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Toward a Theory of Equitable Federated Regionalism in Public Education

Erika K. Wilson
University of North Carolina School of Law, wilsonek@email.unc.edu

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Toward a Theory of Equitable Federated Regionalism in Public Education

Erika K. Wilson

ABSTRACT

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

This Article contends that, given the race- and class-based exclusionary effects that metropolitan fragmentation and localism have on public education, the time has come to reconsider the wholesale commitment to localism in public education. It suggests that in some instances, the dissemination of public education should be made on a regional basis rather than a local basis. It examines how enacting regionalism—a theoretical framework, which advocates for the installment of regional governance structures—might occur in public education. Borrowing from two specific theories of regionalism, equitable regionalism and federated regionalism, it proposes a framework entitled “Equitable Federated Regionalism” for disseminating public education on a regional basis. It suggests that enacting Equitable Federated Regionalism as a form of state law reform would help to ameliorate current disparities in public education that occur along the basis of race and class.

AUTHOR

Erika K. Wilson is an Assistant Professor of Law at the University of North Carolina at Chapel Hill School of Law. She holds a B.S. from the University of Southern California and a J.D. from the UCLA School of Law.

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INTRODUCTION

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

In the American public education system, local rather than state or even federal citizenship is critical. Students receive disparate educational opportunities depending on which side of a school district boundary line they live on. Such disparities are legally permissible because courts view them as race-neutral geographical distinctions beyond their remedial purview. Indeed, courts consistently find that current patterns of segregation and inequality in school districts today are the result of private forces that shape residential location choices. Yet, in reality, the geographic boundaries that define school districts are the product of local government law structures that foster residential segregation and exclusion based on race and class. As a result, race, class, and geography intersect to shape

4. See, e.g., Freeman v. Pitts, 503 U.S. 467, 506 (1992) (Scalia, J., concurring) (arguing that the amount of present-day school segregation attributable to state sponsored discrimination is minimal and instead suggesting that private forces such as migration patterns and white flight from inner cities are primarily responsible for modern-day school segregation). But cf. Nancy A. Denton, The Persistence of Segregation: Links Between Residential Segregation and School Segregation, 80 MINN. L. REV. 795, 812–13 (1996) (“By treating school and neighborhood segregation as separate, we ignore that the original bases for neighborhood segregation were state-sponsored and state-approved . . . .”).
5. See Richard Thompson Ford, The Boundaries of Race: Political Geography in Legal Analysis, 107 HARV. L. REV. 1841, 1861 (1994) (“[L]ocal boundaries, once established, are difficult to alter; segregated localities form autonomous political units whose internal political processes tend to replicate existing demographics . . . .”); Myron Orfield, Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation, 33 FORDHAM URB. L.J. 877, 878 (2006) [hereinafter Orfield, Land Use and Housing Policies] (“Governmental fragmentation—the proliferation of separate political jurisdictions—facilitates structures such as exclusionary zoning laws. By pro-
the opportunities available to students and to exclude poor minority students from access to high-quality schools. The case of Kelley Williams-Bolar provides an illustrative example.

In 2011, a court convicted Kelley Williams-Bolar, an African American mother of two, of two felony counts of tampering with records. A judge sentenced her to five years in prison for each count. Her crimes consisted of falsifying her address so that she could enroll her two children in the suburban Copley-Fairlawn, Ohio school district instead of the Akron, Ohio school district that her daughters were required to attend based on her actual address. In pursuing criminal charges against Ms. Williams-Bolar, school officials reasoned that Ms. Williams-Bolar was stealing from citizens who pay taxes to live in the Copley-Fairlawn School District. Further, the judge who sentenced her indicated that she was given jail time as a deterrent to stop other nonresidents from unlawfully enrolling in school districts in which they are not entitled to enroll.

hibiting the development of housing that only the better-off can afford, these local policies effectively exclude the poor and people of color from the places that erect those policy fences.” (footnote omitted)).

6. See Daniel Kiel, The Enduring Power of Milliken’s Fences, 45 URB. LAW. 137, 144 (2013) (describing the role of local law in perpetuating racial disparities in public education noting that “just as the law had once mandated separation based upon race, so too does contemporary district sovereignty, enshrined in law, mandate separation based upon geography”).


8. STATE OF OHIO ADULT PAROLE AUTHORITY, KELLY WILLIAMS-BOLAR CLEMENCY REPORT 3 (Sept. 2, 2011), available at http://www.drc.ohio.gov/Public/WilliamsBolarKellyClemency.pdf. Ultimately Ms. Williams-Bolar served nine days in jail, was placed on probation for two years and, among other things, required to perform eighty hours of community service, abstain from consuming drugs or alcohol, and submit to random and frequent urine testing to detect for drugs or alcohol. Id.


10. Andrea Canning & Leezel Tanglao, Ohio Mom Kelley Williams-Bolar Jailed for Sending Kids to Better School District, ABC NEWS (Jan. 26, 2011), http://abcnews.go.com/US/ohio-mom-jailed-sending-kids-school-district/story?id=12763654. In addition to the tampering with records charges, the court also charged Ms. Williams-Bolar with one count of felony grand theft. The court ultimately dismissed the felony grand theft charge after the jury deadlocked and was unable to reach a verdict on the charge. STATE OF OHIO ADULT PAROLE AUTHORITY, supra note 8, at 12.

Significantly, Ms. Williams-Bolar’s address in Akron is only three miles from the address that she used to obtain access to the Copley-Fairlawn school district.12 But the Akron and Copley-Fairlawn School Districts are vastly different. The Akron school district is labeled in need of continuous improvement, because of its subpar performance on state assessments, and it has a predominately Black13 and poor student population.14 The Copley-Fairlawn school district is labeled excellent with distinction, because of its superb performance on state assessments, and it has a predominately white and middle-class student population.15

The criminal prosecution of Ms. Williams-Bolar, along with the glaring academic and demographic differences between the neighboring Akron and Copley-Fairlawn school districts, serves as a cautionary tale regarding the exclusionary role that local government law structures play in public education. Specifically, school district boundary lines foster exclusion and inequality in public education along the lines of race and class.


13. When using the term “Black”, I use the upper-case “B” to reflect the view, articulated by other scholars, that Black people are a specific cultural group and that the term “Black” is worthy of being capitalized as a proper noun. See Kimberlé Williams Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 HARV. L. REV. 1331, 1332 n. 2 (1988) (“When using ‘Black,’ I shall use an upper-case ‘B’ to reflect my view that Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.”;); Cheryl I. Harris, Whiteness as Property, 106 HARV. L. REV. 1709, 1710 n.3 (1993) (“I use the term ‘Black’ throughout the paper for the reasons articulated by Professor Kimberlé Crenshaw. I share her view that ‘Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.” (citing Kimberlé W. Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 HARV. L. REV. 1331, 1332 n.2 (1988))); Catherine Mackinnon, Feminism, Marxism, Method, and the State: An Agenda for Theory, 7 SIGNS: J. WOMEN IN CULTURE & SOC’Y 515, 516 (suggesting that the letter “B” in Black should be capitalized because Black is not “merely a color of skin pigmentation, but . . . a heritage, an experience, a culture and personal identity . . .”).


15. OHIO DEPT OF EDUC., COPLEY-FAIRLAWN CITY SCHOOL DISTRICT: 2011–2012 SCHOOL YEAR REPORT CARD 5 (2012), available at http://reportcard.education.ohio.gov/Archives/Copley-Fairlawn%20City%20-%20Summit/Copley-Fairlawn%20City%20-%20Summit/049981_2011-2012_DIST.pdf (noting that students in the district met all twenty-six indicators of academic achievement on state assessments and that only 18.7 percent of students are considered economically disadvantaged and 74.6 percent of students are white).
With few exceptions, school districts draw boundary lines so that students attend school where they live.16 School districts are independent and autonomous local governments.17 They are responsible only for providing education to the students who live within the district’s boundary lines.18 Metropolitan fragmentation—the existence of numerous local governments within a metropolitan area19—produces high levels of race- and class-based residential segregation.20 Because school districts draw boundary lines so that students attend school where they live, the demographics and resources available to school districts are a function of the localities in which they are situated.21

16. A few school districts have interdistrict open enrollment plans, which allow students to attend a school outside of the district in which they live. Interdistrict plans, however, are limited insofar as they allow the receiving school districts to turn away students if they lack the capacity to accommodate them. Other logistical challenges, such as transporting students between district lines and limitations on the number of interdistrict transfers a receiving district will take, limit the overall effectiveness of many of the interdistrict enrollment plans. Aaron Y. Tang, Privileges and Immunities, Public Education, and the Case for Public School Choice, 79 GEO. WASH. L. REV. 1103, 1115–18 (2011) (documenting the states that have interdistrict enrollment statutes and the practical impediments to effectively utilizing the interdistrict enrollment options).

17. Though the provision of public education is one of the powers reserved to the states under the Tenth Amendment to the U.S. Constitution, most state legislatures delegate this power to school districts. See, e.g., State ex rel. Sch. Dist. of Independence v. Jones, 653 S.W.2d 178, 185 (Mo. 1983) (“School districts are bodies corporate, instrumentalities of the state established by statute to facilitate effectual discharge of the General Assembly’s constitutional mandate to ‘establish and maintain free public schools for the gratuitous instruction of all persons in this state . . . . ’”); Pocantico Home & Land Co. v. Union Free Sch. Dist. of Tarrytowns, 799 N.Y.S.2d 235, 239 (N.Y. App. Div. 2005) (“School districts in this State are creatures of statute, which can only be formed, dissolved, or altered in accordance with the provisions of Title II of the Education Law.”).


19. The terms “metropolitan area” and “metropolitan region” are used interchangeably throughout this Article to mean “a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.” Metropolitan and Micropolitan: About Metropolitan and Micropolitan Statistical Areas, U.S. CENSUS BUREAU, http://www.census.gov/population/metro/about (last visited Nov. 9, 2013).

20. See George C. Galster, Polarization, Race, and Place, 71 N.C. L. REV. 1422, 1432–33 (1993) (“A notable feature of most American metropolitan areas is their jurisdictional fragmentation . . . . This fragmentation constrains minorities primarily by intensifying income-class spatial segregation and attendant fiscal disparities among jurisdictions.”); Orfield, Land Use and Housing Policies, supra note 5, at 877–79 (arguing that metropolitan fragmentation results in residential segregation and concentrated poverty). For a fuller discussion of the reasons why metropolitan fragmentation leads to race- and class-based residential segregation, see infra Part L and accompanying footnotes.

21. See Denton, supra note 4, at 815 (describing the role of metropolitan fragmentation in creating residential segregation and in turn school segregation); Saiger, Boundary Problem, supra note 2, at 502–03 (describing how school districts take on the financial and racial characteristics of the larger locality in which they are situated).
Thus, school districts in more affluent, typically predominately white localities have more resources and can offer educational inputs that significantly enhance the quality of education students receive. Conversely, school districts in poorer, typically predominately minority localities have fewer resources and educational inputs to offer relative to the need of their students. Further, owing in large part to a preference for local control of public education, local government law structures in most states do not require or even encourage interdistrict collaboration in order to address disparities between neighboring school districts. In fact, as demonstrated by Ms. Williams-Bolar’s case, the law permits school districts to exclude nonresidents through extreme means including criminally prosecuting those who impermissibly cross school district boundary lines.

22. See, e.g., Wayne Batchis, Urban Sprawl and the Constitution: Educational Inequality as an Impetus to Low Density Living, 42 Urb. L. W. 95, 96–97 (2010) (noting that schools and school districts evidence a patchwork of inequality and that while “[s]ome schools . . . are distinguished by their brand new facilities, technological innovation, experienced and highly paid staff, and upper middle-class white student body . . . others are noted for their decaying infrastructure, antiquated textbooks, inexperienced teachers and poor minority students”).

23. Id.

24. See Jennifer Jellison Holme, Sarah L. Diem & Katherine Cumings Mansfield, Regional Coalitions and Educational Policy: Lessons from the Nebraska Learning Community Agreement, in INTEGRATING SCHOOLS IN A CHANGING SOCIETY: NEW POLICIES AND LEGAL OPTIONS FOR A MULTIRACIAL GENERATION 151 (Erica Frankenberg & Elizabeth Debray eds., University of North Carolina Press 2011) [hereinafter Jellison Holme et al., Regional Coalitions and Educational Policy] (noting the lack of cooperation between school districts to address racial and economic isolation of students); Aaron Jay Saiger, The Last Wave: The Rise of the Contingent School District, 84 N.C. L. Rev. 857, 867–68 (2006) [hereinafter Saiger, The Last Wave] (noting that for suburbanites “educational localism provides a method for [the] realization . . . of segregation by wealth and taste for education; the concomitant ability to wall themselves off from responsibility, both fiscal and political, for less fortunate school systems; and a way to capitalize their tax investments in public school into privately held home values” (footnotes omitted)).

In many ways, the modern story of inequality and exclusion in education described above is part of a broader story often told by local government law scholars about how metropolitan fragmentation, in conjunction with localism, creates inequalities between neighboring localities. These scholars trumpet regionalism—loosely defined as a theoretical framework that advocates for the enactment of regional government or governance structures—as a potential solution to curbing the regional inequalities caused by metropolitan fragmentation and localism. Under the umbrella of regionalism, local government law scholars advance a number of different proposals. Although the particulars of the regionalism proposals vary, almost all of the proposals recognize the importance of local governments working together to address issues on a regional level so that public goods can be disseminated more efficiently and equitably throughout metropolitan regions.

While both education law and local government law scholars recognize that fiscal and racial inequalities between neighboring school districts are a byproduct of metropolitan fragmentation and localism, few critically examine how regionalism might apply in the public education context. In part, the re-


27. See, e.g., Richard Briffault, The Local Government Boundary Problem in Metropolitan Areas, 48 STAN. L. REV. 1115 (1996) [hereinafter Briffault, The Local Government Boundary Problem] (discussing the ways in which local laws and structures breed economic and racial disparities between cities and suburbs); Cashin, Localism, Self-Interest, and the Tyranny of the Favored Quarter, supra note 26, at 1991–95 (noting that the segregation of the poor, affluent, white, and nonwhite has increased along with the creation of numerous autonomous local governments).


29. See Reynolds, Intergovernmental Cooperation, supra note 28, at 112–16 (describing the similarities and variations in regionalism proposals).


31. See, e.g., Briffault, Our Localism Part II, supra note 28, at 438 (arguing that metropolitan fragmentation leads to economic disparities between neighboring jurisdictions and that children in poorer jurisdictions receive inferior educational opportunities); Kiel, supra note 6, at 146–47 (describing the effects of education localism in creating educational disparities along the lines of race and class in a highly fragmented metropolitan area).

32. See, e.g., Elizabeth Debray & Erica Frankenberg, Federal Legislation to Promote Metropolitan Approaches to Educational and Housing Opportunity, in INTEGRATING SCHOOLS IN A CHANGING SOCIETY: NEW POLICIES FOR A MULTIRACIAL GENERATION 281–301 (Erica
luctance of these scholars to take on this task lies in a deep-seated belief that localism in public education is so entrenched that regionalism in education is politically and practically infeasible.33 This Article challenges that notion. It critically examines the ways in which regionalism might be applied in public education.

The Article proceeds as follows: Part I provides a brief overview of the causes of metropolitan fragmentation and the inequalities that it produces within metropolitan areas. Part I then situates metropolitan fragmentation within the literature on localism, examining the benefits and costs of localism. Part II analyzes how adherence to localism in the public education context, in conjunction with metropolitan fragmentation, creates disparities between neighboring school districts along the lines of race and class. It then makes the normative claim that the sole reliance on localist educational governance structures is harmful because it disguises the extent to which localities within metropolitan areas are interdependent.34

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

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33. See Jellison Holme et al., Regional Coalitions and Educational Policy, supra note 24, at 152–53 (noting that regional policies in education remain few in number because they are difficult to create).

