, *supra* note 7, at 151.

45. *Bumpy Road in Richmond*, *TIME*, Feb. 28, 1972, at 18.

46. RYAN, MILES, *supra* note 15, at 70.

47. *Id.*

trict Court Judge Robert H. Merhige in 1971 during the litigation of *Bradley v. School Board of the City of Richmond*.⁴⁸ The order was in line with *Swann v. Charlotte-Mecklenburg Board of Education*, which in the same year not only recognized a link between housing segregation and school segregation, but also authorized the use of busing to integrate public schools.⁴⁹ Coupled with the busing order was the annexation of twenty-three square miles of Chesterfield County, which consisted of 8017 white students and only 206 black students.⁵⁰ However, at the start of the 1970–71 school year, roughly 5000 of the 8000 white students from the annexed area did not attend Richmond Public Schools.⁵¹ Realizing that the only way Richmond would ever diversify its public schools would be through “cross-town” busing, Judge Merhige, in *Bradley*, suggested that the parties file a motion to consolidate Richmond Public Schools with the Chesterfield and Henrico school districts.⁵²

The motion came a mere two days after *Swann*, where the Supreme Court upheld busing in the city of Charlotte, North Carolina, and the surrounding Mecklenburg County suburbs.⁵³ It follows that the plaintiffs in *Bradley*, as well as Judge Merhige, considered consolidation appropriate for Richmond and its surrounding counties since busing had been deemed legal between Charlotte and Mecklenburg County.

When consolidation was finally ordered in January 1972, Judge Merhige noted that the districts could not feasibly comply with *Green* without consolidation since, at the time, Richmond schools were 70% black, and suburban schools were 90% white.⁵⁴ He further noted the municipal obstacles, as Richmond was an independent city completely separated politically from the surrounding counties, but held that “the duty to take whatever steps are necessary to achieve the greatest possible degree of desegregation . . . is not circumscribed by school division boundaries created

48. 338 F. Supp. 67, 78 (E.D. Va. 1972); see CAMPBELL, *supra* note 7, at 167.

49. 402 U.S. 1, 28–31 (1971).

50. CAMPBELL, *supra* note 7, at 167; Zachary Reid, *High Court Vote Squashed Regional Education Merger*, RICH. TIMES-DISPATCH (July 22, 2014, 11:57 A.M.), http://www.richmond.com/news/local/education/article_c5be30cd-84f0-5a44-8a49-522171453784.html.

51. CAMPBELL, *supra* note 7, at 167.

52. See *Bradley*, 338 F. Supp. at 79–80; RYAN, MILES, *supra* note 15, at 75–76.

53. *Swann*, 402 U.S. 1, 30 (1971); RYAN, MILES, *supra* note 15, at 78.

54. See Reid, *supra* note 50.

and maintained by the cooperative efforts of local and central State officials.”⁵⁵ Judge Merhige also recognized the causal link between school and housing segregation, and found unconstitutional state action in school and local officials’ failure to combat the effects of housing segregation in public schools.⁵⁶ Finally, Judge Merhige held that “[i]f there is to be public education it must, under the Constitution, be afforded to all on an equal basis,”⁵⁷ and stated further that schools have the affirmative duty to integrate.⁵⁸

Bradley was overturned 5-1 on appeal, as the Fourth Circuit failed to recognize any duty on the part of school board officials to combat housing segregation, and further held Judge Merhige’s consolidation improper due to the independent nature of the city of Richmond.⁵⁹ As stated by James Ryan, “whereas Judge Merhige strained to see state responsibility for housing and school segregation, the appellate judges shielded their eyes so as not to see it.”⁶⁰ The Supreme Court affirmed *Bradley* in a 4-4 decision with Justice Lewis Powell, former chairman of the Richmond School Board, recusing himself.⁶¹ There has not been another consolidation attempt of the Richmond area school districts in over four decades.⁶²

After handing down the *Bradley* decision, the Supreme Court decided *Milliken v. Bradley*, finding interdistrict desegregation remedies in metropolitan Detroit unconstitutional.⁶³ In a very similar setting to that of Richmond, wealthy, white suburbs surrounded the impoverished and increasingly minority-dominated Detroit—and the respective school systems reflected as much. The Supreme Court overturned a Sixth Circuit decision⁶⁴ and held that school districts were not obliged to desegregate unless there existed sufficient evidence to show that the segregation among the districts was specifically implemented by local governments,

55. *Bradley*, 338 F. Supp. at 79–80.

56. *Id.* at 84–85.

57. *Id.* at 115.

58. *Id.*

59. *Bradley v. Sch. Bd. of Richmond*, 462 F.2d 1058, 1060, 1064 (4th Cir. 1972).

60. RYAN, MILES, *supra* note 15, at 89.

61. *See Bradley v. State Bd. of Educ.*, 412 U.S. 92, 93 (1973).

62. *See Reid, supra* note 50.

63. 418 U.S. 717, 745–47 (1974).

64. *See Bradley v. Milliken*, 484 F.2d 215, 249–50 (6th Cir. 1973).

thus making all future interdistrict desegregation efforts voluntary.⁶⁵ Specifically, the Supreme Court held that a court-ordered remedy would not be permissible without a constitutional violation that “produces a significant segregative effect in another district,” and that such a “racially discriminatory act” must derive from “the state or local school districts.”⁶⁶ In so doing, the Court severely limited, if not eliminated, the possibility of any future court-mandated interdistrict metropolitan desegregation measures. The effects can still be felt today—municipalities could not fully implement existing desegregation plans because, due to housing segregation, there simply were not enough whites in urban areas to have anything close to a substantial impact.

A generation later, the Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1* once again limited desegregation remedies in public schools, holding unconstitutional race-based student assignment programs.⁶⁷ Although the Supreme Court held in 2003 that creating a diverse student body at higher education institutions was a compelling government interest,⁶⁸ the Supreme Court failed to recognize such an interest in primary and secondary schools, and further held that the particular plans at issue, the race-based student assignment programs implemented in Seattle and Louisville, were not sufficiently narrowly tailored, and thus violated the Equal Protection Clause.⁶⁹ *Parents Involved* severely hampered school districts’ ability to reduce racial isolation based on racial classification. In order to meet the Supreme Court’s requirement that programs be narrowly tailored, a school district must show its good faith in exhausting race-neutral desegregation remedies.⁷⁰ Because of the Court’s decision in *Parents Involved* and the fact that express racial classification is subject to strict scrutiny, in practice, any school district that wishes to achieve racial integration within its schools must adopt a race-neutral program to realize diversity.⁷¹

65. See *Milliken*, 418 U.S. at 745.

66. *Id.* at 744–45.

67. See 551 U.S. 701, 720–21 (2007).

68. See *Grutter v. Bollinger*, 539 U.S. 306, 328–33 (2003).

69. See *Parents Involved*, 551 U.S. at 720–26.

70. See *id.* at 733–35; Kimberly Jenkins Robinson, *The Constitutional Future of Race-Neutral Efforts to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, 50 B.C. L. REV. 277, 287–88 (2009).

71. See *Parents Involved*, 551 U.S. at 720; Robinson, *supra* note 70, at 287–88, 293–94.

II. HOUSING SEGREGATION AND FAMILY INCOME DICTATE EDUCATIONAL PERFORMANCE

The social policies, family values, and political pressures of past decades have left Richmond's schools socioeconomically segregated. Indeed, across the country, urban areas are experiencing the same phenomenon—blighted, impoverished family households coupled with underachieving school systems. The vast majority of school segregation, by some estimates between 60% and 70%, is “attributed to how students of different races are sorted across district boundaries.”⁷² Housing segregation, which depends in large part on family income, heightens school inequity, which flows heavily from local property taxes.⁷³ Thus, a child's ability to receive a quality education depends in large part on his parent's choice, or lack of choice, of residence.

Modern studies have shown that, generally, as a school's poverty level goes up, its academic performance goes down.⁷⁴ Richard Kahlenberg, perhaps the nation's most prolific advocate of socio-economic integration, notes that, compared to middle-class schools,

high-poverty schools are marked by students who have less motivation and are often subject to negative peer influences; parents who are generally less active, exert less clout in school affairs, and garner fewer financial resources for the school; and teachers who tend to be less qualified, to have lower expectations, and to teach a watered-down curriculum.⁷⁵

Further, lower-class urban schools consistently perform far worse than schools in middle-class suburban neighborhoods. In general, students who come from middle-class backgrounds perform higher on standardized tests, graduate high school at a higher rate, and are more likely to attend college than students from low-income families.⁷⁶ Despite these statistics, middle-class students

72. SIEGEL-HAWLEY, *supra* note 3.

73. *Id.*

74. See, e.g., Roslyn Arlin Mickelson & Martha Bottia, *Integrated Education and Mathematics Outcomes: A Synthesis of Social Science Research*, 88 N.C. L. REV. 993, 1042–43 (2010).

75. RICHARD D. KAHLENBERG, ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE 47 (2001) [hereinafter KAHLENBERG, TOGETHER].

