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Socioeconomic Integration and the Greater Richmond School District: The Feasibility of Interdistrict Consolidation

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

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

Natural light welcomes students inside Glen Allen High School’s atrium. Built in 2010, the school is the newest of Henrico County’s public high schools. In addition to the building, the sprawling campus includes two baseball fields, a football stadium, a soccer field, and an Olympic-size track. Students enjoy an open floor plan, allowing students on the second floor hallway to see their peers below. The new building offers an ideal learning environment to students residing in Henrico County.

Inside the classrooms, a multitude of Advanced Placement (“AP”) courses are offered—students took a total of 1055 AP exams in 2014, and scored a three or better on 62% of the tests. In Glen Allen, 82% of the 2014 graduating class planned to attend a two- or four-year college in the coming year.

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

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


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


8. See id. at 157, 189.

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April Hawkins said. Hawkins also said that American populations were

of the school’s 97% African American.

Academic disparities between the rich and poor, are prevalent. In 2013, southern schools enacted countless court orders requiring desegregation efforts. American school desegregation proposals intend to address the Supreme Court’s 2007 decision, Parents Involved in Community Schools—socioeconomic integration is constitutional.

This article seeks to add a new section to the educational conversation by focusing on the role of race in school desegregation efforts.


10. Id.

11. Id.; Armstrong, news.com/education/best-strong-high-20601/students/strong-high-20601/students/709-10 (2007).

12. See e.g., Parents Involved in Community Schools, supra note 7.

13. See id. at 174-75; Parents Involved in Community Schools, supra note 7.
Upon entering Armstrong High School, a security guard asks a student to step out of line after a metal detector sounds off. He searches the student’s bag, and after finding no weapons, contraband, or headphones, he allows the student to enter the school. Inside the building, fluorescent lights bear down on the grey-white concrete hallways, orange lockers, and a trophy case containing black and white photographs of past athletic excellence. Six security officers walk the halls daily, keeping order; Principal April Hawkins says the school is in need of two more. Principal Hawkins also says that much of the school’s 97% African-American population “comes to school angry.” Fewer than thirty of the school’s 974 students will attend a four-year college.

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

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

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

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

I. A HISTORY

In 1954, the year the Court ended the doctrine of "separate but equal," the Virginia legislature amended its constitution to include the provision that "no public school may be established which separates or segregates children on the basis of race, color, or national origin." The Virginia Supreme Court struck down a school consolidation plan by the Richmond Board of Education on this basis in United States v. Richmond Bd. of Educ., 231 Va. 107, 245 S.E.2d 867 (1978). This decision is among the first to invalidate a school consolidation plan on the basis of a state constitutional amendment. See id.

Virginia’s difficulty with school consolidation and Brown II is illustrated by the fact that it took the state another 14 years to consolidate in Richmond in the 1970s. The consolidation effort was made possible by the legislature’s decision to require that 58% of students in any one school in the Richmond area shall not receive free or reduced-price lunch in any one school in the Richmond area. However, because of Richmond Public Schools’ existing high poverty rate, no socioeconomic redistricting proposal would be effective without incorporating Richmond’s adjacent suburbs—Chesterfield and Henrico counties.

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

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

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

16. Id. at 26–27.
20. See generally RYAN, MILES, supra note 15, at 35–51 (describing in detail the measures the Virginia legislature and governor’s office took in the 1950s and 1960s to combat racial integration in public schools).
21. See id. at 39.
22. Id. at 39–40.
23. Id.
This was the dawn of Massive Resistance, a decade-long political maneuver to avoid school integration at all cost.\textsuperscript{24}

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

\begin{itemize}
  \item \textsuperscript{24} \textit{Id.} at 40.
  \item \textsuperscript{25} \textit{See id.} at 41, 48.
  \item \textsuperscript{26} \textit{Id.} at 41. However, due to the newly adopted voucher program, students whose schools had been shut down by the state could in turn receive state funding to attend segregated private schools. \textit{See id.}
  \item \textsuperscript{27} \textit{CAMPBELL, supra} note 7, at 163.
  \item \textsuperscript{28} \textit{Id.}
  \item \textsuperscript{29} \textit{RYAN, MILES, supra} note 15, at 47.
  \item \textsuperscript{30} \textit{Id.} at 48.
  \item \textsuperscript{31} \textit{Id.}
  \item \textsuperscript{32} \textit{Id.}
  \item \textsuperscript{33} 317 F.2d 429, 438 (4th Cir. 1963); \textit{see also RYAN, MILES, supra} note 15, at 49–50.
\end{itemize}

Three years after \textit{Brown II}, freedom-of-choice plans, however, chose to adopt \textit{Brown II} due to housing segregation of schools, and the city of Richmond, for those students living in an integrated home zone.\textsuperscript{34} Also, with more well-funded black schools, implementation, only those who chose to attend an integrated school. The choice plan was thus largely limited. The Supreme Court in \textit{Kent County}, the state's ultimate response, retained a "state­ mandated" assignment of black students to white schools that districts believed might be necessary to avoid discrimination under the Supreme Court's precedent. All American plans that would allow this.