34. See Janice C. Griffith, Regional Governance Reconsidered, 21 J.L. & POL. 505, 510–12 (2005) (noting that Americans live on a regional scale in terms of travel, shopping, and recreational needs and as a result, the economies and social wellbeing of localities within metropolitan regions are codependent on one another).
I. **METROPOLITAN FRAGMENTATION: CAUSES AND CONSEQUENCES**

Metropolitan fragmentation\(^{35}\) and political decentralization\(^{36}\) are prominent characteristics of U.S. local government law structures. Scores of independent and autonomous local governments operate throughout most U.S. metropolitan regions.\(^{37}\) The highly fragmented and politically decentralized American metropolis is the result of conscious design rather than coincidence.\(^{38}\) Some scholars suggest that metropolitan fragmentation is beneficial because it results in the efficient provision of public goods by breeding competition among multiple localities for residents.\(^{39}\) Furthermore, scholars also contend that political decentralization facilitates democracy and democratic values because smaller local governments are closer to citizens and more readily allow citizens to participate in the democracy.\(^{40}\)

Yet metropolitan fragmentation and political decentralization come at a cost, namely economic and racial segregation between localities.\(^{41}\) This Part provides a brief overview of the causes of metropolitan fragmentation and describes why

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35. This Article uses the term “metropolitan fragmentation” to mean the existence of several overlapping and independent local governments across metropolitan regions. See generally GREGORY R. WEIHER, THE FRACTURED METROPOLIS: POLITICAL FRAGMENTATION AND METROPOLITAN SEGREGATION 4 (A. Gary Dworkin ed., 1991) (defining and discussing the causes of metropolitan fragmentation).

36. This Article uses the term political decentralization to mean the delegation of political power to a subordinate unit of government. See generally Edward L. Rubin & Malcolm Feeley, Federalism: Some Notes on a National Neurosis, 41 UCLA L. REV. 903 (1994) (noting that decentralization has many meanings and discussing the meaning of decentralization within the political context).

37. See U.S. CENSUS BUREAU, 2012 CENSUS OF GOVERNMENTS: ORGANIZATION COMPONENT PRELIMINARY ESTIMATES, TABLE 2. LOCAL GOVERNMENTS BY TYPE AND STATE (2012), http://www2.census.gov/govs/cog/2012formatted_prelim_counts_23jul2012_2.xls (showing that as of 2012, there were a total of 89,004 local governments operating throughout the United States and a total of 12,884 independent school districts); Reynolds, Intergovernmental Cooperation, supra note 28, at 93 (arguing that “[m]etropolitan America remains stubbornly resistant to attempts to limit local government proliferation and the political fragmentation and territorial overlapping it produces”).

38. WEIHER, supra note 35, at 3–4 (noting that in other countries, even where there is suburbanization or fragmentation, it serves a rational public purpose of equalizing economic development).


40. WEIHER, supra note 35, at 2–3 (characterizing decentralization and fragmentation in American metropolitan regions as Jeffersonian in its origins because of the emphasis on local governments with the understanding that they are supposed to be the incubators of democracy, training citizens in their rights and responsibilities).

41. See, e.g., Kendra Bischoff, School District Fragmentation and Racial Residential Segregation: How Do Boundaries Matter?, 44 URB. AFF. REV. 182, 197–200 (2008) (finding support for the hypothesis that fragmentation increases residential racial segregation through the Theil Index). The Theil Index measures the evenness or unevenness of the spatial distribution of population subgroups in tracts within counties. It is used to measures levels of racial diversity or economic inequality in a particular area. See Thiel, Henri and Anthony J. Finezza, A Note on the measurement of racial integration of schools by means of informational concept, 1 J. MATHEMATICAL SOCIOLOGY 187, 187–94 (1971).
metropolitan fragmentation results in racial and economic residential segregation. It also discusses how the preference for localism or decentralized governance structures, in conjunction with metropolitan fragmentation, creates inequalities between neighboring localities within metropolitan areas.

A. Race, Class, and Metropolitan Fragmentation

Metropolitan fragmentation is purportedly race and class neutral. No laws mandate that localities must consist of persons of a particular race or class. Nevertheless, a substantial body of research demonstrates that the more fragmented a metropolitan area is, the more likely racial and economic segregation exists within that metropolitan area.42 Numerous factors lead to metropolitan fragmentation occurring along the lines of race and class.43 Two factors worth highlighting are (1) the role of federal, state, and local laws and policies in creating racial and economic residential segregation across political boundary lines, and (2) theories related to residential sorting. This Subpart discusses these factors in turn.

1. The Role of State, Federal, and Local Laws and Policies in Perpetuating Residential Segregation

State laws that make incorporation and the formation of local governments relatively easy contribute significantly to metropolitan fragmentation.44 States have exclusive control over the creation of local governments. In *Hunter v. City of Pittsburgh*, the U.S. Supreme Court held that local governments are merely political subdivisions of the state and that states have plenary power over local governments in every regard.45 Thus, states determine whether to create local governments, the amount of power they can exercise, and their relationship to other local governments within a metropolitan region.46

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42. See Bischoff, supra note 41, at 197–200; Weiher, supra note 35, at 31–32; Scott J. South, Kyle Crowder; Jeremy Pais, Metropolitan Structure and Neighborhood Attainment: Exploring Intermetropolitan Variation in Racial Residential Segregation, 48 Demography 1263, 1289 (2011) (finding that political fragmentation shapes neighborhood composition for whites by providing whites with more opportunities to locate in exclusively white neighborhoods).


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


46. See id. (holding that municipal corporations are subdivisions of the state and that the state “at its pleasure may modify or withdraw all such powers [of the corporation], . . . hold it itself, or vest it in
During the nineteenth century, state legislatures often exercised their plenary powers to require the annexation of unincorporated territories to a neighboring larger central city. The preference for annexation during this time reflected an underlying normative belief that larger centralized governance structures were more efficient than smaller decentralized governance structures. During the twentieth century, however, suburban services improved while the racial and ethnic demographics of central cities changed, particularly with an influx of European immigrants and African American migrants from the South. These changes caused many suburban residents to resist annexation. As a result, state laws in relation to unincorporated suburbs began to shift their focus away from annexation and toward incorporation. Indeed, many states significantly relaxed their incorporation requirements.

47. See, e.g., Paul Kantor, The Dependent City Revisited: The Political Economy of Urban Development and Social Policy 55 (1995) (noting that state laws during the twentieth century ensured that almost no alternative to annexation by the central city existed for a suburb that wanted to enjoy better public services because state laws did not permit existing township and county governments to provide many public services); see also Daly v. Morgan, 16 A. 287, 289 (1888) (rejecting an attempt to stop Baltimore from annexing an unincorporated territory reasoning that “n[o] one knew better than the framers of the [Maryland] constitution . . . that the time [would] come . . . when the extension of the limits of a great city like Baltimore would be absolutely necessary to its proper growth and development”).

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

49. See id. at 150 (stating that annexation fell out of favor with suburban residents and state legislatures because of improved suburban services and sharper racial, ethnic, and class distinctions in central cities).

50. See id. at 148–50 (chronicling the decline in population in major central cities in the United States during the twentieth century and suggesting that the reason for the decline was a shift from state laws favoring annexation and consolidation policies to the enactment of state laws that allowed for suburbs outside of central cities to incorporate with relative ease); Kantor, supra note 47, at 164 (“Because state law in the twentieth century was altered to allow relatively easy incorporation in order to prevent further annexation by central cities of suburban areas, families and businesses moving to suburbia almost universally sought municipal incorporation in order to control the development of their communities.”).

51. See, e.g., Ford, supra note 5, at 1863 (asserting that many states allowed for incorporation if the residents of unincorporated territories could show that a minimum number of their neighbors
While relatively lax state laws related to local government incorporation contributed to the current state of metropolitan fragmentation, federal laws and policies contributed to metropolitan fragmentation along racial lines. Other scholars have written extensively about the role of the federal government in contributing to the racialized nature of metropolitan fragmentation and a complete account is beyond the scope of this Article. Nevertheless, it is important to note that the federal government subsidized mortgages and provided states with federal funds to build highways that made it easier for white middle-class citizens to live in suburban outposts and to commute to central cities for work. At the same time, the federal government created policies that made it relatively easy for whites to move to suburban outposts, while also ensuring that poor and minority residents would remain confined to central cities. Notably, the Federal Housing Administration mortgage insurance underwriting program underwrote loans for home purchases only in white racially homogenous communities and explicitly encouraged the maintenance of residential segregation as a matter of public favored incorporation); Mandelker, supra note 44, at 276–77 (asserting that state statutes allowed for incorporation via a showing of vague and minimal requirements, for instance that incorporation must be “right and proper” or “reasonable”).

52. In addition, state and local laws and polices also contributed to metropolitan fragmentation being racially circumscribed. See, e.g., Audrey G. McFarlane, Operatively White?: Exploring the Significance of Race and Class Through the Paradox of Black Middle-Classness, 72 LAW & CONTEMP. PROBS. 163, 173–74 (2009) (describing racial zoning ordinances enacted by various municipalities that explicitly dictated that areas be zoned for a particular race).


54. More specifically, the New Deal legislation created the Home Owners’ Loan Corporation (HOLC) after the great depression in 1933. The HOLC offered low-interest long-term loans to help families purchase homes. The HOLC, however, developed residential maps to categorize the risks associated with lending money to residents interested in purchasing houses in a particular neighborhood. The HOLC maps categorized any neighborhood with Black residents as extremely high risk. As a result, both the HOLC and the private lending market denied loans to Blacks, as the private lending market also used the HOLC maps when categorizing the risks associated with issuing a mortgage. See RUSK, supra note 53, at 24–25.

55. See e.g., WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 46 (1996) (noting that the suburbanization of the middle class was facilitated by the federal government’s transportation and highway policy); Florence Wagman Roisman, The Lessons of American Apartheid: The Necessity and Means of Promoting Residential Racial Integration, 81 IOWA L. REV. 479, 491 (1995) (“[T]he federal government’s role in using the interstate highway and urban renewal programs to segregate blacks has been documented often.”).

56. See MASSEY & DENTON, supra note 43, at 149.

57. See id.
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policy.\textsuperscript{58} While the federal government ended these policies during the 1950s, it failed to enact laws and policies to prohibit housing discrimination until nearly a decade later,\textsuperscript{59} by which time it had already greatly assisted in the entrenchment of racially identifiable spaces in the cities and suburbs.\textsuperscript{60} Further, gaps in the enforcement of federal antidiscrimination housing laws\textsuperscript{61} and resistance to affirmative suburban desegregation programs allowed white racial homogeneity outside of central cities to persist unabated well after the enactment of federal antidiscrimination housing laws.\textsuperscript{62}

In addition to federal laws and polices contributing to racially circumscribed metropolitan fragmentation, local governments enacted land use and taxation policies that also ensured that only middle-class or affluent residents would be able to move to certain, usually suburban, localities.\textsuperscript{63} Indeed, during the era of mass suburbanization, many suburban localities enacted zoning laws that precluded the poor, who were also likely to be minorities, from residing in the sub-

\textsuperscript{58} See RUSK, supra note 53, at 24–25 (noting that the Federal Housing Administration and the Veterans Administration, which provided housing loan assistance to military veterans, embraced HOLC’s racially discriminatory underwriting practices). The Federal Housing Administration encouraged the use of racially restrictive covenants as late as 1950, after the U.S. Supreme Court had found such covenants unconstitutional in \textit{Shelley v. Kraemer}, 344 U.S. 1 (1948). See generally GUY STUART, DISCRIMINATING RISK: THE U.S. MORTGAGE LENDING INDUSTRY IN THE TWENTIETH CENTURY (2003) (describing the history of discrimination by the Federal Housing Administration in its loan underwriting program).

\textsuperscript{59} The Fair Housing Act, signed into law in 1968, is aimed at prohibiting discrimination in the sale, rental, or financing of housing on the basis of race, sex, religion, or national origin. See 42 U.S.C. §§ 3604(a)–3604(e) (2000). Significantly, the Fair Housing Act was one of the last pieces of federal civil rights legislation enacted. The Act was passed largely as a response to rioting by frustrated members of the Black community who were limited to living in segregated urban ghettos as a result of discrimination in the housing market. See 114 CONG. REC. 2278 (statement of Sen. Walter Mondale) (“[T]here is a substantial market of financially able Negroes prevented from buying housing of their choice because of deeply entrenched patterns of discrimination in the sale and rental of housing in our country.”).

\textsuperscript{60} See Ford, supra note 5, at 1848–49 (arguing that federal government policies created racially identified spaces, which were further shaped by private associations of white homeowners who “lobbied city councils for zoning restrictions” and “threatened boycotts of real estate agents who sold homes to Blacks”).

\textsuperscript{61} Before the 1988 amendments to the Fair Housing Act, the Act was widely viewed as ineffective because of barriers to enforcement of the Act. See, e.g., H.R. REP. No. 100-711, at 15 (1988) (noting that although the Fair Housing Act “provides a clear national policy against discrimination in housing, it provides only limited means for enforcing the law”).

\textsuperscript{62} See Erica Frankenberg & Gary Orfield, \textit{Why Racial Change in the Suburbs Matters, in The Re Segregation of Suburban Schools: A Hidden Crisis in American Education} 1, 7 (Erica Frankenberg & Gary Orfield eds., 2012) (describing efforts by Housing and Urban Development (HUD) Secretary George Romney to implement a suburban housing desegregation program to reduce racial segregation in the cities and suburbs that was blocked by then President Richard Nixon).

\textsuperscript{63} State governments typically delegate nearly complete authority to control land use to local governments. See KANTOR, supra note 47, at 126–27.
urbs through the adoption of minimum lot size requirements or single-family home restrictions. Such restrictions had the effect of driving up the cost of housing so that poor people could not afford to live in jurisdictions that have those types of zoning laws. Such zoning laws are still in effect today in many suburban jurisdictions and continue to have the same race- and class-based exclusionary effects.

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

While explicit federal, state, and local laws and policies undoubtedly contributed to metropolitan fragmentation being circumscribed by race and class, residential sorting theories can also explain some of the persistence of race and class delineated metropolitan fragmentation. Two residential sorting theories that have consequences for race and class stratification between school districts are worth noting: Charles Tiebout’s theory of local expenditures and Gregory Weiher’s theory that political boundaries serve a recruitment function.

Tiebout hypothesizes that the creation of multiple local governments with the autonomy to determine the level of public services and the level of taxation imposed on residents causes interjurisdictional competition within a metropolitan area for residents. This competition consists of jurisdictions offering varying levels of a public good or service and varying levels of taxation in order to provide for that public good or service. The differentiation in the levels of public goods, services, and taxation provided by various localities allows residents, who Tiebout considers to be consumer-voters, to “vote with their feet” by moving to the jurisdiction that offers the mix of goods, services, and taxation levels that suits the consumer-voter’s preference.

64. See, e.g., id. at 165; WEIHER, supra note 35, at 13.
65. See WEIHER, supra note 35, at 13 (arguing that when zoning ordinances prohibit all housing except single-family dwellings, it increases the price of housing and effectively precludes the types of people that suburban dwellers deem undesirable from purchasing homes that comply with the zoning requirements).
66. See RUSK, supra note 53, at 24–25, 90; see also infra Part I.B.
67. See Tiebout, supra note 39.
68. See WEIHER, supra note 35, at 166.
69. See Tiebout, supra note 39.
70. See id. at 418–20.
71. See id.
While critics have questioned Tiebout’s theory on a number of grounds,72 it does have implications for understanding why metropolitan areas continue to be fragmented along the lines of race and class, particularly in the absence of explicit laws and policies that mandate or facilitate such racialized sorting. To the extent that residents are indeed consumer-voters who select the municipality in which they want to live based on their preferences for a particular mix of public services and the local taxation rate, it is often the case that the municipalities that offer higher qualities of essential public goods (for example, public education) generally charge more to live there.73 Consequently, such municipalities often contain a larger number of affluent (and usually white) residents because poor (and typically minority) residents often cannot afford to relocate to such municipalities.74

Gregory Weiher’s boundary line recruitment theory also explains present-day race and class circumscribed metropolitan fragmentation. According to Weiher, boundary lines are interactive and serve numerous functions, including a political, economic, and social function.75 The interaction between the political, economic, and social functions gives social meaning to the area encompassed by the boundary lines and provides critical information that helps people to realize whatever preferences they may have.76

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72. Critics most vocally attack Tiebout’s theory for its failure to take into account the costs to consumer-voters of “voting with their feet.” See, e.g., Briffault, Our Localism Part II, supra note 28, at 420–22 emphasizing the high monetary and nonmonetary costs of citizens “voting with their feet,” including the fact that poorer citizens have fewer options because of monetary and nonmonetary constraints such as the lack of affordable housing in some political jurisdictions and the need to be located in close proximity to a job, family, and friends that provide a social safety net). For other criticisms, see id. at 429–30 (arguing that the fragmentation contemplated by Tiebout’s theory allows local governments to take actions without taking into account the externalities imposed on neighboring jurisdictions); Gerald E. Frug, City Services, 73 N.Y.U. L. REV. 23, 28–31 (1998) (arguing that Tiebout’s theory ignores other important local government functions and trivializes humanity through its economic model of public good consumption).