76. See *id.* at 18.

are clearly not inherently more intelligent than students with less financial means; rather, the accepted differences are the outside resources and family support available to middle-class students.⁷⁷

Some studies have determined that the greatest factor differentiating academic outcomes of wealthy and impoverished schools is the quality of the teachers.⁷⁸ Polls consistently reveal that teachers “care more about ‘work environment’ than they do about salary. They [also] care about school safety, whether they will have to spend large portions of their time on classroom management, and whether parents will make sure kids do their homework.”⁷⁹ These polls further reveal why impoverished schools struggle to recruit quality teachers. As a result, segregated and impoverished schools are more likely to employ teachers who do not hold a degree in the subject they teach.⁸⁰ Teacher absences and long-term substitutes also tend to be more frequent.⁸¹ All of those factors, along with added pressures from a standardized testing curriculum, contribute to the high turnover rate among teachers in poor and minority schools.⁸² Finally, although teachers surveyed may not hold salaries as the highest priority in choosing where to teach, the salary disparities are telling. During the 2011–2012 school year, teachers working in schools with high percentages of black and Latino students were paid on average \$1913 less annually than those teachers in the same district working in schools with low percentages of black and Latino students.⁸³

Another concern is the role standardized testing plays in impoverished schools. School boards generally allocate funding to schools based on standardized testing performance.⁸⁴ School ad-

77. *Id.* at 18, 47.

78. *See, e.g.*, Steven G. Rivkin, Eric A. Hanushek & John F. Kain, *Teachers, Schools, and Academic Achievement*, 73 *ECONOMETRICA* 417, 417–19 (2005).

79. Richard A. Kahlenberg, *From All Walks of Life: New Hope for School Integration*, *AMERICAN EDUCATOR* 13 (2012), <https://www.aft.org/sites/default/files/periodicals/Kahlenberg.pdf> [hereinafter Kahlenberg, *Walks*].

80. SIEGEL-HAWLEY, *supra* note 3.

81. *Id.*

82. *See id.*

83. Letter from Catherine E. Lhamon, Assistant Secretary for Civil Rights, to Colleague, U.S. DEP'T OF EDUC., OFFICE OF CIVIL RIGHTS (Oct. 1, 2014), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

84. *See* Noliwe M. Rooks, *Why It's Time to Get Rid of Standardized Tests*, *TIME* (Oct. 11, 2012), <http://ideas.time.com/2012/10/11/why-its-time-to-get-rid-of-standardized-tests/>.

ministrators in fear of losing funding or their jobs are forced to advocate “drill and kill” teaching methods in the classroom with the goal of instilling basic competence in the core curriculum at the expense of a more creative and engaging curriculum.⁸⁵ In Virginia, accreditation is tied exclusively to passing rates on the Standards of Learning (“SOL”) examinations.⁸⁶ To be fully accredited, a Virginia school must have a 70% passage rate in mathematics, science, and history, and a 75% passage rate in English.⁸⁷ If a school’s scores fall below the prescribed benchmarks in any particular subject, the school will receive an “Accredited with Warning” status.⁸⁸ If a school performs under the prescribed benchmarks for four consecutive years, it loses accreditation.⁸⁹ Last year, only 11 of 44 (25%) Richmond schools were rated as fully accredited, compared to 45 of 60 (75%) schools in Chesterfield and 39 of 66 schools (59%) in Henrico.⁹⁰ Meanwhile, 28 of Richmond’s 44 schools received warning status (64%) compared to 15 of 60 in Chesterfield (25%) and 26 of 66 in Henrico (39%).⁹¹

Policies implemented by local school boards further strain school administrators. For instance, the Richmond School Board has adopted federal identification and exit criteria for priority schools—those Virginia schools scoring in the bottom 5% on the SOL tests.⁹² One policy that has already been implemented is that when a school enters priority status, the principal is, by statute, fired if he or she has held his or her position at that school for longer than two years.⁹³ The fact that job security of the adminis-

85. See SIEGEL-HAWLEY, *supra* note 3.

86. See *School Accreditation Ratings*, VA. DEP’T OF EDUC., http://www.doe.virginia.gov/statistics_reports/accreditation_federal_reports/accreditation/index.shtml (last visited Oct. 1, 2015).

87. *Id.*

88. *Id.* Thus, a school may be Accredited with Warning in, for example, English, but not history.

89. *Id.*

90. *Id.*; Zachary Reid, *More Than 30% of Va. Schools Fail to Win Accreditation*, RICH. TIMES-DISPATCH (Sept. 16, 2014, 10:30 PM), http://www.richmond.com/news/local/education/article_b3fa83ca-0b01-5e64-928a-224d2491f504.html.

91. See *School Accreditation Ratings*, VA. DEP’T OF EDUC., http://www.doe.virginia.gov/statistics_reports/accreditation_federal_reports/accreditation/index.shtml (last visited Oct. 1, 2015).

92. See *Priority Schools*, VA. DEP’T OF EDUC., http://www.doe.virginia.gov/support/school_improvement/priority_schools/index.shtml (last visited Oct. 1, 2015).

93. See Zachary Reid, *Reid Principal Fighting to Keep His Job*, RICH. TIMES-DISPATCH (Oct. 3, 2014 10:30 PM), http://www.richmond.com/news/article_0b74f9f5-673d-552d-89bb-8199fe65fbb1.html.

trators and faculty is now directly tied to performance in standardized testing further diverts attention away from a school's ability to implement a creative and engaging curriculum. The reality is that these policies are felt most directly in poor and minority schools—the schools that, with a clear lack of parental support, rely heavily on a stable administrative team. Policies such as this may dissuade well-qualified educators from signing contracts with impoverished schools due to the greater likelihood that those schools will enter priority status at some point during their term, which would, under the current guidelines, result in their termination.⁹⁴ At the start of the 2014–15 school year, twelve of Virginia's thirty-six priority schools were located in the city of Richmond.⁹⁵

Generally, poorer schools have lower-quality facilities. In a “Dear Colleague” letter issued in October 2014, the Office of Civil Rights (“OCR”) recognized that “the quality and condition of the physical spaces of a school are tied to student achievement and teacher retention.”⁹⁶ The OCR further found that “[s]tudents are generally better able to learn and remain engaged in instruction, and teachers are better able to do their jobs, in well-maintained classrooms that are well-lit, clean, spacious, and heated and air-conditioned as needed.”⁹⁷ However, having proper facilities does not merely refer to adequate upkeep of the main school building, but also the presence of laboratories, auditoriums, athletic facilities, technological facilities, libraries, and media centers.⁹⁸ In 2014, Richmond Public Schools' assistant superintendent for op-

94. Vincent Darby, former principal of G.H. Reid Elementary, was removed from his position after the school entered priority status. At his appeal before the Richmond City Council, he noted that his removal would cause many of his fellow principals to grow disinterested with any opportunity to work in Richmond Public Schools because of the greater likelihood of being removed. See Zachary Reid, *Richmond School Board Approves Interim Principal for G.H. Reid Elementary*, RICH. TIMES-DISPATCH (Oct. 7, 2014, 7:42 AM), http://www.richmond.com/news/local/city-of-richmond/article_35ed10e9-961e-5cc4-bc7e-c75a16ef3c97.html.

95. *2014–2015 Priority Schools*, VA. DEP'T OF EDUC., http://www.doe.virginia.gov/statistics_reports/accreditation_federal_reports/federal_accountability/reports/2014-15/priority_schools_2014-15.pdf (last visited Oct. 1, 2015).

96. Letter from Catherine E. Lhamon, *supra* note 83, at 17 (citing generally Lawrence O. Picus, et al., *Understanding the Relationship Between Student Achievement and the Quality of Educational Facilities: Evidence from Wyoming*, 80 PEABODY J. EDUC. 71, 71–95 (2005)).

97. Letter from Catherine E. Lhamon, *supra* note 83, at 17.

98. *See id.*

erations issued a report detailing 135 critical facility needs for Richmond Public Schools that arrived after years or even decades of deferred maintenance.⁹⁹ The maintenance included high-cost projects such as roof replacements, replacing steam boilers, and mold removal—costing the city roughly \$35 million to complete.¹⁰⁰ However, as part of the city's Capital Improvement Plan, Richmond will receive a mere \$7 million for maintenance during the 2014–15 fiscal year.¹⁰¹

In addition to lower-quality facilities, poorer schools have far fewer extracurricular and advanced track opportunities.¹⁰² Student participation in organized, school-based extracurricular activities correlates directly with high student achievement, and the OCR has recognized that greater options in the arts “can improve student achievement and build specialized skills that help students move along a variety of pathways toward college- and career-readiness.”¹⁰³ Further, students who are enrolled in AP courses “tend to put in significantly more effort, and student effort is in turn correlated with higher achievement, regardless of the student's entering level of achievement and regardless of which courses the student takes.”¹⁰⁴ Today, almost one in five of African-American high school students attends a school that offers zero AP courses.¹⁰⁵

The importance of AP opportunities is even more pronounced for students attending impoverished schools. In 2014, Virginia Commonwealth University (“VCU”), located in downtown Richmond, charged \$340.57 per credit hour for in-state tuition.¹⁰⁶ Thus, a passing score on an AP exam worth three credits at VCU

99. Nathan Cushing, *Critical Needs of RPS Buildings Dominate New School Year*, RVANEWS (Aug. 25, 2014, 8:48 AM), <http://www.rvanews.com/news/critical-needs-of-rps-buildings-dominate-new-school-year/116198?east-end-daily>.

100. *Id.*

101. *Id.*

102. U.S. DEPT OF EDUC., FOR EACH AND EVERY CHILD—A STRATEGY FOR EDUCATION EQUITY AND EXCELLENCE 27, 32 (2013), <http://www2.ed.gov/about/bdscomm/list/eec/equity-excellence-commission-report.pdf>.