73. See id. at 420 (“Suburban exclusionary ordinances, such as large-lot zoning and the exclusion of multifamily and subsidized housing, drive up the cost of housing in many jurisdictions, denying many potential movers a meaningful choice of places to live.”); Note, The Equal Protection Clause and Exclusionary Zoning After Vartrierra and Dandridge, 81 YALE L.J. 61, 63 (1971) (“The impact of exclusionary zoning falls most heavily on racial minorities, since proportionately more blacks than whites are members of low- and moderate-income families.”).

74. According to Weiher, boundary lines serve a political function in that they ascribe political authority to officials to tax, spend, and regulate the land between the boundary lines. They serve an economic function insofar as businesses located within the discrete areas circumscribed by boundary lines and the presence (or absence) of businesses within the boundary lines dictate the economic vitality of the area delineated by the boundary lines. Finally, boundary lines perform a social function insofar as they structure the interactions of the people who live within them and give a social distinctiveness to the geography between the boundary lines. Weiher, supra note 35, at 33–35.

75. Id. at 35.
For example, ostensibly race-neutral local land use and taxation policies (a political function served by boundary lines) can often disproportionately exclude people of color from a locality. The locality can become known for its homogeneity, thereby allowing those who do prefer racial segregation to move into a racially segregated locality. Further, even when minorities have the means to move into more affluent, predominately white localities, they may also prefer to remain in racially segregated neighborhoods and the existence of discrete boundary lines gives them the information that they need to do so. Thus, to the extent that boundary lines provide social meaning to geographic spaces, they become recruitment tools that allow residents to locate themselves in accordance with their preferences thereby allowing metropolitan fragmentation to continue occurring along the lines of race and class in the absence of explicit federal, state, or local policies.

B. The Connection Between Fragmentation, Localism, and Distributional Inequalities Within Metropolitan Areas

The race- and class-based residential segregation that often accompanies metropolitan fragmentation is also a result of a strong adherence to principles of localism. Localism is the ideological preference for decentralized, independent, and autonomous governance structures. Localism is the theoretical foundation that underlies the current system of local government structuring in most metropolitan areas today. One of the central tenants of localism is that local government should “enable[] the people who live within . . . discrete areas to organize
themselves into distinct political units and give[ ] those units power to make decisions with respect to a range of public policies and services.83

The scholarly literature on localism offers three separate and distinct arguments in support of enacting localist governance structures: efficiency,84 increased citizen participation,85 and inculcation of a strong sense of community among citizens.86 Each of the justifications advanced in favor of localism has some merit. Smaller and more numerous local governments do in some sense promote efficiency. The ever-present threat of citizens leaving one locality within a metropolitan region for another results in competition among localities, which “creates an efficient local government marketplace.”87 Further, localism can in some instances lead to increased citizen participation.88 The creation of neighborhood councils within localities, for example, has proved successful in increasing civic engagement and community involvement in decision making.89 Finally, there is also support for the argument that localism helps to build a sense of community among residents. Smaller and more homogenous communities have shown an ability to galvanize around issues that impact their community and to agree on collective courses of action.90

Yet for all of the benefits wrought by localism, it has a number of sizable shortcomings. The most comprehensive criticism of localism is that it generates spillovers, fiscal disparities, interlocal conflicts, and it excludes undesirable resi-
In a highly fragmented metropolis, localism leads to spillovers because local governments are each treated as their own “little republic.” They have locally bounded regulatory powers that do not empower or encourage collaboration with other localities. Thus, localities are free to make decisions related to land use, pollution, and taxation that inevitably impact the localities that surround them but without consulting with the other localities that may be impacted and without fully absorbing the costs of their actions.

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

94. See, e.g., Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 69 (1978) (“The imaginary line defining a city’s corporate limits cannot corral the influence of municipal actions. A city’s decisions inescapably affect individuals living immediately outside its borders. The granting of building permits for high rise apartments, industrial plants, and the like on the city’s fringe unavoidably contributes to problems of traffic congestion, school districting, and law enforcement immediately outside the city. A rate change in the city’s sales or ad valorem tax could well have a significant impact on retailers and property values in areas bordering the city. . . . Yet no one would suggest that nonresidents likely to be affected by this sort of municipal action have a constitutional right to participate in the political processes bringing it about.”).
95. Briffault, The Local Government Boundary Problem, supra note 27, at 1136.
97. Notably, this type of fiscal zoning was sanctioned by the Supreme Court in Village of Euclid v. Amber Realty Co., 272 U.S. 365 (1926), in which the Court upheld a zoning ordinance that severely restricted multifamily housing and industrial and commercial use of land, reasoning that the restrictions were appropriate in order to maintain the preferred residential character of the area. Village of Euclid provided a blueprint for exclusionary zoning techniques currently used by localities to build their tax base while minimizing costs expended on social services.
98. See Orfield, The Region and Taxation, supra note 32, at 92 (arguing that localities compete with each other for tax wealth and social status in the form of businesses and high-income white residents).
would require more social services such as the poor and minorities. This forces poor and minority residents to choose localities with weaker tax bases and an inability to meet the much-needed demand for social services.

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

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99. See, e.g., Myron Orfield, Metropolitics: A Regional Agenda for Community and Stability 62 (1997) (noting that jurisdictions compete for property wealth and that fiscal zoning allows jurisdictions to deliberately develop zoning policies that only allow for expensive homes and commercial property which enables them to "limit social need and the demand on [the] tax base that it can engender").

100. Importantly, as local government law scholars have noted, the competition between jurisdictions for desirable businesses and residents is often not on even terms. Affluent jurisdictions are able to obtain a larger and disproportionate share of public infrastructure investments such as highways and roads that contributes to their ability to attract businesses and residents. They are also able to "garn[er] many of the benefits of participating in a regional economy—such as access to regional labor markets and consumers, as well as to regional highway systems . . . while not sharing appreciably in regional social burdens." Cashin, Localism, Self-Interest, and the Tyranny of the Favored Quarter, supra note 26, at 2014–15. This results in localities not internalizing the true costs of their decisions. See id. at 2006.

101. See supra Part I.B.

102. Some scholars have gone even further, arguing that localism does not just facilitate racial segregation and concentrated poverty but instead is a direct causal agent of racial segregation and concentrated poverty. See, e.g., David D. Troutt, Localism and Segregation, 16 J. Affordable Housing & Community Dev. L. 323, 325 (2007) ("It is time that localism, legal and cultural, be recognized as the primary agent behind resegregation . . . ."); John Powell, Race, Place, and Opportunity, AM. PROSPECT (Sept. 21, 2008), http://prospect.org/article/race-place-and-opportunity.

103. See, e.g., Young v. Am. Mini Theaters, Inc., 427 U.S. 50, 71–72 (1976) (upholding a zoning ordinance that limited the places in which theaters showing sexually explicit movies could be located and in doing so reasoned that "the city's interest in the present and future character of its neighborhoods adequately supports" the restrictive zoning ordinances); Vill. of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974) (upholding a zoning ordinance that prohibited three or more unrelated people from living together, reasoning that to the extent the ordinance sought to create a "quiet place where yards are wide open, people few, and motor vehicles restricted," such a purpose was a permissible objective and the ordinance was a rational means of achieving that objective).

104. See, e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 257–58 (1977) (rejecting the plaintiff's claim that it was denied a zoning variance that would have allowed it to build a low-income housing development outside of Chicago because of racial animus after acknowledging that Black people were disproportionately affected by the lack of affordable housing caused by the zoning ordinance at issue). The Court rejected the plaintiff's claim despite evidence that opponents of the zoning ordinance made reference to "what was referred to as the 'social issue' the desirability or undesirability of introducing at this location in Arlington Heights low-
Disturbingly, because of the aforementioned costs of localism, the economic and political advantages enjoyed by predominantly white and affluent jurisdictions are now institutionalized such that most people accept them as normal without questioning the inequities they represent. Many do not readily acknowledge or discuss the history of government discrimination that aided in racially and economically delineated metropolitan fragmentation. Consequently, “citizens may tend to view [the current] fiscal, economic, and social inequality [within metropolitan regions] as reflections of private choice and merit.”

Many are also likely to view the racial and economic stratification of metropolitan areas and the accompanying inequalities as the natural order of things. Indeed, citizens arguably have a difficult time imagining a different distributional order. The result is that citizens are less likely to question stark inequalities within metropolitan areas, particularly to the extent that the inequalities exist along dimensions of race and class. They are also less likely to desire to take collective action to address inequalities or problems that affect the metropolitan region as a whole.

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

Race and class delineated metropolitan fragmentation also affects school districts. School districts are local governments. School district fragmentation

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105. *See Cashin, Localism, Self-Interest, and the Tyranny of the Favored Quarter, supra note 26, at 2024–27* (arguing that metropolitan fragmentation inculcates a parochialism that not only discourages citizens from forming beneficial regional alliances but also institutionalizes the advantaged position of the wealthier, usually whiter, jurisdictions such that they come to believe that it is the natural order of things and are not inclined to question or challenge gross metropolitan inequalities).

106. *See id. at 2026; see also Powell, supra note 102* (suggesting that where one lives has important consequences for the distribution of opportunity in America and noting that a “myriad of public policies and private practices create these spatial opportunity structures and sort people into them”).

107. *Cashin, Localism, Self-Interest, and the Tyranny of the Favored Quarter, supra note 26, at 2026.*

108. *See id.; cf. Powell, supra note 102* (“It is critically important to appreciate that [segregation and inequality] are not natural. Racial segregation was historically legislated, through direct and indirect means, into the very fabric of our communities. And its legacy continues to undermine our individual and communal choices and our capacities to elevate ourselves and our neighborhoods.”).


110. *See, e.g., CHARLES J. RUSSO, THE LAW OF PUBLIC EDUCATION 167 (2012)* (explaining that school boards are “creatures of the state” designed by legislatures to carry out their constitutional mandates to educate children entrusted to their care); *Briffault, The Local School District, supra note 18, at 25* (“[A] school district is a local government.”).
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is the existence of multiple school districts within a metropolitan area. Just as local governments compete for residents, school districts also “compete for residents [who] shape their populations, tax bases and programs.” Thus, the same distributional inequities that plague general-purpose local governments also plague school districts. As a result, neighboring school districts within metropolitan areas offer disparate qualities of public education creating what this Article refers to as regional inequalities in public education. This Part describes the relationship between school district fragmentation and metropolitan fragmentation. It analyzes how both forms of fragmentation create regional inequalities in public education. It also discusses why such inequalities matter and analyzes how localism exacerbates the inequalities.

A. School District Fragmentation and Metropolitan Fragmentation

There are close to 13,000 independent school districts operating in the United States. Levels of school district fragmentation vary substantially across geographical regions within the United States. While school district fragmentation exists at different rates across the country, it exists at a significant enough level in every United States geographic region to raise concerns about how school district fragmentation collectively affects educational opportunities for all students.

For example, in a study of United States metropolitan statistical areas (MSAs), researchers found that the average level of fragmentation within the

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112. Saiger, Boundary Problem, supra note 2, at 500.
115. For example, even though the South has school district fragmentation at a lower rate than the national average, scholars have recognized that the problems created by school district fragmentation still significantly impact educational distributional opportunities and racial segregation in Southern school districts. See, e.g., Erica Frankenberg, Splintering School Districts: Understanding the Link Between Segregation and Fragmentation, 34 LAW & SOC. INQUIRY 869 (2009) (examining how the creating of new school districts in Jefferson County, Alabama changed the nature of school segregation from intradistrict segregation to interdistrict segregation).
116. A metropolitan statistical area (MSA) is defined by the U.S. Census Bureau as a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core. To be an MSA, an area must have at least one urbanized area of 50,000 or more inhabitants. See Metropolitan and Micropolitan Statistical Areas Main, U.S. CENSUS BUREAU (2013), http://www.census.gov/population/metro.
MSAs studied was .72; meaning that a 72 percent probability existed that two randomly selected students within a metropolitan region would attend schools in different school districts.\textsuperscript{117} School district fragmentation is the highest in the Northeast at .862; meaning, there is an 86.2 percent chance that two randomly selected students within a metropolitan region in the Northeast will attend schools in different school districts.\textsuperscript{118} School district fragmentation is similarly high in the Midwest at .744 and lowest in the West and South at .691 and .650, respectively.\textsuperscript{119}

Significantly, metropolitan regions with high levels of school district fragmentation are the most likely to have severe racial segregation in their schools.\textsuperscript{120} In contrast, larger school districts located in metropolitan areas with less fragmentation have less racial segregation because they have a larger base of more diverse students from which they can draw.\textsuperscript{121} Further, the more fragmented general-purpose local governments are within a metropolitan area, the more likely school districts within that metropolitan area are to be highly fragmented.\textsuperscript{122}

\begin{footnotesize}
\begin{enumerate}
\item[117.] Bischoff, \textit{supra} note 41, at 196–97.
\item[118.] \textit{Id.} at 197–98. It is worth noting that of all the MSAs studied, the MSA with the highest level of school district fragmentation was located in the Northeast—Nassau-Suffolk, New York, which had a fragmentation level of .986, meaning that there is a 98.6 percent chance that two randomly selected students in that area will attend different school districts. \textit{Id.} at 197.
\item[119.] \textit{Id.} at 197–98. Levels of fragmentation in the various United States geographical regions are a product of the state laws related to government formation and in the case of the South its history of running dual school systems because of de jure school segregation. For example, the Northeast and Midwest likely have higher levels of school district fragmentation because historically the laws regarding local government formation in those states favored incorporation of suburbs into independent municipalities with their own independent suburban school districts as well. See William A. Fischel, \textit{The Congruence of American School Districts With Other Local Government Boundaries: A Google-Earth Exploration} 20–23 (Apr. 2010) (unpublished manuscript) (describing the laws related to school district formation in the Northeast and Midwest and noting that the “town remains the sacrosanct atom for school districts in New England” and that the Midwest initially followed the New England model as well); Holme & Finnigan, \textit{School Diversity}, supra note 111, at 5. The South on the other hand has county-based school systems, which means less school district fragmentation because the county became the traditional unit of governance in light of the racially segregated system of education implemented in the South. See Fischel, \textit{supra} note 119, at 24 (noting that after the Civil War the South set up separate subcounty districts for schools between blacks and whites).
\item[120.] See Batchis, \textit{supra} note 22, at 98 (summarizing the findings of a study that showed that areas with small school districts and high levels of school district fragmentation were also likely to have high levels of racial segregation in their schools); Charles T. Clotfelter, \textit{Public School Segregation in Metropolitan Areas}, 75 \textit{LAND ECONOMICS} 502, 502–503 (1999) (concluding that regional differences in levels of metropolitan fragmentation results in high levels of residential segregation which in turn accounts for metropolitan area school segregation).
\item[121.] See Clotfelter, supra, note 120, at 503 (finding that larger districts are less segregated because they “allow the possibility of mixing students from diverse neighborhoods”).
\item[122.] For example, states in the Northeast and Midwest have the highest levels of municipal fragmentation. Similarly, “[s]chool districts [are] more likely to be coterminous with city boundaries
Moreover, “[t]he relationship between municipal boundaries and school district boundaries has a direct bearing on levels of school segregation and on the fiscal condition of . . . school districts . . . .”123 This is the case because the policies adopted by municipalities, particularly regarding land use, influence the racial composition and socioeconomic status of the residents the school districts will draw from.124

Simply put, the combination of metropolitan fragmentation and school district fragmentation within a metropolitan region increases the probability that school districts will be racially and economically segregated, have varying levels of student needs and disparate tax bases with which to work.125 This in turn leads to regional inequalities in public education insofar as localities with more middle-class and typically white students have higher tax bases to draw from, are able to offer higher qualities of education, and have higher levels of academic success.126 The converse is true for localities with more poor and minority students that have lower tax bases to draw from, offer lower qualities of education, and have lower levels of academic success.127

B. The Significance of Regional Inequalities in Public Education

The aforementioned regional inequalities in public education matter from an economic perspective and from a social equality perspective. Economically, metropolitan regions are assuming “greater significance in local, national and world affairs.”128 Indeed, many consider regions or metropolitan areas the premier unit of competition in the new global economy.129 People today live their lives in the upper midwestern states and the Northeast,” and thus show the highest levels of fragmentation. Holme & Finnigan, School Diversity, supra note 111, at 8.