103. Letter from Catherine E. Lhamon, *supra* note 83, at 3.

104. *Id.*

105. *Id.*

106. Zachary Reid, *College-Level Tests Show Disparities in High Schools*, RICH. TIMES-DISPATCH (Apr. 19, 2014, 2:09 PM), http://www.timesdispatch.com/college-level-tests-show-disparities-in-high-schools/article_feea217b-f920-59ae-8541-db96a8779975.html?mode=jpm (adding that fees, housing, and other costs are not included).

could save a student \$1021.71 on his or her college tuition. Meanwhile, a perfect score of five on an AP biology, calculus, chemistry, or physics exam is worth eight credits at VCU, and thus saves a student \$2724.56 in tuition.¹⁰⁷ To illustrate the severe gap in AP opportunities, students at Deep Run High School, which draws from wealthy neighborhoods in western Henrico, scored a three or better on 1022 AP exams in the 2013–14 school year—roughly one passing score for every 1.6 exams administered, which faired the best among the district’s thirty-two high schools in the city of Richmond and surrounding counties.¹⁰⁸ Richmond Public Schools, meanwhile, managed only seventeen passing scores from all five of its comprehensive high schools.¹⁰⁹

Without a challenging curriculum that promotes advanced courses and higher learning, it comes as no surprise that the vast majority of students at high poverty schools are not on a four-year college track.¹¹⁰ Attending a school where the majority of students regularly attend class, engage in assignments and class discussion, and are on a college track facilitates the importance of education amongst the entire student body.¹¹¹ The realities are sad-denying: “In high-poverty schools, a child is surrounded by classmates who are less likely to have big dreams and, accordingly, are less academically engaged and more likely to act out and cut class.”¹¹² Students in high-poverty schools are also more likely to move during the school year, thus creating disruption in the classroom, and are “less likely to have large vocabularies, which in turn limits the ability of peers on the playground and in the classroom to learn new words.”¹¹³ The percentage of the student body that is eligible for free or reduced-priced lunch is often used as an effective way of determining a school’s poverty status.¹¹⁴ While as of October 2013, only 33% and 40% of Chesterfield and

107. *Id.*

108. *Id.*

109. *Id.*

110. See generally Roslyn Arlin Mickelson, *Segregation and the SAT*, 67 OHIO ST. L.J. 157 (2006) (arguing that “school and classroom-level segregation contribute to the black-white race gap in SAT scores”).

111. See SIEGEL-HAWLEY, *supra* note 3.

112. Kahlenberg, *Walks*, *supra* note 79, at 13.

113. *Id.*

114. See, e.g., KAHLBERG, TOGETHER, *supra* note 75 at 106–07; Ciolfi, *supra* note 1, at 783–84; James E. Ryan, *Schools, Race, and Money*, 109 YALE L. J. 249, 273 (1999) [hereinafter Ryan, *Money*].

Henrico students, respectively, qualified for any meal assistance, over 74% of all Richmond Public Schools students received free or reduced-price lunch.¹¹⁵

The disparities between Richmond Public Schools and Chesterfield and Henrico schools are glaring. Richmond, with a far higher poverty rate, is unable to adequately educate its students. While Richmond Public Schools' facilities are in need of serious repair, the system is unable to offer high-level courses at the same rate as its surrounding suburbs. But more importantly, because of the socioeconomic housing segregation that plagues the school system, students in Richmond Public Schools are not achieving their academic potential.

III. RACIALLY NEUTRAL DESEGREGATION REMEDIES AND THE ROAD FROM SCHOOL FINANCE REFORM TO SOCIOECONOMIC INTEGRATION

Whether inequality exists in America's public education system is not a debate. Traditionally, and still to this day, schools with a primarily African-American student body have performed much worse academically than those institutions with mostly white students.¹¹⁶ What is a debatable issue is the longstanding question of why, sixty years after *Brown*, these inequities still exist. The answer lies not with the color of a student's skin; rather, studies have shown that the socioeconomic status of a student body is the greatest determinative factor in predicting that institution's academic achievement.¹¹⁷ Thus, although race-based student assignment programs are now caught somewhere along the spectrum of impractical to unconstitutional, the more progressive and impactful method of granting *all* students an equal education is through race-neutral socioeconomic integration.

115. VA. DEP'T OF EDUC., *School Year 2013-2014 National School Lunch Program (NSLP) Free and Reduced Price Eligibility Report*, OFFICE OF SCH. NUTRITION PROGRAMS (Oct. 31, 2013), http://www.doe.virginia.gov/support/nutrition/statistics/free_reduced_eligibility/2013-2014/divisions/frpe_div_report_sy2013-14.pdf; see also *Richmond Public Schools Offer Free Breakfast, Lunch*, WHSV (July 22, 2014, 11:00 AM), <http://www.wHSV.com/home/headlines/Richmond-Public-Schools-Offer-Free-Breakfast-Lunch-268114322.html>.

116. See Mickelson, *supra* note 110, at 174–75.

117. See Robert L. Hayman, Jr. & Nancy Levit, *The Constitutional Ghetto*, 1993 WIS. L. REV. 627, 700–01 (1993).

The goal of educational equity is to mitigate the outside factors that hinder students' academic success.¹¹⁸ This concept derives more from the perspective of the disadvantaged student. Put simply, a student with an educated upbringing who resides in a safe neighborhood is, merely by the circumstances into which he or she was born, given a greater opportunity for academic success, and in turn, economic independence, than a student who lives in a crime-ridden neighborhood and whose parents do not necessarily value education. Educational equity attempts to put the two students on an equal educational playing field, such that the disadvantaged student will be afforded the opportunity to realize the academic success more easily attainable to the advantaged student.

This section will examine two forms of educational reform that have sought to balance inequities in America's public schools. Part A will examine school finance reform, its strengths and weaknesses, and ultimately why it has not gone far enough in remedying inadequate educational opportunities for underprivileged students. Part B will assert that the use of socioeconomic integration is a more socially and politically sound remedy, and will present examples from around the country where its use has been effective.

A. *School Finance Reform*

School districts are funded by a mixture of state and local revenue—the majority of the local revenue being generated by property taxes.¹¹⁹ Educational inequities arise “because localities have differing amounts of property wealth and thus can raise disparate amounts of funding for schools with similar property tax rates”¹²⁰ School finance reform has long been the vehicle for addressing educational equity. The ultimate goal of this type of litigation “is to increase the amount and equalize the distribution of educational resources and, in so doing, to improve the academic

118. See *Six Goals of Education Equity*, INTERCULTURAL DEV. RES. ASS'N, http://www.idra.org/South_Central_Collaborative_for_Equity/General_Compliance_and_Equity_Plan/Six_Goals_of_Education_Equity/ (last visited Oct. 1, 2015).

119. James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2058 (2002).

120. *Id.*

opportunities and performance of students disadvantaged by existing finance schemes.”¹²¹ Some proponents of school finance litigation scoff at the need for desegregation.¹²² Instead, advocates recognize the grave disparities between middle-class and poor schools and thus seek to level the playing field through increased funding to those impoverished, oftentimes predominantly minority, public schools.¹²³

School finance lawsuits were brought in federal court until the Supreme Court held in *San Antonio Independent School District v. Rodriguez* that wealth was not a suspect class, education was not a fundamental right, and unequal interdistrict funding did not violate the Equal Protection Clause of the U.S. Constitution.¹²⁴ Ever since, these lawsuits have been brought under state constitutions and have realized some success, as nearly twenty states have seen their school financing schemes held unconstitutional.¹²⁵ In 1989, equality-based challenges to school financing shifted to adequacy-based litigation.¹²⁶ The reasons for the shift were in large part to gain public support for the litigation.¹²⁷ Under equality-based challenges, in order to equalize funding, school districts would either have to raise their budgets to equate their spending to the highest-spending districts, or decrease their budgets to mirror the low-spending districts.¹²⁸ The first option is financially infeasible in most states, while the second option is politically infeasible in counties that spend significant amounts on education.¹²⁹ Thus litigants now argue “*not* that all students are entitled to the same resources, but rather that all students should receive the funds necessary to finance an adequate education.”¹³⁰

Forty years into school finance reform, impoverished schools seeking to receive increased funding must rely on legislation to

121. Ryan, *Money*, *supra* note 114, at 252.

122. *Id.* at 253.

123. *Id.*

124. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28, 35, 54–55 (1973).

125. Ryan & Heise, *supra* note 119, at 2059.

126. *Id.*

127. See Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101, 158 (1995).

128. Ryan & Heise, *supra* note 119, at 2060.

129. *Id.* (noting that parents tend to reject measures that cap the revenue they can spend on their local schools); see Enrich, *supra* note 127, at 157.

130. Ryan & Heise, *supra* note 119, at 2059.

“direct sufficient resources to mitigate their plight.”¹³¹ However, whether due to poor spending practices at the administrative level or overbearing social pressures on students outside the curriculum, or both, school finance reform has not worked. The overarching problem, well articulated by the OCR, is that “[t]he allocation of school resources . . . too often exacerbates rather than remedies achievement and opportunity gaps.”¹³²

The greatest combatant is likely widespread residential socioeconomic segregation.¹³³ Thus, despite the influx of cash an impoverished district may receive from the state, the fact that the majority of the school’s student body is poor and deals on a regular basis with the social pressures associated with being poor (i.e., single-parent homes, violent home lives, poor health care) dissolves the effect that increased funding would have as compared to an academic institution where the majority of students did not deal with such pressures. Many studies have shown that merely injecting an increased stream of revenue into such an isolated setting does little, if anything, to improve a school’s academic performance.¹³⁴

The impact of school finance reform in Richmond schools is indicative of how this type of litigation has affected similar school districts nationwide. Despite the social deficiencies that plague its classrooms, Richmond Public Schools receive a significantly greater amount of funding per student than either Chesterfield or Henrico County schools—Richmond spends \$13,022 per pupil, whereas Henrico spends \$8978 and Chesterfield spends \$9030.¹³⁵ Further, there are millions of additional dollars being injected in-

131. Derek W. Black, *Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 B.C. L. REV. 373, 373 (2012).

132. Letter from Catherine E. Lhamon, *supra* note 83, at 2.

133. See Ryan, *Money*, *supra* note 114, at 276–80 (arguing that “[t]he most important demographic factor affecting urban schools, which dwarfs all others, is the intense residential segregation among blacks and whites in metropolitan areas”).

134. See, e.g., Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1347–53 (2004); Ryan, *Money*, *supra* note 114, at 286–95.

135. RICHMOND CITY PUBLIC SCHOOLS, SCHOOL BOARD ADOPTED BUDGET FY 2013–14 146, <http://web.richmond.k12.va.us/Portals/0/assets/BudgetReporting/pdfs/SchoolBoardADOPTEDBudgetFY2014ExecutiveSummary.pdf>; Henrico Cty. Pub. Sch., *Average Per Pupil Expenditures for Operations* (May 2015), <http://www.henrico.k12.va.us/Pdf/Finance/PerPupilExpenditure.pdf>; Chesterfield Cty. Pub. Sch., *Average Per Pupil Expenditures for Operations*, http://mychesterfieldschools.com/wp-content/uploads/budget_files/FY14_State-PP.pdf (last visited Oct. 1, 2015).

to the Richmond school system annually in an effort to fix Richmond schools' facilities.¹³⁶ However, based on the accreditation rates of Richmond Public Schools described above, increased funding has not translated to a better academic environment.

Richmond is not alone in being an urban school district that spends more per pupil than its surrounding suburbs; rather, that trend is prevalent throughout America's metropolitan areas. Yet despite the greater funding, "[u]rban schools continue to lag behind suburban ones on every measure, including test scores, graduation rates, the quality of teachers, the quality of facilities, academic rigor and expectations, and reputation."¹³⁷ Thus, forty years into school finance litigation, the vast majority of impoverished students have not realized the opportunity to receive an adequate education.

B. *Socioeconomic Integration*

Socioeconomic integration recognizes that a student's ability to maximize his or her educational capacity does not correlate with the amount of money injected into that student's struggling school district. There are too many factors within a school district that more money simply cannot alleviate—be it single-family homes, parental neglect, violence, or poor health care. The general theory behind socioeconomic integration is that, while students enrolled in struggling schools may benefit in some way from increased funding to the school, of far more value to students enrolled in such schools is middle-class peers within their school.¹³⁸ Socioeconomic integration thus seeks to lessen the effects the poverty of a school has on individual students through redistricting or broadened freedom-of-choice plans that bring impoverished and middle-class students under one roof.¹³⁹ School districts tend to measure socioeconomic status using the proportion of a school's student body eligible for free or reduced-price

136. Graham Moomaw, *Mayor Calls for \$2M School Fund as Council Votes to Keep Tax Rate Unchanged*, RICH. TIMES-DISPATCH (Oct. 13, 2014, 10:30 PM), http://www.richmond.com/news/local/city-of-richmond/article_782d6ed1-d3ea-5578-9a28-7541a79d0b70.html.

137. RYAN, MILES, *supra* note 15, at 273.

138. Richard D. Kahlenberg, *Addressing School Segregation All Year Round*, HUFFINGTON POST (Aug. 14, 2012, 5:12 AM), http://www.huffingtonpost.com/richard-d-kahlenberg/school-segregation_b_1596691.html [hereinafter Kahlenberg, *Year Round*].

139. Kahlenberg, *Integration*, *supra* note 2, at 1551–54.

lunch, while also considering census data of parental education, single-parent households, and income.¹⁴⁰

Thus, the goal behind this type of integration is to create middle-class schools by minimizing the concentration of students eligible for free or reduced-price lunch in any given school. As this section will explain, the effects of socioeconomic integration are far more sweeping than school finance reform, and the implementation of socioeconomic integration is legally more feasible than race-based desegregation methods.

1. The Social Effects of Socioeconomic Integration

There are many driving forces behind socioeconomic integration.¹⁴¹ One such force is the Supreme Court's decision in *Parents Involved*. As stated above, race-based student assignment plans are now highly impractical, if not unconstitutional, after the 2007 decision.¹⁴² Assigning students based on socioeconomic status, however, is a valid race-neutral desegregation method that achieves racial diversity in public schools. Legislatures are given far more discretion when implementing socioeconomic integration plans than race-based assignment programs, which are subject to a strict scrutiny standard of review, thus making socioeconomic plans the more feasible option in the eyes of the law.¹⁴³ In assigning students based on income levels as opposed to race, districts are not subject to a strict scrutiny analysis, since wealth is not a suspect class.¹⁴⁴ District assignments are thus valid under a rational basis review, so long as the assignments are made for a legitimate state interest.¹⁴⁵ Providing an adequate education to students attending unaccredited schools and achieving social diversity in the classroom certainly satisfies rational basis scrutiny.¹⁴⁶

140. Kahlenberg, *Walks*, *supra* note 79, at 7.

141. *Id.*

142. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 721 (2007).

143. See RYAN, MILES, *supra* note 15, at 273.

144. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973).

145. Eboni S. Nelson, *The Availability and Viability of Socioeconomic Integration Post-Parents Involved*, 59 S.C. L. REV. 841, 843 (2008).

146. See *id.*

Nonetheless, socioeconomic integration could come under fire if a court were to determine that it was motivated by a racially discriminatory purpose.¹⁴⁷ The assignment plan would then come under a strict scrutiny analysis to determine whether the integration was racially motivated. This is unlikely to happen, however, because Justice Kennedy, concurring in *Parents Involved*, specifically recognized avoiding racial isolation and achieving a diverse student body as compelling government interests.¹⁴⁸

The second force is the growing legislative pressures on school districts to raise the academic achievement of low-income and minority students. Many studies have been performed on the issue and have found that low-income students perform better in middle-class schools.¹⁴⁹ In turn, middle-class students are not adversely affected academically by attending schools with impoverished children.¹⁵⁰ The key is that each school maintains a student body in which fewer than 50% of the students receive free or reduced-price lunch, as the “numerical majority sets the tone in a school”¹⁵¹ Researchers have found that the negative effects of concentrated poverty are not displayed within a school unless a clear majority of the student body is in fact impoverished.¹⁵² Further, middle-class students tend to be less susceptible to school influences, a finding known as “Coleman’s Law”: students with strong family support and parental influence have more “firmly

147. See *Lawrence v. Texas*, 539 U.S. 558, 600 (2003) (Scalia, J., dissenting) (“A racially discriminatory purpose is always sufficient to subject a law to strict scrutiny, even a facially neutral law that makes no mention of race.”).

148. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 797–98 (2007) (Kennedy, J., concurring) (“A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a district may consider it a compelling interest to achieve a diverse student population.”).

149. See, e.g., JAMES S. COLEMAN ET AL., EQUALITY OF EDUCATIONAL OPPORTUNITY 29 (1966), <http://files.eric.ed.gov/fulltext/ED012275.pdf> [hereinafter COLEMAN REP.]; Kahlenberg, *Walks*, *supra* note 79, at 7; Adam Gamoran & Daniel A. Long, *Equality of Educational Opportunity: A 40-Year Retrospective* (Wis. Ctr. for Educ. Research, Working Paper No. 2006-9, 2006), http://www.wcer.wisc.edu/publications/workingpapers/working_paper_no_2006_09.pdf.

150. Kahlenberg, *Walks*, *supra* note 79, at 5. However, research shows that middle-class students in poor schools often do worse than poor students in middle-class schools. Ciolfi, *supra* note 1, at 789.

151. Kahlenberg, *Walks*, *supra* note 79, at 3, 5.

152. *Id.* at 5.

rooted” goals and aspirations, whereas students with little support or supervision at home are more prone to the influence of peers.¹⁵³

The Coleman Report, in fact, introduced the concept of socioeconomic integration. The report was commissioned by the U.S. Department of Education to study educational equity in the United States.¹⁵⁴ It was immensely comprehensive, examining some 650,000 students in 4000 schools, and introduced several highly influential findings, including the notion that racial integration has an effect on academic achievement in public schools.¹⁵⁵ Perhaps more significantly, however, the report ultimately found that “the social composition of the student body is more highly related to achievement, independently of the student’s own social background, than is any school factor.”¹⁵⁶ Today, many educators and sociologists agree that “the most effective way to increase a child’s academic and life chances is to send him or her to school with middle-class peers.”¹⁵⁷

A third force is that concentrated poverty is growing, and those school districts facing this problem are not merely inner-city districts.¹⁵⁸ As of 2013, 50% of elementary students attend schools where the majority of the student body is low income.¹⁵⁹ Between 2000 and 2010, the nation’s percentage of majority low-income schools rose from 29% to 45%.¹⁶⁰ Over 30% of all American children live in a low-income household, giving the United States among the highest childhood poverty rates for the world’s developed countries.¹⁶¹ But while the overall poverty rate has actually been shrinking over the past several years, the suburban poverty rate has been increasing. Between 2000 and 2008, suburban pov-

153. See KAHLBERG, TOGETHER, *supra* note 75, at 41.

154. N.Y. State Educ. Dep’t, *The Johnson Years: The Coleman Report—Equal Educational Opportunity*, 1945-2009, http://nysa32.nysed.gov/ledpolicy/research/res_essay_johnson_cole.shtml (last visited Oct. 1, 2015).