123. Id.
124. See id. at 7–8.
125. See id. at 8.
126. See, e.g., Margaret C. Hobday, Geneva Finn & Myron Orfield, A Missed Opportunity: Minnesota’s Failed Experiment With Choice-Based Integration, 35 WM. MITCHELL L. REV. 936, 949–51 (2009) (describing the trends of urban and suburban student enrollment in the Minneapolis region and noting that the trend of concentrated poverty and racial segregation in urban schools negatively impacts student life outcomes); Saiger, Boundary Problem, supra note 2, at 502–07 (describing interjurisdictional variation between school districts as characterized by fiscal disparities racial disparities, and achievement disparities).
127. See Saiger, Boundary Problem, supra note 2, at 502–07.
129. Id. (noting that regions are viewed as the premier unit of competition in a global economy); Griffith, supra note 34, at 511 (arguing that the “increasing globalization of the economy has transformed metropolitan regions throughout the world into cohesive economic units,” and that “[o]ur artificial political boundaries were formed during an era in which travel times were considerably longer than those at present; economic activity today cuts across these local
on a regional rather than local scale. They cross jurisdiction boundary lines for activities including working, shopping, and entertainment.\(^{130}\) Thus, to the extent that an educated workforce is a prerequisite for economic growth,\(^ {131}\) inequalities between neighboring school districts within metropolitan areas have significant implications for the overall economic well-being of metropolitan regions.

By restricting high-quality public education to only a subset of the metropolitan region, metropolitan areas breed a shallow labor pool that will, in the end, make them less competitive in the new global economy.\(^ {132}\) Indeed, scholars have noted that because “of the growing number of minority students in public schools, if existing educational trends continue, the nation risks something it has never before seen: an intergenerational decline in its educational level, a threatening outcome in a knowledge-based, global economy.”\(^ {133}\)

Further, continued racial and economic segregation perpetuates social inequality. Other scholars have written about the deleterious social effects of racially and economically segregated education.\(^ {134}\) Most notably, students who attend racially and economically segregated schools receive a qualitatively inferior education, which reduces their social mobility and loosens their connections to critical social networks.\(^ {135}\) As a result, such individuals are likely to be disaffected citizens

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\(^{130}\) F O S T E R , supra note 128, at 4; see Griffith, supra note 34, at 512.


\(^{132}\) See David D. Troutt, Katrina's Window: Localism, Resegregation, and Equitable Regionalism, 5 5 B U F F. L. R E V. 1 1 0 9 , 1 1 6 9 (2008) (“Metropolitan areas that continue to embrace localism at the expense of shared regional responsibilities tend to be less competitive in attracting economic development, keeping businesses and jobs, and maintaining a deep and talented labor pool.”).

\(^{133}\) See Brief of 5 5 3 S o c i a l S c i e n t i s t s a s A m i c i C u r i a e i n S u p p o r t o f R e s p o n d e n t s a t 1 2, P a r e n t s I n v o l v e d i n C m n t. S c h s. v. S e a t t l e S c h. D i s t. N o. 1, 5 5 1 U.S. 7 0 1 (2007) (Nos. 0 5 - 9 0 8 a n d 0 5 - 9 1 5), 2 0 0 6 W L 2 9 2 7 0 7 9 [hereinafter Brief of 5 5 3 Social Scientists].


\(^{135}\) See Amy Stuart Wells, The "Consequences" of School Desegregation: The Mismatch Between the Research and the Rationale, 2 8 H A S T I N G S C O N S T. L.Q. 7 7 1 , 7 8 9 -- 9 0 (2001) (describing the negative effects of racially and economically isolated schools); id. ("Educational institutions acquire their status from their students, and those that serve only high-status students are better connected to the high-status colleges and well-paying employers. This reality contributes to a vicious cycle of poverty and
because their poor education denied them the benefits of social mobility. Therefore, they are more likely to engage in social ills such as crime and malfeasance.136 To that end, as the racial demographics shift America closer to a majority minority country,137 the costs of “continuing to maintain [racially and economically] segregated schools and failing to properly educate poor and minority students will be borne not only by the individual students but also by society as a whole.”138

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

As a matter of legal theory, school districts are creatures of the state.139 They possess only the powers afforded to them by the state and exist to implement the “state’s education mandate locally.”140 The reality of school district authority however, diverges greatly from the legal theory of limited school district authority. As I note in a previous article, in practice there is a strong preference for localism or local control of public education.141 While scholars have long documented the nebulous definition of local control in the education context,142 despair for those in low-status urban schools. It leads to the anger and violence of teenagers who consciously and subconsciously know they have been excommunicated from opportunity. It leads to the self-fulfilling prophecy of inner-city schools as a place where failure is virtually assured.

136. See Erik Thorbecke & Chutatong Charumilind, Economic Inequality and Its Socioeconomic Impact, 30 WORLD DEV. 1477, 1495 (2002) (explaining that income inequality reduces social capital and increases the probability that those on the lower end of the economic spectrum will commit crime because “the alternative to crime is less attractive . . . and the potential proceeds from crime are greater”). Furthermore, “[a] rise in inequality may also have a crime-inducing effect by reducing the individual’s moral threshold . . . .” Id.

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


139. See, e.g., Gragg v. Unified Sch. Dist. No. 287, 627 P.2d 335, 338 (Kan. Ct. App. 1981) (“A school district is an arm of the state existing only as a creature of the legislature to operate as a political subdivision of the state. A school district has only such power and authority as is granted by the legislature . . . .” (quoting Wichita Pub. Sch. Empl. Union v. Smith, 397 P.2d 357 (Kan. 1964))).

140. See Briffault, The Local School District, supra note 18, at 30.

141. Wilson, supra note 138, at 636–44 (describing the doctrinal preference for local control of schools by the Supreme Court); see also City of Pawtucket v. Sundlun, 662 A.2d 40, 62 (R.I. 1995) (holding that the preservation of local control is a legitimate state interest and the Rhode Island system for financing public schools was rationally related to that legitimate interest).

this Article suggests that a fair reading of the term, as it is applied in case law, is that school districts are afforded broad fiscal and political autonomy. Though the amount of fiscal and political autonomy afforded school districts varies from state to state, school districts and their governing bodies, school boards, for the most part have broad authority to raise and spend revenue for the benefit of their students\(^{143}\) assign students to schools\(^{144}\) and make education related policy decisions.\(^{145}\)

Because local school districts are afforded broad fiscal and political autonomy, they are permitted to function in practice as if they were sovereign entities, even though they are not according to the actual strictures of state law. Put another way, in practice, local school districts—and not the state—bear the primary responsibility for educating students within their geographic boundaries.\(^{146}\) Importantly, federal and state court decisions reinforce the practical sovereignty of school districts in ways that perpetuate race- and class-based inequalities in education.

For example, court decisions have relied on the importance of local control and the purported autonomy of school districts in declining to abrogate school district boundary lines in order to desegregate schools. In the seminal case *Milliken v. Bradley*, the Supreme Court did not disturb the trial court’s finding that racial segregation within the Detroit public school system was the result of intentional dis-

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143. *See, e.g.*, Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005, 1010, 1023–24 (Colo. 1982) (finding that the Colorado’s school financing scheme, which called for 47 percent of school funding to be derived from local property taxes, was constitutional where the purpose of the legislation was to afford local control to school districts to determine “how much money should be raised for the local schools, and how that money should be spent?”); Kukor v. Grover, 436 N.W.2d 568, 580–81 (Wis. 1989) (using local control as a basis for upholding the constitutionality of a school financing system).

144. *See, e.g.*, Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring in part and concurring in the judgment) (plurality opinion) (noting the broad authority that school boards have to assign students to schools, including strategic site selections for schools and drawing attendance zones with the racial demographics of the neighborhood in mind).

145. *See, e.g.*, Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 507 (1969); Dawson v. E. Side Union High Sch. Dist., 34 Cal. Rptr. 2d 108, 115–16 (Cal. Ct. App. 1994) (upholding the legality of a contract between the East Side Union High School District and a television company involving a video program shown to students in classrooms which contains commercial advertising). In *Dawson*, the court reasoned that the California constitution and state legislature afforded local school districts broad power to choose instructional materials and courts should intervene only when there is a clear case of abuse of discretion by the local school district. *Id.*

146. *See* Kiel, *supra* note 6, at 145 (“[D]istrict sovereignty as it currently functions assures that geographic residence will be the primary factor in determining which school a child attends. Access to schools outside of a student’s geographic reach is limited or non-existent.”).
The Court also acknowledged the high concentration of Black students and low concentration of white students in the Detroit public school system. The Court nonetheless relied on the purported importance of local control and autonomy of school districts in finding that an interdistrict remedy between the Detroit school system and the surrounding suburban school districts was unconstitutional. The Court reasoned:

[S]chool district lines may [not] be casually ignored or treated as a mere administrative convenience . . . [because] [n]o single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.

The Supreme Court and lower federal courts have subsequently used similar reasoning in other cases to strike down interdistrict desegregation plans.

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

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148. *Id.*

149. *Id.* at 752–53.

150. *Id.* at 741–42.

151. See, e.g., *Missouri v. Jenkins*, 515 U.S. 70 (1995) (finding that a desegregation order imposed by a district court that sought to attract nonminority students from outside school districts to schools within the district was beyond the scope of the court’s remedial authority and that the proper remedy would have been an intradistrict remedy); *Bronson v. Bd. of Educ. of City Sch. Dist. of Cincinnati*, 578 F. Supp. 1091, 1097 (S.D. Ohio 1984) (declining to order an interdistrict desegregation remedy between the Cincinnati school district and suburban districts reasoning that “Ohio’s local school districts are in fact separate and autonomous entities comparable in their level of independence and in the extent of their local control to the school districts considered by the Court in *Milliken*. “).


153. See, e.g., *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1010, 1023–24 (Colo. 1982) (upholding the constitutionality of a school financing system in which 47 percent of the funds for
From an educational equity perspective, federal and state court reliance on education localism to reify the practical sovereignty of school districts has allowed “local rights” to replace “states’ rights” as a vehicle to preclude states from having to provide substantive educational equality to poor and minority students. As a result, school districts are able to function as their own fiefdoms, providing disparate education along the lines of race and class without consequence.

D. Regional Inequalities Between School Districts: What it Looks Like

The combination of fragmentation and localism creates significant disparities between neighboring school districts within metropolitan areas. The disparities play out in three notable ways. First, despite the moderate success of school finance litigation in some jurisdictions, gross fiscal disparities persist between neighboring school districts. School districts levy taxes on property
that lies within their boundaries and, for the most part, use all of that money to fund their own schools.\textsuperscript{157} The amount of money that school districts can raise for funding their schools depends on “the tax rate levied [by the school district] and the value of the property within the taxing district’s boundaries.”\textsuperscript{158} School districts that encompass higher valued property can levy taxes at a lower rate yet still collect large sums of money while school districts that encompass lower valued property must levy taxes at a higher rate but still collect less money, thereby allowing fiscal disparities between districts to persist.\textsuperscript{159}

Further, when state courts require equalization of funding across school districts, they also leave local school districts with the authority to tax themselves at higher rates and to provide funding at levels above the state mandated equalized level, thereby allowing fiscal disparities between poor and wealthy districts to persist.\textsuperscript{160} Significantly, financial disparities between school districts matter. Although the relationship between school funding and academic achievement is undoubtedly complex and subject to much debate,\textsuperscript{161} a consistent body of research has shown that school districts with more money are able to provide more challenging curriculum and other educational inputs that significantly impact student achievement.\textsuperscript{162}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{157} See Saiger, \textit{Boundary Problem}, supra note 2, at 502; cf. Reynolds, \textit{Skybox Schools}, supra note 156, at 788 (describing school funding statutes known as “Robin Hood” statutes in Vermont and Texas in which the states “explicitly seize property tax revenues and redistribute them (or force the local school district itself to distribute them) to districts with less property wealth. . . . [I]n both statutory schemes the poorer districts’ enhanced state aid comes directly from the wealthy districts, with no substantial additional state aid”).
\item \textsuperscript{158} Reynolds, \textit{Skybox Schools}, supra note 156, at 757.
\item \textsuperscript{159} Id.
\item \textsuperscript{160} See \textit{RYAN}, supra note 156, at 128–29 (describing state funding equalization methods and focusing on a funding mechanism known as the foundation program). Through the foundation program, states determine a minimum amount of money per pupil required to provide students with an adequate education and determine how much each district is required to pay towards the foundation amount. The state contributes some portion of the foundation amount and determines the tax rate each district will assess in order to meet its required portion of the foundation amount. But states also allow districts to levy a higher tax rate and to spend more per pupil than the foundation program minimum floor. Id.
\end{itemize}
\end{footnotesize}
Second, adherence to localism in education incentivizes a perverse type of community building that allows high-quality school districts to exclude minorities and poor students through race- and class-neutral means. While local government boundary lines are racially stratified, racial stratification along school district boundary lines is particularly acute.\textsuperscript{163} Indeed, since the Court’s decision in Brown, outlawing segregation in schools, “the territorially sovereign district, responsible only for its own resident students and not those nearby, has been a preeminent tool for resisting the racial integration of schools.”\textsuperscript{164} The race-neutral land use policies that result in racial and economic stratification of metropolitan areas result in similar stratification along school district boundary lines.\textsuperscript{165} In the school district context, officials use race-neutral land use policies to create homogeneous school districts that the Court in Brown outlawed. While many parents profess a desire to send their children to racially and economically diverse schools, they also fervently defend localist policies that maintain neighborhood schools and resist efforts to disrupt the connection between housing and schools.\textsuperscript{166} Thus, while one of the virtues of localism is that it facilitates community building, officials use localism, in the education context, to build racially (and economically) homogenous school communities.

Finally, interlocal competition for residents strengthens wealthy white school districts while weakening poorer minority districts. Simply put, “[b]ecause a municipality’s property taxes typically play a significant role in funding education, jurisdictions with higher property values . . . are much better positioned” to compete for middle-class students.\textsuperscript{167} The parents of white, middle-class, or upper-class students are the most likely to be in a position to exercise their Tieboutian choice to relocate to a municipality with high property values and a sufficient tax base to fund a high-quality school district.\textsuperscript{168} Conversely, poor and minority parents are unlikely to be able to change residence in order to change their children’s quality of education.\textsuperscript{169} As a result, school dis-

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\item[163.] See Kiel, supra note 6, at 156; Saiger, Boundary Problem, supra note 2, at 506.
\item[164.] Saiger, Boundary Problem, supra note 2, at 504; see also Batchis, supra note 22, at 98 (describing the connection between local control and resistance to school desegregation efforts).
\item[165.] See supra Part II.B.
\item[166.] See Jennifer Jellison Holme, Buying Homes, Buying Schools: School Choice and the Social Construction of School Quality, 72 HARV. EDUC. REV. 177, 182–83 (2002) [hereinafter Jellison Holme, Buying Homes, Buying Schools].
\item[167.] Batchis, supra note 22, at 97.
\item[168.] See generally Jellison Holme, Buying Homes, Buying Schools, supra note 166, at 177–78 (describing the ability of high-income parents to access high-quality schools by moving into a school district with good schools).
\item[169.] Wilson, supra note 138, at 635.
\end{itemize}
districts situated in municipalities with high property values and an ample tax base have a significant advantage in luring middle-class students to their schools.\textsuperscript{170}

Further, the congregation of predominately middle- or upper-class students in one district and low-income students in another creates qualitative disparities between school districts. A significant achievement gap exists between low-income and middle-class or upper-middle-class districts.\textsuperscript{171} Poor, predominately minority school districts are more likely to have a plethora of failing schools where students are unable to meet minimum state testing requirements.\textsuperscript{172} Scholars have demonstrated that part of the reason for this is that middle-class and upper-class students are a valuable resource that enhances the learning environment for all students.\textsuperscript{173} Because of the environment from which they come, “middle- and high-income students tend to bring more educational capital to school and, thus, elevate the learning of those around them.”\textsuperscript{174} Poor, predominately minority school districts do not have this resource. Middle- and upper-class parents recognize this, and therefore seek to enroll their children in school districts that have a plethora of middle- and upper-class students.\textsuperscript{175} Thus, districts that are more affluent have yet another advantage over poorer districts in the interlocal competition for students.

\textsuperscript{170} Indeed, the status associated with the amount of money per pupil a school district spends on its students combined with the type of students the district serves, heavily influences parents' decisions about where to locate for purposes of sending their children to school. See Jellison Holme, Buying Homes, Buying Schools, supra note 166, at 180 (“[P]arents in this study assumed that those schools serving the children of high-status parents . . . were superior to those serving the children of lower-status parents . . . . T[he] assumed quality of the schools was directly associated with the status of the families they served.”).

\textsuperscript{171} Jonathan Rothwell, Housing Costs, Zoning, and Access to High-Scoring Schools 12 (2012), available at http://www.brookings.edu/~/media/research/files/papers/2012/4/19%20school%20inequality%20rothwell/0419_school_inequality_rothwell.pdf (finding that “[v]ariation in metropolitan income inequality and demographic diversity contributes to the variation in school test-score gaps across metro areas,” and that “[m]etro areas with high income inequality and high median incomes tend to have significantly larger test-score gaps”).

\textsuperscript{172} See Ryan, supra note 156, at 157 (“High-poverty schools, especially high-poverty urban schools, almost always have lower levels of academic achievement than low-poverty schools, regardless of funding levels.”).

\textsuperscript{173} See, e.g., Derek W. Black, Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access, 53 B.C. L. Rev. 373 (2012) (putting forth a theory of equal access to quality education for poor students through economic desegregation efforts on the grounds that middle-class peers are an educational resource that poor students need in order to excel academically).

\textsuperscript{174} Id. at 409; see also Ryan, supra note 156, at 165 (describing research demonstrating that the socioeconomic status of a student’s peers heavily influences student academic performance and noting that students conform to the dominant culture within the school). Schools that are majority poor and urban lack the influence of middle-class students who bring a culture of achievement. Id. Instead, a culture in which expectations and motivations for academic success are lower dominates. Id.

\textsuperscript{175} See Jellison Holme, Buying Homes, Buying Schools, supra note 166, at 201–02.
Notably, some scholars suggest that the primacy of localism and practical school district sovereignty in perpetuating educational inequalities may be eroding.\footnote{See Briffault, The Local School District, supra note 18, at 52 ("Several recent developments have further challenged local control and the status of local school boards."); Saiger, The Last Wave, supra note 24, at 873–88 (arguing that while local power remains substantial, school districts have lost their power to state agencies, the federal government, and constituent schools within the school districts).} In making this suggestion, they point to various education reforms such as greater accountability measures being imposed on local school districts by the federal No Child Left Behind Act (NCLB) and by states through the enactment of rigorous academic standards and harsh penalties for failing to meet those standards, including state takeovers or closures of failing schools.\footnote{See id. at 875–83.} They also point to the success of adequacy-based school finance litigation in getting states to increase their share of public education funding in order to eliminate wealth disparities between school districts.\footnote{See id. at 878–83.} Finally, they note that the proliferation of private market forces such as vouchers and charter schools enables parents to select schools and therefore lessens the importance of school district boundary lines in determining what school a student attends.\footnote{See id. at 875–78.}

To be sure, federal and state education reforms have partially reduced the practical sovereignty of school districts. School districts no longer have a complete monopoly on determining educational content, and state and federal governments hold them more accountable for failing to meet standards.\footnote{See id. at 896–98.} Yet, increased state and federal accountability has not generally improved the academic plight of poor, urban districts.\footnote{See id. at 896–98.} Instead, poor, urban districts are more likely to be penalized for failing to meet federal NCLB requirements or state standards and are more likely to have schools closed down or taken over by the state.\footnote{See id. at 875.} Thus, to the extent these measures erode the practical sovereignty of school districts and the primacy of localism in public education, it is uneven erosion with the salience of localism diminishing in poor, predominately minority urban dis-
tricts while the autonomy of middle-class, predominately white districts remains unchanged.\footnote{183}{See Saiger, The Last Wave, supra note 24, at 921–22 (acknowledging that accountability measures result in distressed districts losing autonomy, while the autonomy of suburban districts remains unchanged).}

Further, although successful school finance litigation caused many states to provide a higher share of public education funding, increased state funding has not ameliorated fiscal inequalities between school districts. As noted earlier in the Article\footnote{184}{See supra note 160 and accompanying text.}, this is because even when courts require equalized state funding of schools, they have also permitted local districts to tax and spend above any basic level of funding provided by the state.\footnote{185}{For example, in Rose v. Council For Better Education, Inc., 790 S.W.2d 186 (Ky. 1989), the Kentucky Supreme Court held that Kentucky’s system of common schools violated the state constitution. The court found that the state failed to provide enough funding to the common schools to ensure that children were receiving an adequate level of education and ordered the state legislature to provide funding sufficient to provide each child in Kentucky an “equal opportunity to have an adequate education.” Id. at 211–12. Significantly, the court also held that school districts were free to “assess local ad valorem taxes on real property and personal property at a rate over and above that set by the General Assembly to fund the statewide system of common schools.” Id. at 212. Courts in other jurisdictions have made similar findings. See, e.g., Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806, 814–15 (Ariz. 1994) (finding that disparities caused by local control did not violate the state constitution, since a school district or a county can decide to pursue an educational system better than the general uniform system created by the state).}

Finally, similar to federal and state education reforms, the proliferation of market based options for parents has weakened the effect of localism primarily on poor, predominately minority urban schools, not suburban schools.\footnote{186}{See, e.g., BRIAN GILL ET AL., RHETORIC VERSUS REALITY: WHAT WE KNOW AND WHAT WE NEED TO KNOW ABOUT VOUCHERS AND CHARTER SCHOOLS 160 (2007) (conducting an extensive study of the demographics of voucher holders and charter school attendees and noting that “[i]n most cities, minority racial/ethnic groups have been heavily represented in voucher programs”); Julia Schwenkenberg & James VanderHoff, Why Do Charter Schools Fail?—An Analysis of Charter School Survival in New Jersey 11 (Rutgers University, Newark, Working Paper No. 2013-002) (noting that poor minority students are more likely than white students or middle-class students to attend charter schools in New Jersey).}

Most market based options such as school choice, vouchers, and minority students stuck in failing districts, not suburban students, primarily use charter schools.\footnote{187}{See, e.g., BRIAN GILL ET AL., supra note 186, at 170 (“Most of the existing targeted voucher programs . . . serve relatively low-achieving students; there is no evidence that voucher schools are ‘creaming’ high achieving students from public schools.”); CTR FOR RESEARCH ON EDUC. OUTCOMES, NATIONAL CHARTER SCHOOL STUDY 82 (2013), available at http://credo.stanford.edu/documents/NCSS%202013%20Final%20Draft.pdf (concluding that the percentage of Black and socioeconomically disadvantaged students that enroll in charter schools is higher than the percentage of Black and socioeconomically disadvantaged students enrolled in traditional public schools).} Though there are challenges to localism in education, these challenges do not
thwart race- and class-based inequalities between school districts. Consequently, adherence to education localism remains a key component in the creation of regional inequalities in public education.

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

As discussed in the previous two Parts, inequalities between neighboring localities and school districts are in many ways a result of the preference for decentralized autonomous local governance structures. Indeed, because of the locally bounded nature of the powers of general-purpose governments and school districts, such entities often act in isolation, neglecting to reflect the economically and socially interdependent nature of the metropolitan region as a whole.188

In order to mitigate inequalities between localities, scholars look to a theory of governance called regionalism as a possible solution for general-purpose local governments but not school districts. This Part suggests that we should consider regionalism as a solution to distributional disparities in public education between school districts. It examines the broader regionalism doctrine and takes the position that metropolitan fragmentation and exclusively relying on localist educational governance structures create serious race- and class-based inequalities in public education. Such disparities will persist if we continue to disseminate public education solely on a local basis rather than a regional basis.

A. The Normative Argument for Shifting Away From Localism in Public Education and Toward Regionalism

Public education plays a critical role in the maintenance of American democracy.189 Scholars champion localism in education on the same democracy-related grounds used in support of the broader localism doctrine: citizen participation and community building.190 Allegedly, a more centralized system of dis-

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188. See Briffault, The Local Government Boundary Problem, supra note 27, at 1129–30 (1996) (describing the ways in which local government regulatory powers and service provision requirements are confined within the locality’s borders).
189. See Saiger, Boundary Problem, supra note 2, at 521 (“Many political theorists understand education and self-government as symbiotic processes by which people create and maintain good societies.”).
190. See PEDRO NOGUERA, CITY SCHOOLS AND THE AMERICAN DREAM: RECLAIMING THE PROMISE OF PUBLIC EDUCATION 84–85 (2003) (citing the prevalence of local control and decentralization of public education in the United States as rooted in a perception that such a governance structure is inherently more democratic than a centralized system of education). Efficiency is also used as a justification for local control of schools, particularly that allowing parents
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Seminating public education is undesirable because it would be bureaucratic and as a result less responsive to the needs and desires of parents within the local community. A more decentralized system of public education on the other hand is purportedly geographically and politically closer to the people, more responsive to their needs and therefore more likely to inspire citizen participation in educational matters. In addition, scholars also defend localism in public education on the grounds that it facilitates a type of community building that is purportedly essential to building the type of social capital and networks that are necessary in a successful democracy. In particular, scholars suggest that localism allows parents to be more involved with their children’s education by building relationships with their teachers, classmates and having a better understanding of the child’s daily school experience.

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

Further, the community building that localism facilitates is neither broad nor inclusive. Instead, because of the racially and economically stratified nature of the larger localities in which school districts are situated, the sense of community that educational localism breeds is “quite narrow both geographically and politically.” The community building rational for localism allows residents who live in high-quality school districts to develop a very narrow sense of the purpose of public education. They come to view public education as just another consumable good for those who can afford to move into a high-quality school district. In conceptualizing public education as a consumable good, as demonstrated by the Williams-Bolar case, these residents believe that they have the right to exclude nonpayers or nonresidents from consuming the same public education that the residents paid to consume. This type of community building stratifies, rather than enhances democracy.

196. See McDermott, supra note 191, at 55 (finding that in many communities, school board candidates are elected unopposed and that turnout for school board elections is as low as, if not lower, than other local elections); Noguera, supra note 190, at 85 (noting that low levels of community participation in schools follows trends that are similar to other forms of civic engagement).

197. See McDermott, supra note 191, at 60–67 (studying the structure of board of education meetings in various communities and concluding that most of the deliberations on substantive education policy issues occurs in special meetings, leaving larger meetings open to the public largely for ceremonial functions). The study also noted that most of the people who attended and commented at meetings open to the public were school principals or other school district employees and that the public comments made at the meetings rarely related to the items actually on the board agendas. Id.

198. See Noguera, supra note 190, at 83 (“Concentrated poverty and racial segregation limit the ability of parents to exert control over the schools that serve their children, and educational leaders in such communities often lack the resources to take on the task themselves.”); Wilson, supra note 138, at 635.

199. See supra Part II.

200. McDermott, supra note 191, at 121.


Thus, in practice, the democratic-based rationales for the strong ideological commitment to localism in education do not bear out. Instead, the strong ideological preference for localism is arguably a post hoc rationalization for discrimination and exclusion.203 Put another way, localism in education is in many ways nothing more than a rhetorical device used to enable localities to legally maintain racially and economically homogenous schools notwithstanding the Supreme Court’s decision in Brown.204 This point is particularly poignant given the stark resistance to school desegregation post–Brown,205 and the ostensibly politically motivated decision in Miliken to preclude interdistrict desegregation plans, which was a sharp departure from the Court’s previous rulings on school desegregation.206

To be fair, we should not reject localism in education all together. Localism has positive benefits such as making it geographically easier for citizens to be involved in their children’s education and to respond to citizen preference.207 Thus, localism in and of itself is not problematic. Rather, the reliance on localism as a defensive mechanism to prevent an equitable and efficient sharing of educational opportunity and resources is problematic. In some instances, shifting away from a sole reliance on localism and integrating regionalism in the form of interdistrict collaboration will more evenly distribute educational opportunities, increase diversity in schools, and improve efficiency. As racial segregation in schools reaches pre–Brown levels, and economic segregation in schools similarly intensifies,208 the

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203. See generally Troutt, supra note 132 (suggesting that localism generally is invoked as subterfuge for racial exclusion and protection of white privilege).

204. Brown v. Bd. of Educ., 347 U.S. 483 (1954); see also McDermott, supra note 191, at 16 (noting that support for local control of education is at times motivated by wealthier localities’ desire to not have to deal with the problems facing poorer districts).


206. See James E. Ryan, Brown, School Choice and the Suburban Veto, 90 VA. L. REV. 1635, 1645–46 (2004) (suggesting that the Court’s decision in Miliken to deviate from its previously aggressive interpretation of the remedial scope of the Court’s powers in school desegregation cases may have been a result of political influence). Further, Ryan reasons that “[p]ublic sentiment at the time was strongly opposed to cross-district busing. President Nixon delivered a televised address specifically to denounce cross-district busing, and politicians from both sides of the aisle introduced measures, prior to Miliken, to prohibit it.” Id. (footnotes omitted).

207. See McDermott, supra note 191, at 122.

time has come to reconceptualize our vision of public education in America. Regionalist governance structures offer one such possibility for doing so. The Subparts that follow demonstrate the possibilities of integrating more regionalist frameworks in public education.

B. Regionalism in Public Education

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

1. Forms of Regionalism

Two distinct doctrinal branches of regionalism exist: traditional regionalism and new regionalism. Traditional regionalism advocates for the centralization or consolidation of government authority into a regional government. More specifically, traditional regionalism calls for shifting much of the power currently enjoyed by local governments into a regional government. Traditional regionalism is rooted in skepticism of local government autonomy, particularly in the face of metropolitan fragmentation delineated by race and class. Advocates of traditional forms of regionalism believe that the centralization of government powers throughout metropolitan regions is necessary to eliminate distributional inequalities between local governments caused by localism and de-

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of Virginia public schools but also noting that more than fifty years after Brown, Black students in Virginia enroll in schools that are intensely racially and economically segregated).


210. See Parlow, supra note 81, at 64.

211. See id.

212. See H.V. Savitch & Ronald K. Vogel, Paths to New Regionalism, 32 ST. & LOC. GOV'T REV. 158, 162 (2000) (describing traditional forms of regionalism as being based on the premise that the primary ills of local government stem from fragmentation).
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centralization.213 A centralized regional government can operate more efficiently, because it has the ability to pool tax resources and to regulate in a manner that takes into account the region as a whole, not just the individual localities within a region.214 Traditional forms of regionalism, however, have fallen out of favor. Scholars view traditional forms of regionalism as politically untenable because a core tenet of traditional regionalism is the enactment of centralized government and displacement of local government autonomy.215

In contrast to traditional regionalism, new regionalism seeks to maintain existing local government structures while at the same time putting in place regional governance structures that recognize and address how localities within a metropolitan region are connected.216 New regionalism rejects the idea of having classical government structures replace local governments.217 Instead, proponents of new regionalism endorse limited metropolitan governance arrangements or various forms of voluntary intergovernmental cooperative agreements between local governments.218 New regionalism is viewed as a preferable approach to addressing inequalities within metropolitan areas because it recognizes the apparent

213. See id. (noting that those in favor of consolidation or traditional regionalism believe that consolidation will “bring about social justice and equity between different jurisdictions by merging them into one grand public enterprise”).

214. See id. (theorizing that centralized regional governments are “able to deal with segregation, income disparities, and the ever-growing problem of sprawl by pooling tax resources to build integrated housing, redistribute wealth, and regulate land use”). Limited forms of traditional regionalism structures were enacted in the 1960s and 1970s as part of federal grant programs involving housing, transportation, and urban development. Specifically, federal housing and transportation agencies required urban metropolitan areas to form regional governing bodies that had central planning authority and governance responsibilities as a condition for receiving federal housing and transportation grants. See Lisa T. Alexander, The Promise and Perils of “New Regionalist” Approaches to Sustainable Communities, 38 FORDHAM URB. L.J. 628, 641–42 (2010) (describing traditional forms of regional governments that were enacted as a requirement for receiving federal grants for housing through the Housing and Urban Development Act of 1965).