155. COLEMAN REP., *supra* note 149, at 29; Kahlenberg, *Walks*, *supra* note 79, at 2.

156. COLEMAN REP., *supra* note 149, at 325.

157. Ciolfi, *supra* note 1, at 788.

158. See Kahlenberg, *Walks*, *supra* note 79, at 7.

159. *Id.*

160. *Id.*

161. Gonzalo Fanjul, *Children of the Recession: The Impact of the Economic Crisis on Child Well-Being in Rich Countries*, in UNICEF INNOCENTI REP. CARD 12: CHILDREN IN THE DEVELOPED WORLD 8 (Rick Boychuk ed., 2014), <http://www.unicef-irc.org/publications/pdf/rc12-eng-web.pdf>.

erty grew by 25%, “almost five times faster than primary cities and well ahead of the growth seen in smaller metro areas and non-metropolitan communities.”¹⁶² As a result, suburbs of primary cities were home to 1.5 million more poor residents than their primary cities.¹⁶³ Thus, while concentrations of poverty were, in decades past, an issue to be dealt with by city governments, poverty in schools is now an issue that concerns parents of suburban students.

2. Successes of Socioeconomic Integration

The initial attempt to implement socioeconomic integration focused on the public schools of La Crosse, Wisconsin, where, in 1992, the school district sought to redraw the districts with the aim of having every school maintain a student body where 15% to 45% of the students receive a free or reduced lunch.¹⁶⁴ Today, there are an estimated eighty school districts educating some four million students that are pursuing socioeconomic integration.¹⁶⁵

Another compelling study focused on students living in public housing units in Montgomery County, Maryland, who were randomly assigned to attend either an impoverished school or a predominantly middle-class school.¹⁶⁶ The high-poverty schools received approximately \$2000 more per student in funding.¹⁶⁷ Nevertheless, students attending the low-poverty schools performed much better academically.¹⁶⁸

162. Elizabeth Kneebone & Emily Garr, *The Suburbanization of Poverty: Trends in Metropolitan America, 2000 to 2008*, in METROPOLITAN OPPORTUNITY SERIES 1 (2010), http://www.brookings.edu/~media/research/files/papers/2010/1/20%20poverty%20kneebone/0120_poverty_paper.pdf. The study divided the United States into four categories—primary cities, suburbs, small metropolitan areas, and non-metropolitan areas. *Id.* at 3. Primary cities were identified as the 100 largest metropolitan areas based off the 2007 census and “(1) appear first in the official metropolitan area name, or 2) are listed second or third in the official name and contain a population of at least 100,000.” *Id.*

163. *Id.* at 1.

164. KAHLENBERG, TOGETHER, *supra* note 75, at 237.

165. Kahlenberg, *Walks*, *supra* note 79, at 7 (noting that school districts large and small are now embracing socioeconomic integration).

166. *Id.* at 5.

167. Stephanie McCrummen & Michael Birnbaum, *Study of Montgomery County Schools Shows Benefits of Economic Integration*, WASH. POST (Oct. 15, 2010, 12:26 AM), <http://www.washingtonpost.com/wp-yn/content/article/2010/10/14/AR2010101407577.html>.

168. See HEATHER SCHWARTZ, HOUSING POLICY IS SCHOOL POLICY: ECONOMICALLY INTEGRATIVE HOUSING PROMOTES ACADEMIC SUCCESS IN MONTGOMERY COUNTY,

Numerous school districts have entered into voluntary socioeconomic integration efforts. Perhaps the most ambitious took place in 2000, where Wake County Public Schools, the largest public school district in North Carolina, voted to disband a goal for each school in the system to have a minority population between 15% and 45%, and implemented a rule stating that no school would have more than 40% of students eligible for free or reduced-price lunch, and no more than 25% of any student body would be reading below grade level.¹⁶⁹ Included in this proposal was a redistricting plan that helped facilitate socioeconomic integration.¹⁷⁰ Five years into the integration plan, the percentage of third through eighth grade African-American students who scored on grade level on state tests increased from 40% to 80%, while scores from Hispanic students increased from 79% to 91%.¹⁷¹ Most significantly, 61% of low-income students passed the state high school exit exams, compared to 43% in Durham County and 50% in Charlotte-Mecklenburg County.¹⁷² Simply put, Wake County “reduced the gap between rich and poor, black and white, more than any other large urban educational system in America.”¹⁷³

Jefferson County Public Schools in Louisville, Kentucky offers yet another formula to help facilitate socioeconomic integration. The county school board places neighborhoods into two broad categories—Area A has below-average income and education levels, and above-average minority population, while Area B neighborhoods consist of the opposite.¹⁷⁴ The school board allows students to choose the schools they wish to attend with the goal of having each school in the district comprised of between 15% to 20% Area

MARYLAND 6, 8 (2010), <https://tcf.org/assets/downloads/tcf-Schwartz.pdf> (“With few exceptions, schools in the United States with high concentrations of students from low-income families perform less well than schools with low concentrations of poverty.”).

169. Taryn Williams, Note, *Outside the Lines: The Case for Socioeconomic Integration in Urban School Districts*, 2010 BYU EDUC. & L.J. 435, 447 (2010); *Wake Schools: 600 Teachers Have Quit This School Year*, WNCN (May 6, 2015, 8:50 PM), <http://www.wncn.com/story/25270906/wake-teacher-turnover-numbers-expected-Thursday>.

170. Williams, *supra* note 169, at 447–48.

171. Alan Finder, *As Test Scores Jump, Raleigh Credits Integration by Income*, N.Y. TIMES (Sept. 25, 2005), <http://www.nytimes.com/2005/09/25/education/as-test-scores-jump-raleigh-credits-integration-by-income.html>.

172. Williams, *supra* note 169, at 448.

173. GERALD GRANT, HOPE AND DESPAIR IN THE AMERICAN CITY: WHY THERE ARE NO BAD SCHOOLS IN RALEIGH 92 (2009).

174. Kahlenberg, *Walks*, *supra* note 79, at 11.

A students.¹⁷⁵ Thus, the Jefferson County integration plan looks at both the racial and socioeconomic makeup of neighborhoods in its desegregation efforts.

The most glaring difference between the successful socioeconomic integration of these districts and a potential plan in Richmond is the fact the Wake County and Jefferson County school districts have incorporated an urban center, Raleigh and Louisville, respectively, and the surrounding suburbs.¹⁷⁶ However, consolidation plans based on socioeconomic integration, while much more rare, do take place. In 2011, in the largest school district consolidation in American history, residents of the City of Memphis, Tennessee, voted to voluntarily surrender the school district's charter in order to merge with surrounding Shelby County.¹⁷⁷ In Memphis, 87% of students had been eligible for free or reduced lunch, compared with merely 37% of students attending Shelby County schools.¹⁷⁸ Memphis had an easier political route in its consolidation efforts—rather than relying heavily on local property taxes to fund local schools, Tennessee mandates all county property taxes be pooled and disbursed to schools based on enrollment.¹⁷⁹ However, the ideal lasted only one school year, as a court ruling in 2013 permitted certain incorporated areas of the new school district the right to secede.¹⁸⁰

3. Concerns in the Implementation of Socioeconomic Integration

Numerous questions arise as to the effects and feasibility of socioeconomic integration. One concern is that, even though a child may be attending a school with more middle-class students, the child's home life may inhibit academic success. While this situation inherently arises via socioeconomic integration, under Coleman's Law, students with less parental support tend to be influenced more by their peers, thus lessening the effects of a distraught home environment.¹⁸¹ Further, one particular study

175. *Id.*

176. *See infra* notes 204–07 and accompanying text.

177. SIEGEL-HAWLEY, *supra* note 3.

178. Campbell Robertson, *Memphis to Vote on Transferring School System to County*, N.Y. TIMES, Jan. 28, 2011, at A21.

179. SIEGEL-HAWLEY, *supra* note 3.

180. *Id.*

181. *See supra* notes 153–57 and accompanying text.

determined that having one's own parents intimately involved in the school is of far less importance to a child's academic success than the overall level of parental support within the school.¹⁸²

Perhaps an even greater concern, and probably the greatest impediment to this reform, is the transportation practicality of desegregation in highly segregated metropolitan areas. No doubt, the outrage that swept the Richmond area during busing was fierce, as parents waved the banner of the importance of neighborhood schools in a child's education.¹⁸³ Many parents at the time were nostalgic regarding neighborhood schools; in 1969, in fact, roughly 50% of all students either walked or rode their bike to school.¹⁸⁴ This idea is far less prevalent in today's world, illustrated by the fact that families choosing to send their children to non-neighborhood schools rose by 45% between 1993 and 2007.¹⁸⁵ However, despite some proponents arguing that socioeconomic integration can be realized without increased transportation costs,¹⁸⁶ it is unlikely that this will be the case in Richmond. Although the Greater Richmond Transit Company, the area's public transit system, is paid for by both the city of Richmond and Henrico County, and owned by Richmond and Chesterfield County, there are only nominal bus routes carrying passengers to and from Richmond and the surrounding counties,¹⁸⁷ thus making the prospect of a joint public school bus transit between the municipalities an arduous undertaking. Yet in Richmond, this education platform cannot be effectively implemented without cooperation between Richmond, Chesterfield, and Henrico on an appropriate, cost-effective transportation system.