215. See, e.g., ANTHONY DOWNS, NEW VISIONS FOR METROPOLITAN AMERICA 170 (1994) (arguing that regionalist proposals that completely displace suburban government are doomed and politically unfeasible). Some forms of traditional regionalist governments still do exist, but their success in eliminating distributional inequalities and creating more efficient structures of government is debatable. See, e.g., Savitch & Vogel, supra note 212, at 162 (describing traditional regionalism government structures in the form of central city consolidations that have taken place in Jacksonville, Indianapolis, and Nashville and questioning whether they have been successful in eliminating distributional inequalities and operating efficiently).

216. See Parkos, supra note 81, at 64–65.

217. Government entails formal institutions and elections, along with established decisionmaking processes and administrative structures. Traditional regionalism favors formal government structures insofar as it seeks to displace local governments and to enact a centralized system of government. See Savitch & Vogel, supra note 212, at 161–62.

218. See id. at 161 (noting that governance structures rely on the idea that existing institutions can be harnessed in new ways and recognizes that localities can enter into interjurisdictional agreements to provide services to one another without establishing a classical government structure).
permanence of powerful local governments, while at the same time acknowledging the need for local governments to work together on some issues that affect the metropolitan region as a whole.\(^{219}\)

In a nutshell, new regionalism “offers a middle ground [in] the dispute over the allocation of state and local government power.”\(^{220}\) It does so by recognizing the strengths and political necessity of local government authority, while at the same time acknowledging the need for localities to act in concert on some occasions to increase efficiency and to eliminate regional inequalities. As discussed in further detail below, new regionalism offers promise for increasing efficiency and eliminating inequalities in public education.\(^{221}\)

2. The Justifications That Support Enacting Regionalism in the General-Purpose Local Government Context Apply in the Education Context as Well

Supporters of regionalism, particularly new regionalism proposals, advance four primary justifications for enacting regional governance structures: (1) increasing efficiency, (2) recognition of the economic interdependence of localities within metropolitan regions, (3) increasing citizen participation, and (4) reducing interregional inequalities.\(^{222}\) These justifications, used in support of enacting new regionalism in the general local government context, apply with equal, if not greater, force in the context of public education.

With respect to efficiency, in the general local government context, localism and the proliferation of independent autonomous localities arguably increases

\(^{219}\) See Alexander, supra note 214, at 641–43 (describing new regionalism as a retreat from the unsuccessful attempts at displacement of local government powers favored by traditional regionalism and noting that new regionalism instead promotes interlocal cooperative agreements and limited-purpose metropolitan governments); Reynolds, Intergovernmental Cooperation, supra note 28, at 112 (arguing that new regionalism “notes the repeated failure of local government consolidation efforts in major metropolitan areas and stresses the permanence of existing multi-purpose local governments”).

\(^{220}\) Reynolds, Intergovernmental Cooperation, supra note 28, at 113.

\(^{221}\) New regionalism literature contains several proposed policy approaches. The “linked functions” proposal suggests that localities enter into interlocal service agreements for discrete services that potentially have interjurisdictional effects, such as solid-waste disposal or economic development. See Savitch & Vogel, supra note 212, at 163–64. Similarly, the “complex networks” proposal suggests that localities should enter into a number of voluntary interlocal agreements in which “[n]umerous jurisdictions with overlapping services . . . [allow] citizens [to] seek out the most optimal arrangement for [their] particular circumstance.” See id. at 164. Finally, the “multitiered” proposal essentially advocates keeping local governments intact, but adding an additional metropolitan or regional tier of government to provide public services that have interjurisdictional effects or require redistribution to ensure regional equity. See id. at 162–63.

\(^{222}\) See Reynolds, Intergovernmental Cooperation, supra note 28, at 113.
public infrastructure costs and creates inefficiencies. Scholars increasingly see regionalism, by virtue of increasing the governance base while at the same time keeping the size of the base small enough to be manageable, as a way to increase the efficiency in the provision of public goods. In the education context, increasing the territorial base of governance through some forms of regional governance structures could streamline operational expenses for neighboring school districts. It could also result in critical information sharing between districts thereby triggering an efficient mechanism to “distribute some of the community’s intangible educational resources,” such as effective teaching techniques and ways to innovate curricula.

In terms of appropriately recognizing the interdependent nature of jurisdictions within metropolitan areas, experts view economic growth within metropolitan regions as contingent on the health of the individual cities and suburbs within the region. As such, it is in the self-interest of poorer cities and more affluent suburbs to ensure that each locality is functioning well. This justification has particular force with respect to disparities in education. Education is a key driver of economic health and growth. Recent research shows that concentrated poverty and low quality public education limits economic mobility within metropolitan regions and has a harmful impact on the

223. See Briffault, Localism and Regionalism, supra note 129, at 8 (suggesting that existing local governance systems exacerbate urban sprawl by “creat[ing] a demand for expensive new infrastructure—highways and streets, sewage treatment facilities, fire stations, schools—in growing communities on the urban fringe”).

224. See FOSTER, supra note 128, at 4 (noting that by virtue of their scale, regions have the potential to address sprawl and equity issues wrought by metropolitan fragmentation); Reynolds, supra note 30, at 491 (noting that even staunch supporters of localism admit that regionalist governance structures would enlarge the territorial base, thereby distributing infrastructure costs more efficiently).

225. See id.

226. See id.

227. Briffault, Localism and Regionalism, supra note 129, at 12 (documenting an increasing interest in regionalism due to a belief that regionalist governance structures are a necessity because of the new global economy that situates the region as the premier unit of economic competition); Reynolds, Intergovernmental Cooperation, supra note 28, at 113.

228. See Griffith, supra note 34, at 512–13; Reynolds, Local Governments and Regional Governance, supra note 30, at 491–92 (documenting the interdependence argument in support of regionalism, which finds that suburban economic health is codependent on a strong central city and, for reasons therefore rooted in self-interest, affluent segments of metropolitan areas should support regional redistribution efforts).

229. See Griffith, supra note 34, at 512–13.

230. See CARNEVALE ET AL., supra note 131.
economic vitality of metropolitan regions as a whole. To the extent that regional governance structures can more evenly allocate public education resources to ensure that more students within a metropolitan region have access to high-quality education, enacting regional governance structures in education could help to buttress the economic vitality of metropolitan regions.

Further, just as proponents of localism suggest that localism enhances democratic values, proponents of regionalism also make this claim. Proponents of regionalism suggest that because localities within metropolitan areas are intimately connected, but locally bounded, in terms of their authority, individuals do not have a say in addressing critical issues that cross boundary lines such as sprawl and economic development. Arguably, regionalism would increase democratic participation by “widening the scale of participation to include all of those affected by local actions.” In the education context, research has shown that while participation in school governance is low, participation increases when school governance structures are put in place that enable them to actually make positive changes in their children’s schools. Thus, the enactment of regional governing bodies that could ensure a more equitable distribution of public education resources has the potential to increase citizen participation.

Finally, one of the foremost justifications for enacting regionalism is to eliminate inequalities between neighboring metropolitan jurisdictions. Under this rationale, proponents of regionalism advise that localist governance structures are in many ways rooted in racism and intentionally perpetuate race- and class-based disparities. From this perspective, localist governance structures


232. See Briffault, Localism and Regionalism, supra note 129, at 20–22.

233. See id. at 21 (“Local issues like sprawl, the adequacy of local tax bases to local service needs, and economic development may not be capable of successful resolution at the local level. The individual may have a larger role in the formulation of local policies, but in the metropolitan context purely local decisions may be powerless to solve many critical problems.”).

234. Id. at 21–22.

235. See Noguera, supra note 190, at 98 (citing the creation of local site councils in Chicago comprised of parents and community representatives who had the authority to hire school principals, approve school budgets and receive reports on academic plans, as a model for increasing parental participation in Chicago schools).

236. See infra Part IV.

237. See, e.g., Troutt, supra note 132, at 1171 (arguing that “the re-entrenchment of racial and economic segregation was facilitated by this country’s legal and ideological commitment to localism” and advocating for regionalism in order to restore racial and economic justice); Bob Wing, What we Need to Do About The ‘Burbs, COLORLINES (Sept. 15, 1999, 12:00 PM), http://colorlines.com/
create social and economic disparities between localities by, among other things, allowing localities to enact exclusionary zoning policies, which results in localities having disparate financial bases. The social costs of poverty are therefore borne exclusively by poorer, usually central-city or inner-ring suburbs while more affluent, typically suburban, localities enjoy the benefits of being within the metropolitan region without absorbing any of the social costs. For these reasons, some see regionalism as necessary to allocate more fairly the costs of metropolitan poverty and to lessen the current stark fiscal and social inequalities that exist between neighboring localities.

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

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238. See Georgette C. Poindexter, Towards a Legal Framework for Regional Redistribution of Poverty-Related Expenses, 47 WASH. U. J. URB. & CONTEMP. L. 3, 15–22 (1995) (describing how exclusionary zoning policies create fiscal disparities between localities within the city, typically having lower tax revenue available to it and higher spending needs in the form of social support and infrastructure that is used by city and suburban residents).

239. See Cashin, Localism, Self-Interest, and the Tyranny of the Favored Quarter, supra note 26, at 1987 (describing the benefits enjoyed by the “favored quarter” without having to absorb their fair share of the costs of poverty within the metropolitan area); Poindexter, supra note 238, at 15 (“Exclusionary zoning allows municipalities to take a ‘free ride’ on the payment of poverty-related expenditures at the expense of other communities in the region.”).

240. See Poindexter, supra note 238, at 24–27 (advocating for direct or indirect taxation on suburban residents in the name of regional equity).


242. See infra Part IV.C.
C. Obstacles to Regionalism in Public Education

“[A]lmost no one favors metropolitan area government except a few political scientists and intellectuals.”

While the justifications for enacting regionalism are plentiful, resistance to regionalism is strong. The primary objection to regionalism is a philosophical one: America has long been committed to decentralized government because of its purported benefits of enhancing democracy and promoting efficiency. This is particularly true with respect to objections to regionalism in public education. Many routinely reject calls for regionalism as infusing an unnecessary level of government and overriding the will of the people to locate themselves for governance purposes as they see fit. Others philosophically reject regionalist proposals because of fears that centralization of government powers will result in bureaucracy, particularly a loss of participatory and responsive democratic governance structures that localism enables.

In addition to philosophical resistance to regionalism, there is also significant political resistance to regionalism. Undoubtedly, the American philosophical commitment to localism partially motivates the political resistance to regionalism. Yet much of the political resistance to regionalism is rooted in simple self-interest. Residents who live in “favored quarters” benefit from insulating themselves from the social costs attached to living in a metropolitan re-

244. See supra Part II.B.
245. See, e.g., Gerald E. Frug, Against Centralization, 48 Buff. L. Rev. 31, 32–33 (2000) [hereinafter Frug, Against Centralization] (decrying calls for centralization, in the form of regional levels of government, as implying a level of coercion and usurpation of citizen choice making it politically unpopular and impracticable); Richard C. Schragger, The Limits of Localism, 100 Mich. L. Rev. 371, 426 (2001) ("Any proposed limiting principle on local power must differentiate between local decisions to exclude and local choices to instantiate a way of life, which are often one and the same.").
246. See Richard Thompson Ford, Beyond Borders: A Partial Response to Richard Briffault, 48 Stan. L. Rev. 1173, 1184 (1996) (taking a position against centralization in the form of certain proposals for regionalism, reasoning that “we will lose the opportunities for participatory, or at least responsive, democratic government, effective place based political initiatives, and civic interaction and identification with the public sphere[,] [m]eanwhile government will become more distant, more bureaucratic, and less responsive”); Clayton P. Gillette, Regionalization and Interlocal Bargains, 76 N.Y.U. L. Rev. 190, 208 (2001) ("[I]t is by no means clear that centralization translates into a greater likelihood that those affected will receive representation.").
247. See, e.g., Briffault, Localism and Regionalism, supra note 129, at 27 ("[T]he resistance to regionalism in the political process is largely a matter of the self-interest of those who benefit from the status quo, such as local elected officials, land developers, corporations that are the subjects of interlocal bidding, and the businesses and residents located in the high-tax base localities of the metropolitan area."")
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While at the same time benefiting from their geographic positioning within a metropolitan region, they fervently resist regionalist governance proposals in order to prevent a redistribution of resources and to protect the status quo that favors them. Similarly, people who live in the “non-favored quarter” also reject regionalism, particularly minority communities, because of a desire to maintain control over their own communities and fears that regionalism will result in their being politically usurped by people who live in more affluent localities.

In attempting to enact regionalism in public education, the greatest obstacles are undoubtedly the philosophical commitment to localism and the political resistance to regionalism. One way to cultivate the political will required is to demonstrate to suburban residents both the benefits of moving toward regionalist education structures and the perils of not doing so. In terms of the benefits, research suggests that the overall economic health of metropolitan areas suffers when the workforce within the area is poorly educated. In particular, crime increases as does the costs of social welfare programs when large blocks of students are inadequately educated. Enacting regionalist governance structures in pub-

248. See id. at 27; Cashin, Localism, Self-Interest, and the Tyranny of the Favored Quarter, supra note 26, at 2030–31 (“[I]n most metropolitan regions the collective well-being of the region is not being pursued, primarily because of the aggregate spillover effects of local power being exercised by scores of autonomous localities, each without consideration of the impact of local decisions on the entire region.”).

249. See Poindexter, supra note 238, at 23–24 (arguing that the favored quarter embraces localism because it allows them to segregate themselves into homogenous communities without having to pay for their fair share of the resources needed for regional infrastructure and social welfare programs). In addition to self-interest, resistance to regionalism, to the extent it redistributes resources to non-whites, may be rejected not just for reasons of self-interest but also for reasons related to racial bias. See e.g., David O. Sears and P.J. Henry, Over Thirty Years Later: A Contemporary Look at Symbolic Racism, in MARK ZANNA, ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 37, 95–150 (2005) (noting that some research indicates that white self-interest as “operationalized by racial threats to whites personal lives is rarely a significant factor in white opposition to racial policies”).

250. See Cashin, Middle Class Black Suburbs and the State of Integration, supra note 79, at 734 (“African-American economic or fiscal self-interest lies with integration but for many Black suburbanites the psychic benefits of "being with one's own" may be worth the costs of segregation.”); Frug, Against Centralization, supra note 245, at 33 (“Many African-American mayors of declining central cities have become equally enamored of local power, preferring to run their cities in their own way rather than submit to centralized control.”).

251. See HENRY M. LEVIN, CAMPAIGN FOR EDUC. EQUITY, THE SOCIAL COST OF INADEQUATE EDUCATION 6, 16–19 (2005) (describing the threat of inadequately educating children, as these children are more likely to be arrested, become pregnant, use drugs, experience violence, and require public assistance, which diminishes the competitiveness of America's current and future workforce). In addition, inadequately educating children is a civic threat because our children's overall enfranchisement—their personal stake in society—so clearly mirrors their educational levels. Id.
lic education would allow more citizens to become better educated thereby increasing the economic vitality of metropolitan regions as a whole and reducing crime and other social costs associated with an inadequate education.

Further, the problems associated with racial and economic segregation in central city urban schools are steadily arising in suburbs as well. This is the case because of demographic shifts in school age population, as more minority parents and students are residing in suburbs, and an economic recession that has resulted in a loss of jobs and tax base for once privileged suburban areas. Thus, given that the same problems that plague predominately minority and poor urban districts are now migrating to the suburbs, it would behoove suburban residents to become invested in solutions that improve the lot of everyone rather than utilizing an exit strategy. Indeed, research has shown that communities that embrace solutions that seek to effectively integrate an influx of minority and poor students into an existing system rather than allowing white flight are able to maintain stability and cultivate student success.