182. Esther Ho Sui-Chu & J. Douglas Willms, *Effects of Parental Involvement on Eighth-Grade Achievement*, 69 SOC. EDUC. 126, 136 (1996).

183. See Ronald J. Bacigal & Margaret I. Bacigal, *A Case Study of the Federal Judiciary's Role in Court-Ordered Busing: The Professional and Personal Experiences of U.S. District Judge Robert R. Merhige, Jr.*, 3 J.L. & POL. 693, 709 (1987); Kahlenberg, *Walks*, *supra* note 79, at 10.

184. Kahlenberg, *Walks*, *supra* note 79, at 10.

185. *Id.*

186. See, e.g., Marco Basile, *The Cost Effectiveness of Socioeconomic School Integration*, in THE FUTURE OF SCHOOL INTEGRATION 127, 135–36 (Richard D. Kahlenberg ed., 2012) (noting that incentive programs in, among other locales, Milwaukee, Indianapolis, Rochester, and East Palo Alto, provide local districts with additional state funding to help offset the added costs of educating out-of-zone students to promote social diversification within the schools).

187. See *FAQs*, GRTC, <http://www.ridegrtc.com/need-help/faqs/> (last visited Oct. 1, 2015).

Socioeconomic integration would nonetheless be highly impactful if implemented in the Richmond area. In its implementation, the school board should attempt to have no more than 50% of any student body eligible for free or reduced-price lunch. However, because roughly three-quarters of Richmond students are currently receiving free or reduced lunch, this benchmark is unattainable without a more socioeconomically diverse pool of students. Thus, in order for Richmond Public Schools to be properly integrated, and for the students within those schools to have a greater chance to realize their academic potential, the Greater Richmond school districts *must* be consolidated. Logistically, consolidation would be most practical with Richmond's two bordering counties—Chesterfield and Henrico.

IV. LITIGATING TOWARD COURT-ORDERED INTEGRATION, CIRCUMVENTING POLITICAL BARRIERS, AND VOLUNTARY CONSOLIDATION OUTLOOKS

If socioeconomic integration becomes a reality in Virginia, the effects would be sweeping. A new study using a formula that has been called “conservative”¹⁸⁸ found that interdistrict integration plans in Virginia would reduce the number of high-poverty schools—those schools with greater than half of students on free or reduced lunch—in the Commonwealth by 36%.¹⁸⁹ However, in order for consolidation to be contemplated, interdistrict quarrelling between Richmond and its surrounding suburbs must first be quashed.

Although socioeconomic integration would have a profound effect on the look and the performance of Virginia's public schools, barriers ingrained in Virginia's political system make achieving this reality an immense challenge. In Virginia, cities are independent from counties, which makes integration of any type—be it racial or socioeconomic—legally difficult. Yet consolidation of the Richmond area school systems is nonetheless possible. Part A of this section will examine a litigation strategy for court-ordered redistricting that focuses on the Virginia Constitution's “district-

188. Kahlenberg, *Walks*, *supra* note 79, at 12.

189. Ann Mantil, Anne G. Perkins & Stephanie Aberger, *The Challenge of High-Poverty Schools: How Feasible Is Socioeconomic School Integration?*, in *THE FUTURE OF SCHOOL INTEGRATION* 155, 164, 185, 187 tbl.5.11 (Richard D. Kahlenberg ed., 2012).

ing clause” and an accompanying statute locking the current districts in place. Part B will evaluate the likelihood of voluntary district consolidation in consideration of Virginia’s annexation moratorium and the nature of Virginia’s independent cities as barriers.

A. *Court-Ordered Remedial Action via the Virginia Constitution*

Since the United States Supreme Court denied a fundamental right to education while refusing to recognize wealth as a suspect class in *San Antonio Independent School District v. Rodriguez*, school reform litigation efforts often focus on state constitutions.¹⁹⁰ All fifty states contain some form of educational protection in their constitutions.¹⁹¹ More than twenty states have declared their school finance schemes void under their constitutions.¹⁹² As previously noted, education reform litigation has now focused toward “adequacy” claims of school financing schemes, rather than intradistrict equity based on the Equal Protection Clause.¹⁹³ The premise of these claims, generally, is that “students are entitled to a statewide funding scheme that is sufficient to provide an adequate education.”¹⁹⁴ The reality is that sufficient funding to make a middle-class school or district adequate is less than sufficient funding to make an impoverished school adequate.¹⁹⁵

Article VIII of the Virginia Constitution presents a compelling window for litigating the issue of socioeconomic integration. Article VIII states, “the Board [of Education] shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the pre-

190. 411 U.S. 1, 28 (1973); see Ciolfi, *supra* note 1, at 775.

191. See Ciolfi, *supra* note 1, at 796–97.

192. See, e.g., *Robinson v. Cahill*, 303 A.2d 273, 295 (N.J. 1973) (holding that New Jersey’s financing scheme violated the state’s “thorough and efficient” education clause); *DeRolph v. State*, 677 N.E.2d 733, 740 (Ohio 1997) (holding that Ohio’s elementary and secondary public school financing system violated the state constitutional provision mandating that the state provide a thorough and efficient system of common schools throughout the state).

193. James E. Ryan, *The Influence of Race in School Finance Reform*, 98 MICH. L. REV. 432, 448–49 (1999) [hereinafter Ryan, *Influence*]; see *supra* note 126 and accompanying text.

194. Ciolfi, *supra* note 1, at 797.

195. See *id.* at 797–98.

scribed standards of quality”¹⁹⁶ Thus this “districting clause” creates “an affirmative duty for legislators to draw boundary lines in a manner that promotes quality education”¹⁹⁷ By implication, the Board of Education is thus charged to draw district lines that avoid concentrations of poverty. As this article has sought to demonstrate, in Richmond, and indeed throughout the country, coming from an impoverished household and attending a school with the majority of the classmates impoverished has a devastating effect on that student’s educational ceiling.

While the General Assembly specifically delineates the standards of quality for each of the core subjects taught in Virginia schools,¹⁹⁸ Article VIII, section 1 goes further, stating that “[t]he General Assembly . . . shall seek to ensure that an educational program of high quality is established and continually maintained.”¹⁹⁹ That “educational program of high quality,” and in turn the standards of quality, are carried out by SOL testing.²⁰⁰ A high quality of education can reasonably be equated to an accredited school—otherwise referred to as an adequate education. Because the General Assembly has chosen to use SOL scores as the sole determination of school accreditation,²⁰¹ it is appropriate to use SOL test results in determining whether the school districts are meeting the General Assembly’s “educational program of high quality” status, and in turn, whether the Board of Education has drawn district lines that would allow the General Assembly’s adequacy standards to be achieved.

It follows, therefore, that schools that are not fully accredited do not fulfill their obligations to promote the standards of quality under Article VIII. Further, a conglomeration of unaccredited schools in a single high-poverty school district is evidence that the district lines may be unconstitutional. Thus, Article VIII “creates an affirmative duty for legislators to draw boundary lines in a manner that promotes quality education—a manner that by implication does not create concentrations of poverty.”²⁰²

196. VA. CONST. art. VIII, § 5(a).

197. Ciolfi, *supra* note 1, at 806.

198. See VA. CODE ANN. § 22.1-253.13:1 (Cum. Supp. 2014).

199. VA. CONST. art. VIII, § 1.

200. See Ciolfi, *supra* note 1, at 777.

201. 8 VA. ADMIN. CODE § 20-131-300 (2015).

202. Ciolfi, *supra* note 1, at 806.

The scope of this portion of Article VIII was discussed in *Scott v. Commonwealth*, which held that:

[N]owhere in Article VIII, §§ 1 and 2 is there any requirement for “substantial equality” in spending or programs among or within the school divisions in the Commonwealth. Instead, the provisions of Article VIII plainly mandate that each school division provide an educational program meeting standards of quality as determined and prescribed by the General Assembly.²⁰³

This language makes clear that educational reform litigation based on Article VIII must focus not on equality, but on adequacy. This language lends further support to the notion of adequacy equating to accreditation. As discussed above, educational quality directly relates to district boundaries—a child residing in a suburban district is far more likely to attend an accredited school than a similarly situated student in an urban district. Thus, a school district that is either too poor or too small inevitably cannot provide the adequate education guaranteed by the Virginia Constitution.²⁰⁴

Districting falls under the jurisdiction of the Virginia General Assembly and the Virginia Board of Education—the Virginia Board of Education has constitutional authority to define district boundaries, but the General Assembly may institute conditions.²⁰⁵ Despite this constitutional authority, Virginia Code section 22.1-25 holds that: (1) the Commonwealth’s school divisions must remain “as they exist[ed] on July 1, 1978 . . . until further action of the Board of Education;” (2) “[n]o school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city affected;” and (3) “[n]o change shall be made in the composition of any school division if such change conflicts with any joint resolution expressing the sense of the General Assembly. . . .”²⁰⁶ This statute, implemented seven years after the annexation moratorium, spun the web of entrenchment that exists today between Virginia’s schools and its magisterial districts.²⁰⁷

203. 247 Va. 379, 385, 443 S.E.2d 138, 142 (1994).