With respect to the perils, a fair number of urban districts are experiencing extreme distress. Indeed, many urban school districts across the country are in such fiscal distress that they are making unprecedented cuts to personnel and programming. In extreme cases, states are taking over schools or school districts are closing schools altogether. Such actions by urban school districts have
negative implications for the region as a whole. For example, in Memphis, Tennessee, the public schools went into such a state of financial distress that the Memphis city school board voted to voluntarily surrender their charter to the state. As a result, the Memphis City Schools and the Shelby County Schools dissolved into one school district, effectively creating a regional school district. Further, state takeovers or increased state roles in schools have social and financial costs that are ultimately borne by all state taxpayers. Regionalism advocates can use these perilous examples to demonstrate to suburban residents why adopting regionalism is in their best interest. Simply put, regionalism, if enacted properly, will allow them to maintain some of the strengths of local control of education while at the same time having a voice in helping to improve public education for the region as a whole. Placing a strong emphasis on the aforementioned benefits of enacting regionalism in public education and the perils of not doing so is one suggestion for generating the political will necessary to enact regionalism in public education.

\[\text{Schools Hurt Neighborhoods, WASH. POST (Mar. 6, 2013, 6:00 AM), http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/03/06/how-closing-schools-hurts-neighborhoods; Bowman Before School Districts Go Broke, supra, note 256, at 906.}\]

\[259. \text{See Daniel Kiel, A Memphis Dilemma: A Half-Century of Public Education Reform in Memphis and Shelby County From Desegregation to Consolidation, 41 U. MEM. L. REV. 787, 824–33 (2011).}\]

\[260. \text{Id.}\]

\[261. \text{See Michelle Wilde Anderson, Making a Regional District: Memphis City Schools Dissolves Into Its Suburbs, 112 COLUM. L. REV. SIDEBAR 47 (2012) (arguing that the Memphis City Schools forced consolidation into Shelby County Schools amounted to a forced regionalization of the Memphis and Shelby school districts).}\]

\[262. \text{See Emily Richmond, What Would Happen If the State Took Over Your District?, ATLANTIC (Apr. 1, 2013, 2:38 PM), http://www.theatlantic.com/national/archive/2013/04/what-would-happen-if-the-state-took-over-your-school-district/274527 (describing the social and fiscal consequences of the increasing number of state takeovers of failing urban schools and increased state involvement in cities such as Cleveland, Detroit, and Camden).}\]

\[263. \text{In addition to education specific examples of the dangers of failing to embrace some forms of regionalism, examples also exist in the noneducation context. For example, in January of 2014, the Atlanta metropolitan region experienced an extreme snowstorm that paralyzed the entire region and left motorists stranded for hours on frozen highways. See Kim Severson, Questions Fly in the Storm that Stopped Atlanta, N.Y. TIMES, Jan. 30, 2014, http://www.nytimes.com/2014/01/31/us/mayor-unapologetic-in-eye-of-storm-that-brought-atlanta-to-a-halt.html?_r=0. Commentators pointed to the balkanization of local governments in the Atlanta Metropolitan region and the failure to embrace regionalism as a significant cause of the paralysis caused by the storm. See e.g., Rebecca Burns, The Day We Lost Atlanta, How 2 Lousy Inches of Snow Paralyzed a Metropolitan Area of 6 Million, POLITICO MAGAZINE, Jan. 29, 2014 (noting that during the snow storm there was little coordination “because ‘Atlanta’ is comprised of dozens of municipalities connected by state and federal highway systems” and concluding that if Atlanta wants to get serious about public safety “it will need to start practicing regionalism instead of paying lip service to it).}\]

\[264. \text{See supra Part IV.}\]
Lastly, enacting regionalism in public education also faces the practical obstacle of existing state and local government law structures. Regional governance frameworks are not part of most state constitutions. As a result, the creation of regional governance frameworks would require complex reworking and integration of regional frameworks into existing state legal schemes. In the education context, unlike general-purpose local governments, school districts are true creatures of the state and are heavily regulated by the state. For example, states have the authority to define school district boundaries are responsible for financially supporting school districts, and have the ability to set educational policy such as curriculum standards and graduation requirements. Further, consistent with a state’s high level of regulation of school districts, states generally do not afford school districts the broad discretion of home rule authority that is afforded to general-purpose local governments. Because states have plenary power over school districts, as a matter of law, it is possible for states to enact regionalist frameworks to govern the dissemination of public education.


266. See Griffith, supra note 34, at 521 (“Because lawmakers have not meshed metropolitan governments into state constitutional and legal frameworks, an attempt to fit them into the existing governmental setup faces innumerable hurdles.”); Reynolds, Intergovernmental Cooperation, supra note 28, at 119–21 (describing the existing state enabling authority that would allow for intermunicipal agreements regarding the provision of public services).

267. See, e.g., Sherwood Sch. Dist. 88J v. Wash Cnty. Educ. Serv. Dist., 6 P.3d 518, 526 (Or. Ct. App. 2000) (determining that a necessary incident of the legislature’s authority to establish a uniform and general system of common schools is the authority to establish or change the boundaries of school districts).

268. See, e.g., Butt v. State, 842 P.2d 1240, 1249, 1256 (Cal. 1992) (holding that the state of California “has broad responsibility to ensure basic educational equality under the California Constitution” and that the California state legislature was required to provide financially distressed school districts with funds so that it would not be forced to close six weeks before the end of the school year).

269. See, e.g., Hancock v. Comm’r of Educ., 822 N.E.2d 1134, 1143, 1158 (Mass. 2005) (finding that state legislation, which set curriculum and established minimum standards for receiving a high school diploma, was constitutional under the Massachusetts constitution education clause).

270. Home rule authority refers to a broad delegation of authority by the state, through state statutory provisions or state constitution provisions, to local governments over matters of local concern. See RICHARD BRIFFAULT & LAURIE REYNOLDS, CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW 331–332 (7th ed. 2009).

271. See Briffault, The Local School District, supra note 18, at 34; Saiger, The Last Wave, supra note 24, at 866 (noting that school districts have no parallel constitutional protections such as the home rule protections afforded to general-purpose local governments).

272. See supra Part I.A.1 and accompanying notes.
D. Existing Regionalist Frameworks in Public Education: Successes and Challenges

The ideological preference for localism in public education is so deeply entrenched that there are few examples of regionalism in American public education. In elementary and secondary public education, the closest parallels to regionalism are voluntary choice-based interdistrict desegregation plans. Eight U.S. metropolitan areas have enacted such plans: Minneapolis, Minnesota; Palo Alto, California; Hartford, Connecticut; St. Louis, Missouri; Rochester, New York; Boston, Massachusetts; Milwaukee, Wisconsin; and San Antonio, Texas.

273. For a detailed overview of some of the more comprehensive voluntary choice-based interdistrict desegregation plans that exist, see Amy Stuart Wells et al., Charles Hamilton Houston Inst. for Race & Justice, Harvard Law Sch., Boundary Crossing for Diversity, Equity and Achievement: Inter-District School Desegregation and Educational Opportunity (2009).

274. Minneapolis has three large-scale multidistrict collaborations: the West Metro Education Program, the East Metro Integration District, and the Northwest Suburban Integration School District. Minnesota state law authorizes the collaborations under a joint powers agreement. The collaborations expanded after the settlement of a lawsuit brought by the Minnesota branch of the National Association for the Advancement of Colored People (NAACP). The NAACP alleged that the Minneapolis public schools were segregated by race and class, and the students were not receiving a similar education to students in neighboring districts that had fewer minorities and low-income students. See Myron Orfield, Regional Strategies for Integration of Schools and Housing Post-Parents Involved, 29 LAW & INEQ. 149, 168 (2011).


276. In response to the Connecticut Supreme Court’s decision in Sheff v. O’Neill, 678 A.2d 1267 (1996), in which the Connecticut Supreme Court found that poor and minority public school students had been denied equal educational opportunities, the state created the Hartford Open Choice program that allows students to voluntarily transfer between the Hartford public schools and neighboring suburban schools. The program also established an interdistrict magnet school program, which established fifty magnet schools that are open to students from districts throughout the metropolitan region. See Robert Bifulco et al., Can Interdistrict Choice Boost Student Achievement?: The Case of Connecticut’s Interdistrict Magnet School Program, EDUC. EVALUATION & POL’Y ANALYSIS 323 (2009); Casey Cobb et al., Legally Viable Desegregation Strategies: The Case of Connecticut, in INTEGRATING SCHOOLS IN A CHANGING SOCIETY 131 (Erica Frankenberg & Elizabeth DeBray eds., 2011) (analyzing Connecticut interdistrict and open choice plans).

277. The U.S. Court of Appeals ruled in 1980 that the St. Louis Public School Board of Education and the State of Missouri were responsible for maintaining a segregated school system. In 1981, the Court of Appeals directed that a voluntary interdistrict plan be worked out between the city and the county schools. See Liddell v. Bd. of Educ., 693 F.2d 721 (8th Cir. 1981). There are sixteen participating school districts. A Voluntary Inter-district Coordinating Council, which oversaw implementation of the 1983 settlement agreement, became a nonprofit corporation in 1999, and was renamed the Voluntary Inter-district Choice Corporation (VICC). Each of the sixteen
Wisconsin; and Omaha, Nebraska. The central goal of all of these programs is desegregation—namely to achieve greater levels of racial integration between school districts in light of the geographic limits placed on interdistrict desegregation remedies by the Court in *Milliken*. Many of the programs consist of student transfers from city school districts to suburban school districts. Others include interdistrict magnet schools that draw students from both city and suburban school districts. All of the programs are voluntary; students must choose to enroll and cannot be compelled to do so.

These regionalist-like interdistrict desegregation programs have achieved moderate success, most notably in reducing racial segregation between school districts and offering students access to high-performing suburban schools that they otherwise would not be able to attend. Further, they have also arguably succeeded in helping to close the academic achievement gap between minority and nonminority students enrolled in the programs, improved racial attitudes among students and parents within the collaborating districts, particularly white parents, and increased the likelihood that minority students would go on to obtain education beyond high school.

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278. Rochester has an urban-suburban interdistrict transfer plan (USITP). The USITP developed because of a call in 1963 by New York’s Education Commissioner for districts to consider how to reduce racial imbalances and improve educational opportunities for disadvantaged students. *See KARA S. FINNEGAN & TRICIA J. STEWART, NAT’L CTR. ON SCH. CHOICE, VANDERBILT UNIV., INTERDISTRICT CHOICE AS A POLICY SOLUTION: EXAMINING ROCHESTER’S URBAN-SUBURBAN INTERDISTRICT TRANSFER PROGRAM (USITP) (2009).*

279. Boston is part of a voluntary interdistrict desegregation program called the Metropolitan Council for Educational Opportunity (METCO). METCO is funded through a grant from the state of Massachusetts. METCO is operated by the Massachusetts Department of Education. It allows non-white students from racially imbalanced schools in Boston and Springfield to transfer into districts in nearby suburban districts. *See generally METCO Program, MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, http://www.doe.mass.edu/metco/faq.html?section=all (last updated Dec. 19, 2013).*


281. *See Jellison Holme et al., Regional Coalitions and Educational Policy, supra note 24 (describing the Omaha, Nebraska Learning Community interdistrict desegregation plan).*

282. *See supra Part II.*

283. WELLS ET AL., supra note 273.

284. *Id.* at 24.

285. *Id.* at 3.

286. *See, e.g., Orfield, supra note 274, at 169 (documenting the successes of the Minneapolis programs).*

287. *See WELLS ET AL., supra note 273, at 4–8.*
Nevertheless, despite their successes, as other scholars have noted, they also have a number of practical challenges that limit their overall effectiveness. First, their scope is often limited.288 They serve a small number of students relative to the number of students in the metropolitan areas in which they operate.289 These programs also lack governing bodies with proportionate representation and with the authority to make policy decisions beyond the desegregation goal of the districts.290 For example, the desegregation programs in Hartford, Connecticut, and Minneapolis, Minnesota, have regional governing bodies that consist of one representative from the participating school districts without regard for the size of various districts that make up the regionalist governing bodies.291 The lack of proportional representation makes it likely that these regionalist governing bodies may not adequately address the interests of the larger districts, which are typically poor and minority.292

Moreover, the interdistrict plans all lack comprehensive and effective funding schemes to address fiscal disparities between participating districts.293 Instead, the interdistrict plans for the most part rely on voluntary funding or state per-pupil allotments that do not adequately address the fiscal disparities between the participating districts.294 Significantly, with the exception of an interdistrict...
plan in Omaha, Nebraska, discussed in further detail below, none of the interdistrict plans requires the redistribution of tax revenue to poorer school districts.295 Finally, all of the interdistrict programs are largely voluntary.296 This is the case primarily because the political will to enact regionalism in public education is weak at best. Thus, the few regionalist public governance structures that exist in public education are small in scope and voluntary, such that they do not challenge the dominant localist refrain in public education. Yet the successes of the interdistrict plans should not be minimized or overlooked and instead suggest that an expansion of regionalism in public education warrants at least serious consideration.

IV. **Equitable Federated Regionalism in Public Education: A Proposed Framework**

The interdistrict school desegregation plans described in Part III provide a blueprint of the possibilities for enacting regionalist governance structures in public education. But they also provide a window into the challenges or limitations that exist in enacting regionalism in public education. This Part examines what a more expansive system of regionalism in public education might look like. Using the successes and pitfalls of the interdistrict desegregation plans as a guide, this Part proposes a theoretical framework that could be followed to effectively enact regionalism in public education. The theoretical framework proposed by this Article is entitled Equitable Federated Regionalism. It borrows from principles of equitable regionalism and federated regionalism, both described in this Part. The framework responds to the equity and efficiency issues that plague urban metropolitan areas and would be most useful when applied to the urban metropolitan context.

A. **Equitable Regionalism**

Equitable regionalism is a form of new regionalism that responds to the exclusionary aspects of localism and decentralized governance structures—namely

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295. See Holme & Finnigan, *School Diversity*, supra note 111, at 20, 22 (describing a tax base sharing scheme in the Nebraska interdistrict desegregation plan); *see also infra* Part IV.C (describing in additional detail the Nebraska desegregation plan and tax base sharing scheme).

concentrated poverty and racial segregation. Proponents of equitable regionalism suggest that the resistance to regionalism is a reflection of structural racism. In particular, they suggest that the preference for localism is rooted in “preserving racial segregation and perpetuating its corresponding economic advantages and disadvantages that fall mainly, but not exclusively, along racial lines.” Thus, localities will not voluntarily cooperate in addressing certain issues, even when to do so would be in the best interest of the locality and the metropolitan region as a whole.

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

Thus, rather than relying on organic voluntary cooperation, equitable regionalism proposes that states enact legislation to facilitate cooperation between localities on issues that are unlikely to otherwise net voluntary cooperation be-

298. See Troutt, supra note 102, at 338.
299. Id. at 325; see also Richard Briffault, Localism and Regionalism, supra note 129, at 27 (describing the preference for localism and ardent resistance to regionalism in most metropolitan areas as a function of self-interests, namely preserving existing political control over resources and shielding wealthier localities from having to share responsibility in providing for the needs of the socioeconomically disadvantaged in poorer localities).
300. Troutt, supra note 102, at 337 (arguing that the “legal and political deference to [localism], permits self-interested, irrational, and inefficient preferences to flourish at the expense of regions, cities, and impoverished minority communities within them”).
301. See Troutt, supra note 132, at 1172 (citing affordable and public housing, revenue sharing, and density control as examples of issues that should be susceptible to regional cooperation but are not due to localist opposition).
302. Id.
303. See supra Part I.A.2.
Equitable regionalists envision such state legislation taking many forms including compelling interlocal cooperation or merely incentivizing cooperation. The key is the involvement of the state in facilitating cooperation between localities rather than leaving it to localities themselves to come together to address issues that impact the region as a whole.

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

While mandatory legislation undoubtedly faces numerous political obstacles that may in some instances prove insurmountable, an alternative would be for states to enact legislation that includes incentives for regional coordination between school districts to essentially coerce cooperation between school districts. For example, several states have adopted financial incentive programs to

304. Troutt, supra note 132, at 1173 (“[E]quitable regionalism is a principle of local government law reform by which states enact legislation to compel interlocal cooperation where equity, and often efficiency, demand it.”).

305. Id. at 1173 (“The principle may take many forms, from top-down to bottom-up, voluntary and compulsory, population cut-offs—or locality size—for participation requirements, commission-driven, and/or legislative.”).

306. See supra Part II.C.

307. See McDermott, supra note 191, at 123–24 (suggesting that instead of purely localist systems of public education distribution, the state should be responsible for maintaining equity in public education with assistance from regional organizations); Kiel, supra note 6, at 167–70 (describing the merger of the urban Memphis school district and suburban Shelby County school district and how the state’s role can either assist or undermine regional efforts).

308. One potential effective incentive could come by way of the federal government placing pressure on the state government to enact regionalist reforms. In the words of education professors Jennifer Holme and Kara Finnigan:

One possible source for incentives could be the federal government, which is currently using an incentive-based approach to stimulating educational reform in states and districts through the Race to the Top and Investing in Innovation programs. The federal government may also consider providing some exemptions to—or special
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reward teachers and students for academic performance with moderate success.\textsuperscript{309} States could adopt similar financial incentive programs via state legislation to encourage school districts to participate in regional plans that coordinate actions between school districts on key issues such as student enrollment.

Further, the content of such state legislation mandating or incentivizing cooperation between neighboring school districts should, broadly speaking, include the following four types of provisions. First, the legislation should define the geographic region in which cooperation between school districts will be required or encouraged. The process of defining the region should not be static, but should instead take into account the geographic proximity of localities within the region and the ways in which they are socially and economically interdependent.\textsuperscript{310} One suggestion for defining the region is to adopt the definition of the metropolitan statistical area set forth by the U.S. Census Bureau.\textsuperscript{311} While such a definition would not work in all cases,\textsuperscript{312} it could work in many cases and is an easily definable parameter.

Second, the legislation should include provisions that increase the permeability of school district boundary lines so that students are not limited to attending schools in only their school district. Increasing the permeability of school district boundary lines must be a critical component of any plan to enact regionalism in—federal accountability requirements as an incentive for greater cooperation to improve cross-district diversity.

In addition, the federal government could also consider requiring states to enact regionalist reforms as part of the requirements to receive funds under Title I of the Elementary Secondary Education Act ("ESEA"). Such an approach could be particularly effective because Title I funds are such a crucial component of school funding that to date no state has opted out of complying with ESEA and lost federal funding. Holme & Finnigan,\textit{ School Diversity, supra note 111, at 24; see Bowman, supra note 256, at 937 ("[N]o state has yet opted out of NCLB/ESEA and refused [federal] funds.").}


\textsuperscript{310} See, e.g., Gerald E. Frug,\textit{ Beyond Regional Government, 115 HARV. L. REV. 1763, 1834–35 (2002) (commenting that the definition of a region should accommodate as many of those affected by regional decisions as possible).}

\textsuperscript{311} See \textit{Metropolitan and Micropolitan, supra note 19, for a definition of metropolitan statistical area.}

\textsuperscript{312} In some cases the MSA used by the U.S. Census Bureau encompasses portions of several states. For example the Washington, D.C., MSA used by the U.S. Census Bureau encompasses Washington, D.C., and parts of Virginia, Maryland, and West Virginia. \textit{Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area, U.S. CENSUS BUREAU, http://www.census.gov/econ/census/snapshots_center/dc.html} (last visited Nov. 12, 2013). In such a case, the MSA would not provide a useful guideline for establishing a region for purposes of facilitating regional cooperation among school districts. Instead, a more flexible definition that takes into account geographic proximity and practical interactions between the localities should be adopted.
public education. One of the most detrimental impacts of the strong preference for localism in public education is the way in which it legally perpetuates racial and economic segregation in schools. One way to increase the permeability of school district boundary lines is to enact legislation that requires school districts within a defined region to engage in regionalist mobility strategies, such as the voluntary interdistrict student assignment plans or strategically sited magnet schools, like the plans already in existence in Connecticut and Minnesota. States could also increase school district boundary permeability if legislation required school districts within the region to enact open enrollment across all of the districts within the defined region, meaning that a student is entitled to enroll in any school district within the metropolitan region.

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

Fourth, the legislation should require resource sharing between school districts in the form of a tax base sharing plan in order to ameliorate the fiscal dispar-

313. See Wilson, supra note 138, at 651–54.
314. See supra Part II.D.
315. See, e.g., the discussion on the Nebraska Learning Community infra Part IV.B.
316. Notably, programs such as the No Child Left Behind Act (NCLB) public choice provision which give students attending failing schools the opportunity to transfer and enroll in a higher performing school within the same district have a relatively low usage rate. See Susan L. DeJarnatt, School Choice and the (Ir)rational Parent, 15 GEO. J. ON POVERTY L. & POL’Y 1, 16 n. 88 (2008) (noting the low percentage of students who opted to transfer to a better performing school utilizing the NCLB public choice provision). But as I noted in a previous article, a significant reason why parents and students do not utilize the public choice provision is that the provision limits their options to intradistrict transfers which leaves parents and students with few options because failing schools are often clustered in one district. See Wilson, supra note 138, at 660. Enacting open enrollment across school district boundary lines would alleviate that problem.
317. Parents Involved in Community Schools v. Seattle School District No.1, 551 U.S. 701, 733–35 (2007) (finding two voluntary school district desegregation plans unconstitutional where the school districts failed to demonstrate that they made a good faith effort to use race-neutral alternatives to obtain diversity).
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The specifics of any tax base sharing plan would be limited by the strictures of state laws pertaining to school finance. Nevertheless, funds from the tax base sharing plan should then be redistributed on a needs basis so that poorer school districts within the region can improve their schools via an “in-place” strategy.319

B. Federated Regionalism in Public Education

Just as predominately white and affluent localities remain resistant to regionalist solutions, many poor, predominately minority localities resist regionalist solutions as well.320 Minority resistance to regionalism is primarily rooted in fears that regional governance structures will result in cultural dilution and loss of political power.321 Many regional proposals advance mobility strategies aimed at deconcentrating minority populations to move them toward housing, job, or education opportunities and to remove the geographic barriers to opportunity.322 Mobility strategies are seen as culturally diluting because they require assimilation on the part of minorities without a reciprocal embrace of minority cultures and values by the predominately white communities into which they are dispersed.323

Some also view regional mobility strategies as potentially diluting minority political power because they often disperse minorities throughout the metropolitan region.324 Further, even when regionalism does not encompass a mobility

318. See, e.g., the discussion on the Nebraska Learning Community in infra Part IV.B.

319. The term “in-place” strategy means methods of moving resources and opportunities to low-income predominately minority school districts in order to improve those school districts. See John A. Powell, Addressing Regional Dilemmas for Minority Communities, in Reflections on Regionalism 218, 229 (Bruce Katz ed., 2000).

320. See John A. Powell, supra note 319, at 228–229 (detailing minority resistance to regionalism and noting that despite the potential economic benefits of regionalism, “given the history of urban renewal, and racism in general, there is a strong concern that regionalism, if successful, would deal with concentrated poverty by dispersing the inner-city minority community”).

321. Id. at 229–30.

322. See, e.g., Debray & Frankenberg, supra note 32, at 281 (proposing increasing federal housing voucher program to deconcentrate residential poverty and segregation in urban areas); Wilson, supra note 138, at 661–64 (proposing a regional mobility strategy through the No Child Left Behind Act’s public choice provision to allow urban minority students to cross jurisdictional boundary lines to enroll in high performing schools); Mark Shroder, Moving to Opportunity: An Experiment in Social and Geographic Mobility, 5 Cityscape: J. Pol’y Dev. & Res., no. 2, 2001, at 57, 57–58 (describing a HUD program which enables low-income individuals who receive public assistance in housing to have portable vouchers which allow them to move to middle-class neighborhoods throughout metropolitan areas).

323. See Powell, supra note 319, at 230 (arguing that integration through regional mobility programs can fragment a minority community by requiring assimilation and dilution of minority culture and values).

324. Id.
strategy and instead incorporates a regional governance structure of some sort, there is fear that the regional governance structure will not be responsive to the needs of minority communities. Thus, many minority communities reject regionalism, particularly regionalist proposals that call for mobility and instead advocate for “in-place” strategies that focus on bringing more resources to minority communities without dispersing minority community members.

Scholars advance federated regionalism as an appropriate framework to address these concerns. The quintessential feature of the framework is that it integrates regional cooperation while at the same time preserving local autonomy. Under a federated regionalism scheme, “a regional authority controls access to the opportunities that have regional dimensions, but local authorities control other matters,” particularly those that call for political and cultural empowerment.

Examples of federated regionalism include the regional governing bodies in Minneapolis and Portland, which allow for regional policymaking and plan-

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325. Id. at 231.
326. Id. at 230.
327. Id. at 232–33 (“Federated regionalism requires entities within a metropolitan region to cooperate on some levels and leaves them relatively autonomous on others.”).
329. The Minnesota state legislature enacted a regional governing body for the Twin Cities, known as the Metropolitan Council (Met Council). See generally Land Use Planning—The Metropolitan Land Use Planning Act, 3 WM. MITCHELL L. REV. 305 (1977) (noting that the Minnesota legislature created the Met Council in response to increasing urbanization in the Twin Cities). The Met Council is empowered to review all comprehensive plans of localities within the seven county Twin Cities area and ensure that they conform to regional goals. See MINN. STAT. § 473.173(1) (2013) (“The council shall review all proposed matters of metropolitan significance to be undertaken by any private organization, independent commission, board or agency, local governmental unit, or any state agency . . . .”).
ning on important issues that transcend local borders—such as housing, transportation, and land use planning—while at the same time keeping power vested in local governments to deal with local matters and implementation of regional goals. In addition, another example of federated regionalism in practice is the tax base sharing plan in Minneapolis, Minnesota that requires localities within the Twin Cities to contribute 40 percent of their commercial-industrial tax revenues to a regional fund. The fund distributes the proceeds across the region according to need.

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

In the case of public education, states should enact federated regionalism by constructing a regional governing body that coordinates activities between all of the school districts within a metropolitan region. Significantly, the people should

331. Powell, supra note 320, at 241–42.
333. See Myron Orfield & Nicholas Wallace, The Minnesota Fiscal Disparities Act of 1971: The Twin Cities’ Struggle and Blueprint for Regional Cooperation, 33 WM. MITCHELL L. REV. 591, 592 (“[Under the tax sharing plan], [m]unicipalities are assigned a portion of [the regional pool], based on population and the ratio of the total market value of property per capita in the jurisdiction to the average market value of property per capita in the region. The formula assigns a share of the pool that is greater than a locality’s population proportion to municipalities with lower-than-average market value per capita; whereas high-market-value localities receive a lower portion than their population share.” (footnote omitted)).
334. See powell, supra note 319, at 235 (“A federated or cumulative voting structure coupled with regional districting is one of several initiatives that could constitute a form of federated regionalism.”).
335. Id. at 233–34. For an overview of the ways in which cumulative voting schemes help to enhance minority voting strength, see generally Lani Guinier, Groups, Representation, and Race-Conscious Districting: A Case of the Emperor’s Clothes, 71 TEX. L. REV. 1589, 1632–33 (1993) (“Under a modified at-large system [of cumulative voting], each voter is given the same number of votes as open seats, and the voter may plump or cumulate her votes to reflect the intensity of her preferences. Depending on the exclusion threshold, politically cohesive minority groups are assured representation if they vote strategically.” (footnotes omitted)).
336. Notably, however, the effectiveness of cumulative voting in ensuring that minority political power is not diluted presumes cohesion of interests amongst minority groups. See Guinier, supra note 335, at 1633.
directly elect the regional body through means such as a cumulative voting system
that would increase the likelihood of significant minority representation in the
regional governing body.  

The regional governing body could have policymaking authority regarding
issues such as school diversity, the use of funds obtained from a tax sharing plan,
and educational programming aimed at reducing achievement gaps within the
metropolitan area.  Importantly, a federated system of regionalism in public
education would allow school districts to retain significant autonomy over critical
issues such as the day-to-day operations of the school district (for example, the
school district budget, interdistrict student assignment, school activities, and cur-
iculum). At the same time, however, the existence of such a regional governing
body could ensure that students who would otherwise be confined to school dis-
tricts with concentrated racial segregation and poverty have the opportunity to
access a high-quality school.

C. Equitable Federated Regionalism in Practice: What it Should Look Like

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

Omaha, Nebraska, created the Metro Area Learning Community (Learn-
ing Community) “in an effort to resolve educational and boundary issues among
several school districts in the Omaha metropolitan area.” It contains three cen-
tral elements that exhibit the promise of regionalism in public education and
demonstrates what this Article’s proposed Equitable Federated Regionalism
could look like.

First, Nebraska state legislation created it. Because the state mandated
the regional efforts, school districts in the Omaha metropolitan area are required

337. See Holme & Finnigan, School Diversity, supra note 111, at 20 (suggesting that in order for
interdistrict councils to be effective, representatives should be directly elected and representation
should be proportionate to the population).

338. Id.

339. Jellison Holme et al., Regional Coalitions and Educational Policy, supra note 24, at 153.

24_learning.html.

341. See NEB. REV. STAT. § 79-2102 (2008) (“A learning community shall be established for each city
of the metropolitan class and shall include all school districts for which the principal office of the
to participate in the Learning Community thereby increasing the scope of the program. Moreover, the legislation created a regional governance council called the Learning Community Coordinating Council (LCCC). The LCCC encompasses eleven school districts across two counties. Significantly, LCCC consists of a twenty-one member board of individuals who are directly elected. The people elect twelve members of the LCCC through a limited voting scheme. A caucus of school board members elects six members to represent the interests of local school boards. School boards of any districts that fail to win a seat through the election or caucus process appoint the final three members. This proportional voting scheme, along with the allowance for direct representation, at least offers the promise that minority voices will be represented on the regional governance council, which addresses the potential concern for political and cultural dilution that regionalism often creates with minority communities.

Second, the legislation created a mandatory tax base sharing plan for the eleven school districts within the Learning Community. The legislation assessed a levy across the property tax of all eleven school districts. Then the state redistributed the funds from the levy to individual school districts based on their

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343. See Jellison Holme et al., Regional Coalitions and Educational Policy, supra note 24, at 153.
344. See NEB. REV. STAT. § 32-546.01(1) (2012).
345. See Jellison Holme et al., Regional Coalitions and Educational Policy, supra note 24, at 153.
346. Id.
347. Id.
348. See NEB. REV. STAT. § 79-2104 (2012) (giving the coordinating council the authority to levy a common levy for the general funds of member school districts; levy for early childhood education programs for children in poverty; and, adopt, approve, and implement a diversity plan, which shall include open enrollment); NEB. REV. STAT. § 77-3442(2)(b) (2012) (“For each fiscal year, learning communities may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one hundred dollars of taxable valuation of property subject to the levy.”).
349. See NEB. REV. STAT. §§ 79-2104(1)–(2); Jellison Holme et al., Regional Coalitions and Educational Policy, supra note 24.
level of need according to a formula generated by the state. Notably, the tax sharing plan was subject to much political resistance and ultimately a legal challenge. Nevertheless, the legal challenges to the tax base sharing plan were not sustained and despite political opposition, the tax sharing plan was recently reauthorized by the Nebraska state legislature in 2013.

Finally, and significantly, the legislation encourages the learning community to create a desegregation plan to ensure socioeconomic and racial diversity across the eleven school district boundary lines. Students may attend schools within the Learning Community across school district boundary lines, with transportation provided in most instances. This ensures that school district boundary lines are permeable and makes available high-quality educational opportunities to students who the state would otherwise deny access.

CONCLUSION

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

In this Article, I have argued that in order to ameliorate the race- and class-based disparities between neighboring school districts caused by metropolitan fragmentation and localism, some forms of regionalism should be applied to public education governance structures. Given the equity issues present in public education, the Article specifically suggests that equitable regionalism, or regionalism in which the state requires or heavily incentivizes cooperation between local school districts, is necessary. The Article further suggests that any such legislation should include provisions that require or encourage school districts within met-

350. NEB. REV. STAT. § 79-1073 (2012) (“[P]roperty tax receipts shall be divided among member school districts proportionally based on the difference of the school district’s formula need . . . .”).
353. See NEB. REV. STAT. § 79-2104(7) (2012) (stating that the learning community coordinating council has the authority to “[a]dopt, approve, and implement a diversity plan which shall include open enrollment”); Id. § 79-2110 (outlining the requirements for diversity plans adopted by the Learning Community).
354. See id. § 79-2110.01 (stating that Learning Community students who enroll in a district through the open enrollment process will be treated like residents of the school district in which they are enrolled).
355. See Jellison Holme et al., Regional Coalitions and Educational Policy, supra note 24.
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metropolitan regions to adopt enrollment plans that allow students within metropolitan regions to cross school district boundary lines to attend school. The Article also proposes that school districts within metropolitan regions be required or encouraged to share financial resources through the enactment of a regional tax base sharing plan.

Finally, the Article recommends incorporating elements of federated regionalism into public education governance structures. Incorporating elements of federated regionalism would consist of putting in place a directly elected school district regional governing body through some form of proportional voting. The school district regional governing body would not displace local school districts; rather, the governing body would supplement local school districts by having policymaking authority to address regional equity issues such as regional diversity in schools and the sharing of resources. Enacting a combination of equitable and federated regionalism, or what this Article calls Equitable Federated Regionalism, would ensure that poor minority parents like Ms. Williams-Bolar would be able to obtain access to a high-quality education for their children without having to violate the law and become felons in order to do so.