204. See Ciolfi, *supra* note 1, at 774–75.

205. VA. CONST. art. VIII, § 2; VA. CODE ANN. § 22.1-25(A) (Cum. Supp. 2014).

206. VA. CODE ANN. § 22.1-25(A)(1)-(3) (Cum. Supp. 2014).

207. See Ciolfi, *supra* note 1, at 811; *infra* note 224 and accompanying text.

One could argue the unconstitutionality of the statute under state law, as the General Assembly is merely authorized to ensure that district boundaries bolster the standards of quality.²⁰⁸ Putting aside the fact that the statute was almost certainly implemented to maintain the de facto racial segregation of urban and suburban school districts, the fact that the statute utterly fails to promote the standards of quality—as evidenced, for example, by the disparities in the school districts of Richmond and its surrounding counties—a court could strike the entire law as the standards of quality could never realistically be achieved based on the 1978 district lines.²⁰⁹ In summary, those district lines codified in Virginia Code section 22.1-25(A)(1) diminish, rather than promote, the standards of quality protected under Article VIII.

In an attempt to strike section 22.1-25(A)(1) as unconstitutional under Article VIII of the Virginia Constitution, a lawsuit would likely have to be brought by Richmond Public Schools' students deprived of an adequate education based on the statute. The proper defendant would be the Commonwealth, as the General Assembly acted as an agent of the State in enacting the statute. In order for the plaintiffs to prevail, a willing court would first have to recognize the essential nexus between district boundaries and educational quality. Second, the court would have to recognize not only that impoverished districts are not meeting the State's constitutional requirements of fulfilling a quality education, but are *unable* to do so because of the firm district boundaries implemented by section 22.1-25(A)(1). Thus, the court could find section 22.1-25 unconstitutional and open the doors for consolidation efforts. Once the law is struck, the court could order interdistrict socioeconomic integration if the court realized that no effective remedy would exist without joining Henrico and Chesterfield counties into the lawsuit. The court would need to understand first that there is a congregation of students receiving free and reduced-price lunch in the city of Richmond, and second, that there is a direct correlation between impoverished student bodies, accreditation rates, and adequate education. Only then, upon realizing that Richmond's poverty is entrenched within its borders, due in large part to Richmond's status as an independent city,

208. See VA. CODE ANN. § 22.1-25(A) (Cum. Supp. 2014).

209. Ciolfi, *supra* note 1, at 811–12.

could the court order the 1978 division barriers bulldozed, thus opening the gates for socioeconomic education reform.

The districting clause offers, at the very least, an open window for litigation that could lead to district consolidation through the courts. But though section 22.1-25 offers a promising outlet to realize socioeconomic integration, it is still unlikely that a court would agree with the plaintiffs. The Fourth Circuit specifically cited the independent nature of Virginia's cities in striking Judge Merhige's consolidation order.²¹⁰ Further, since districting is an enumerated duty of the legislative branch, a court could choose to sidestep the issue as a political question. Thus, a more viable avenue toward effectuating socioeconomic integration into Richmond Public Schools may be through voluntary efforts by Richmond, Chesterfield, and Henrico.

B. *Barriers Created by the Annexation Moratorium and Virginia's Independent Cities*

Voluntary consolidation efforts would certainly be a less adversarial process and could, without a doubt, benefit all three jurisdictions. Merging school districts would increase transportation costs, but those costs would be shared among the three jurisdictions. General operating costs would likely decrease, as consolidation would probably lead to some facility closures. Students would also benefit from increased diversity and a likely spike in magnet programs offered by the Greater Richmond School District. However, local government laws favoring suburban municipalities make consolidation an extremely difficult sell to Chesterfield and Henrico counties.

The Virginia Constitution expressly recognizes cities as separate municipal entities from counties.²¹¹ This is a phenomenon completely unique to Virginia, as thirty-eight of the country's forty-one independent cities are in Virginia—Baltimore, St. Louis, and Carson City, being the exceptions.²¹² The nature of Virginia's

210. *Bradley v. Sch. Bd. of Richmond*, 462 F.2d 1058, 1068 (4th Cir. 1972) ("Each of the three political subdivisions involved here has a separate tax base and a separate and distinct electorate. The school board of the consolidated district would have to look to three separate governing bodies for approval and support of school budgets.").

211. See VA. CONST. art. VII, § 1.

212. Andrew V. Sorrell & Bruce A. Vlk, *Virginia's Never-Ending Moratorium on City-*

independent cities as independent political and municipal entities is the root of Virginia's local government problems, and it has led to severe socioeconomic disparities between cities and surrounding counties.²¹³ Virginia's independent cities are not politically associated with any county, even though they may be completely surrounded by one. City residents in Virginia pay taxes and vote only in their city, unlike residents of cities in every other state, where city residents pay county taxes and elect county government officials.²¹⁴ What has arisen is a separate and oftentimes adversarial relationship between Virginia's independent cities and its surrounding counties.²¹⁵

Over the course of American history, a city's power to annex adjacent land has been an essential tool to help cities accommodate rising populations and promote economic growth.²¹⁶ Annexations were generally seen as permissible and even necessary because counties did not offer the same types of municipal services as the cities.²¹⁷ However, in Virginia, even though annexation proceedings were common well into the twentieth century, these proceedings were often met with mistrust on the part of county officials, as little political cooperation existed between cities and their surrounding counties.²¹⁸ Inherently, the stakes of an annexation were higher in Virginia, as annexation in other parts of the country did not result in a swallowing of a portion of a separate county, and in effect a separate municipal entity's tax base.²¹⁹ Further resentment arose as counties garnered more sophisticated municipal resources, thus making annexations less of a quid pro quo for the counties, and beneficial only to the city.²²⁰

County Annexations, VA. NEWS LETTER 1 (Jan. 2012), <http://www.coopercenter.org/sites/default/files/publications/Virginia%20News%20Letter%202012%20Vol.%2088%20No%201.pdf>.

213. *Id.* at 7; David K. Roberts, Note, *Separate, but Equal? Virginia's "Independent" Cities and the Purported Virtues of Voluntary Interlocal Agreements*, 95 VA. L. REV. 1551, 1555–56 (2009).

214. *See generally* Roberts, *supra* note 213, at 1553–54 (“[I]n Virginia, cities are independent, with counties’ taxing and other powers ceasing at city boundaries.”).

215. *See* Sorrell & Vlk, *supra* note 212, at 7.

216. *Id.* at 2.

217. *Id.*

218. *Id.* at 1.

219. *Id.*

220. *See* Roberts, *supra* note 213, at 1557 (explaining that as counties began to deliver services traditionally associated with cities, the county residents no longer needed to rely

In the late 1960s, as described above, white flight was amplifying in Richmond.²²¹ The city had an increasing black population—a vast number of students attending Richmond Public Schools were black, and blacks were, after years of segregation, finally making inroads politically.²²² In 1969, a court-negotiated annexation agreement between the city and Chesterfield County placed 44,000 mostly white Chesterfield residents into the city of Richmond and dropped Richmond's black population to 42%.²²³ The outcry from the newly elected black city council, as well as from residents of the annexed area of northern Chesterfield County led the Virginia legislature to take action; the following year, the General Assembly imposed a moratorium on all new annexations for cities with populations greater than 125,000, which “[a]s a practical matter . . . applied only to the Richmond metropolitan area.”²²⁴ The city, which since 1742 had used annexation to reflect population and economic growth eleven times, was now locked into its boundaries.²²⁵ That moratorium was broadened in 1987 to include all Virginia cities, and continues to this day.²²⁶ Meanwhile, Henrico and Chesterfield counties have been granted annexation immunity by the General Assembly, which survives even if the moratorium is one day lifted.²²⁷ The issue is not scheduled to hit the General Assembly floor until 2018.²²⁸

The effect of this moratorium can best be seen when comparing Richmond to other southern cities. During the twenty years following the moratorium, metro regions in Virginia had a 1% private sector job growth.²²⁹ Those regions in Georgia and North Carolina grew at a rate of 11.2% and 6.7%, respectively.²³⁰ In

on annexation by the neighboring city to provide those services; rather, annexation was seen mostly as a way for cities to increase their tax base).

221. See *supra* note 39 and accompanying text.

222. See CAMPBELL, *supra* note 7, at 167, 170–71.

223. *Id.* at 171–72.

224. JACK D. EDWARDS, NEIGHBORS AND SOMETIMES FRIENDS: MUNICIPAL ANNEXATION IN MODERN VIRGINIA 61 (1992).

225. CAMPBELL, *supra* note 7, at 174.

226. See Sorrell & Vlk, *supra* note 212, at 3.

227. *Id.*

228. *Id.*

229. Neal J. Barber, *Local Government Structure: A Hindrance to Economic Competitiveness?*, VA. ISSUES AND ANSWERS, <http://www.via.vt.edu/winter96/govstructure.html> (last visited Oct. 1, 2015).

230. *Id.*

1970, the year before the moratorium, Richmond had a larger population than Charlotte.²³¹ But over the next two decades, Charlotte merged its municipal services, including its school system, with surrounding Mecklenburg County, and implemented progressive banking laws that would drive three prominent Richmond banks south to the Charlotte area.²³² The economic disparities between the two cities are vast to this day.

The moratorium on annexation has a crippling effect on Richmond as an independent city. The ability to annex is crucial to the economic stability of an independent city, and Richmond had used its annexation power consistently since its foundation.²³³ In large part due to the high volume of governmental, educational, non-profit, and religious institutions within the city limits, Richmond was initially unable to collect taxes on nearly 20% of its real property.²³⁴ Virginia's independent cities in general "continue to have a larger tax burden, more fiscal stress and less ability to develop than before the moratorium."²³⁵ Yet while the independent cities struggle for economic growth, often, the wealthier counties are growing faster than the cities they surround.²³⁶

This is the crux of the problem with Richmond Public Schools—a system within a trapped and suffocating independent city lacking the economic resources and tax base to pull itself out of poverty. Meanwhile, Chesterfield and Henrico counties, municipal entities completely separate from the city of Richmond, thrive in economic segregation from their urban neighbor, and are neither compelled nor obliged to do anything to aid the struggling city, nor its struggling school system. School reform is inherently an uphill battle, and a solution in the city of Richmond will not be met without cooperation from Chesterfield and Henrico.

Because of the entrenched history of Virginia's independent cities and the Commonwealth's desire to align municipal entities

231. *Population of the 100 Largest Urban Places: 1970*, U.S. BUREAU OF THE CENSUS, <https://www.census.gov/population/www/documentation/twps0027/tab20.txt> (last visited Oct. 1, 2015).

232. See CAMPBELL, *supra* note 7, at 186–87.

233. See *Annexation History Map*, ARCGIS, <http://www.arcgis.com/home/webmap/viewer.html?webmap=2c2cc30aec1b4c8b8ccdbdbf5b9116> (last visited Oct. 1, 2015).

234. CAMPBELL, *supra* note 7, at 182.

235. Sorrell & Vlk, *supra* note 212, at 5.

236. *Id.*

and school divisions, achieving socioeconomic integration through voluntary school reform efforts between Richmond and its surrounding counties is very much an uphill battle. There is no constitutional requirement that school districts align with local government divisions, but that has been the norm across the Commonwealth for over a century.²³⁷ It may be impossible to overturn Virginia's annexation laws, as most counties nowadays, including those counties bordering Richmond, possess highly sophisticated municipal entities. However, that fact alone does not kill any opportunity for educational reform, or an opportunity to create a working relationship between the Richmond area municipalities as it relates to the establishment of a Greater Richmond School District. For example, the independent cities of Bedford, Charlottesville, Franklin, Lexington, and Radford voluntarily surrendered their annexation authority over their respective surrounding counties in favor of a revenue sharing plan with the surrounding counties.²³⁸ The relationship between Charlottesville and Albemarle County has existed successfully since 1982.²³⁹ Further, the increased willingness for cooperation between multiple jurisdictions has been undertaken with the specific goal of attracting new economic opportunity. For instance, in recent years, the ten cities, six counties, and one town that make up the Hampton Roads region announced a joint effort to attract businesses to the region.²⁴⁰ Establishing such a relationship between Richmond and its surrounding counties may be the first step toward a consolidated school system.

District consolidation in Virginia requires affirmative approval of all participating school boards and governing bodies, as well as approval by the state legislature.²⁴¹ Consolidation efforts between independent cities and their surrounding counties have been initiated several times throughout the Commonwealth. Roanoke and Roanoke County, Covington and Clifton Forge and Alleghany County, and Bedford and Bedford County all sent consolidation proposals to the polls, but voters in all three instances rejected

237. See Ciolfi, *supra* note 1, at 807–08.

238. Sorrell & Vlk, *supra* note 212, at 4.

239. See EDWARDS, *supra* note 224, at 103–04, 108–09.

240. Tony Germanotta, *Hampton Roads Leaders Agree that Economic Realities Require Pulling Together*, THE VIRGINIAN-PILOT (Apr. 27, 2006), <http://hamptonroads.com/node/94931>.

241. VA. CODE ANN. § 22.1-25(A)(2)–(3) (Cum. Supp. 2014).

the bill.²⁴² However, Emporia and Williamsburg, both independent cities, though with far fewer residents than Richmond, have consolidated their school systems with their surrounding counties.²⁴³

Williamsburg and James City County consolidated their public schools in the mid-1950s and have operated jointly ever since.²⁴⁴ About 90% of the students attending Williamsburg-James City County Public Schools reside in James City County, while the rest live in the City of Williamsburg.²⁴⁵ The school board is comprised of five elected officials from the county and two appointed members from the city.²⁴⁶ The district has some 11,000 students in three high schools, three middle schools, and nine elementary schools.²⁴⁷ The City of Emporia, meanwhile, merged all municipal services with surrounding Greensville County in an effort to cut costs between the jurisdictions.²⁴⁸ The district now is comprised of two elementary schools, a middle school, and a high school.²⁴⁹ The school board has six members, two of whom are from the city of Emporia, the rest from various Greensville County districts.²⁵⁰ While these districts are significantly smaller than any of Richmond, Chesterfield, or Henrico, their ability to consolidate despite the political barriers is nonetheless significant.

242. Barber, *supra* note 229.

243. *About WJCC*, WILLIAMSBURG JAMES CITY COUNTY PUBLIC SCHOOLS, <http://wjccschools.org/web/about-wjcc/> (last visited Oct. 1, 2015); E-mail from Woodrow Harris, Emporia City Council Member, to author (Dec. 2, 2014, 12:30 EST) (on file with author).

244. THE THOMAS JEFFERSON PROGRAM IN PUBLIC POLICY, AN ANALYSIS OF ADVANTAGES AND DISADVANTAGES OF SEVERAL OPTIONS FOR PRODUCING EXCELLENCE IN EDUCATION IN WILLIAMSBURG CITY (K-12) 7–8 (2009).

245. *Id.* at 10.

246. JOINT RESOLUTION TO AMEND THE RESTATED CONTRACT FOR THE JOINT OPERATION OF SCHOOLS, CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY 8 (Mar. 27, 2007), <http://www.jamescitycountyva.gov/pdf/AdoptedResolutions2012/042412bos/JointSchoolsOperation.pdf>; STANDARD OPERATING PROCEDURES MANUAL WJCC PUBLIC SCHOOLS BOARD 10 (2015), <http://wjccschools.org/web/wp-content/uploads/2014/05/140219-School-Board-SOP-Adopted.2-18-14.pdf>.

247. *About WJCC*, WILLIAMSBURG JAMES CITY COUNTY PUBLIC SCHOOLS, <http://wjccschools.org/web/about-wjcc/> (last visited Oct. 1, 2015).

248. E-mail from Woodrow Harris, Emporia City Council Member, to author (Dec. 2, 2014, 12:30 EST) (on file with author).

249. *Schools*, GREENSVILLE COUNTY PUBLIC SCHOOLS, <http://www.greenville.k12.va.us/education/components/sectionlist/default.php?sectiondetailid=5&category=0> (last visited Oct. 1, 2015).

250. *Board Members*, GREENSVILLE COUNTY PUBLIC SCHOOLS, <http://www.greenville.k12.va.us/education/staff/staff.php?sectiondetailid=7956&> (last visited Oct. 1, 2015).

Economic persuasion would ultimately be the best way to facilitate a deal between Richmond, Chesterfield, and Henrico. The first step would be to form an economic partnership that creates joint returns for all municipalities. A starting point may be a joint public transportation system that is paid for and operated by Richmond, Chesterfield, and Henrico, and that has numerous bus routes going into and out of all the three jurisdictions. A consolidated school system would inevitably result in more interdistrict transportation. An effective public transit system running between Richmond, Chesterfield, and Henrico would increase the feasibility of the jurisdictions transporting students across city and county lines.

It is unlikely that Chesterfield or Henrico would be inclined to consolidate their school systems with the city of Richmond absent an initial and successful economic partnership. This preliminary effort would hopefully pave the path to future and lasting municipal cooperation, both in the schools and in economic development. However, due to the independent nature and self-sustaining municipal resources of both counties, it is unlikely that either Chesterfield or Henrico would be willing in the near future to join the city of Richmond in creating a Greater Richmond School District. Thus, voluntary efforts to consolidate, frankly and sadly, remain a remote possibility.

CONCLUSION

The district lines drawn by the Board of Education work to segregate the wealthy from the poor. As a result, poor students in Richmond are not receiving the adequate educational opportunities mandated by the Virginia Constitution, while suburban schools flourish. Socioeconomic integration is the best way to instill true reform in Richmond Public Schools. Redistricting the division lines to ensure no more than half of any school's student body receives free or reduced-price lunch will raise the academic ceiling for impoverished students currently attending low-performing schools. However, because of the significant poverty level already in existence in the majority of schools in the city of Richmond, an effective socioeconomic integration plan will never be achieved without the involvement of Chesterfield and Henrico counties.

Incorporating as much school choice as possible on the part of individual families would certainly lessen the political burdens, as Chesterfield and Henrico families would likely never agree to mandatory assignment programs. The most effective, and likely most lasting, method to ensure real reform in the Richmond area schools is for the city of Richmond, Chesterfield County, and Henrico County to voluntarily enter into a mutually beneficial partnership. The consolidation avenues offered under Article VIII, although ideological, are likely too dubious at this juncture to be given merit by most Virginia courts. Yet, due to the uninhibited municipal independence enjoyed by the counties over the past half-century, it is unlikely that either Chesterfield or Henrico will be inclined in the near future to voluntarily join forces with the city to create a consolidated Greater Richmond School District.

For the time being, the feasibility of the Greater Richmond School District hinges on proven economic cooperation between Richmond, Chesterfield, and Henrico. In order for the region to sustain true economic growth, the jurisdictions must work as a cohesive unit. Only upon that showing will educational equity in the Richmond area be attainable.

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