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

Clearly, one of the biggest impediments to integration in the Richmond area was housing. Much of this was due to discriminatory measures taken by the Federal Housing Authority that served to isolate low-income minorities in pockets of the city of Richmond, thus allowing white flight toward the more expensive Chesterfield and Henrico counties. City ordinances in Richmond segregated residential neighborhoods, and the Supreme Court was forced on two occasions to strike discriminatory laws.
housing, meanwhile, was built exclusively in black neighborhoods within the city. In the 1950s alone, in the name of urban renewal, roughly 4700 units of black housing were destroyed and replaced with a mere 1736 public housing units. Thus, as blacks were dispersed throughout the city of Richmond, the caucasian migration accelerated and moved further south into Chesterfield and west into Henrico. However, white flight was more than just racial segregation; as an influx of middle-class residents entered the suburbs, Richmond became increasingly impoverished.

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

The first legitimate attempt to integrate the schools was the long-anticipated busing order, issued by the United States District Court Judge of Bradley v. School Board, was in line with Green, which involved school desegregation, the use of busing order was successful. In Chesterfield County, with only 206 black students a school year, route changes and annexed area districts that the only with schools would be considered when Richmond Public school districts.

The motion considered constituting surrounding counties, Chesterfield and Henrico.

When consolidating Merhige noted that Green without consolidation, were 70% black. Diener noted the independent city constituting counties, but was unnecessary to action . . . is not clear.

42. Id.
43. See supra notes 37–38 and accompanying text.
44. CAMPBELL, supra note 7, at 151.
45. Bumpy Road in Richmond, TIME, Feb. 26, 1972, at 18.
46. RYAN, MILES, supra note 15, at 70.
47. Id.
trict Court Judge Robert H. Merhige in 1971 during the litigation of Bradley v. School Board of the City of Richmond. The order was in line with Swann v. Charlotte-Mecklenburg Board of Education, which in the same year not only recognized a link between housing segregation and school segregation, but also authorized the use of busing to integrate public schools. Coupled with the busing order was the annexation of twenty-three square miles of Chesterfield County, which consisted of 8017 white students and only 206 black students. However, at the start of the 1970–71 school year, roughly 5000 of the 8000 white students from the annexed area did not attend Richmond Public Schools. Realizing that the only way Richmond would ever diversify its public schools would be through “cross-town” busing, Judge Merhige, in Bradley, suggested that the parties file a motion to consolidate Richmond Public Schools with the Chesterfield and Henrico school districts.

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

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

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48. 338 F. Supp. 67, 78 (E.D. Va. 1972); see Campbell, supra note 7, at 167.
49. 402 U.S. 1, 28–31 (1971).
51. Campbell, supra note 7, at 167.
52. See Bradley, 338 F. Supp. at 79–90; RYAN, MILES, supra note 15, at 75–76.
53. Swann, 402 U.S. 1, 30 (1971); RYAN, MILES, supra note 15, at 78.
54. See Reid, supra note 50.
and maintained by the cooperative efforts of local and central State officials. Judge Merhige also recognized the causal link between school and housing segregation, and found unconstitutional state action in school and local officials’ failure to combat the effects of housing segregation in public schools. Finally, Judge Merhige held that “[i]f there is to be public education it must, under the Constitution, be afforded to all on an equal basis,” and stated further that schools have the affirmative duty to integrate.

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

After handing down the Bradley decision, the Supreme Court decided Milliken v. Bradley, finding interdistrict desegregation remedies in metropolitan Detroit unconstitutional. In a very similar setting to that of Richmond, wealthy, white suburbs surrounded the impoverished and increasingly minority-dominated Detroit—and the respective school systems reflected as much. The Supreme Court overturned a Sixth Circuit decision and held that school districts were not obliged to desegregate unless there existed sufficient evidence to show that the segregation among the districts was specifically implemented by local governments, thus making it unconstitutional. Specific remedy would be in the form of “pro- districts,” and that such remedy would severly limit court-mandated measures. The Court found that to not fully implement housing segregation would be akin to putting a "band aid" on a "gun wound.

A generational study by Community Strategies limited desegregation as constitutional remedies to the Supreme Court body at higher interest in the particular programs implemented, sufficiently narrow under the Equal Protection Clause. Parity ability to reduce segregation in order to meet narrowly tailor exhaustingly rare and Court’s decision classification social classification, school districts must a
thus making all future interdistrict desegregation efforts voluntary. 65 Specifically, the Supreme Court held that a court-ordered remedy would not be permissible without a constitutional violation that "produces a significant segregative effect in another district," and that such a "racially discriminatory act" must derive from "the state or local school districts." 66 In so doing, the Court severely limited, if not eliminated, the possibility of any future court-mandated interdistrict metropolitan desegregation measures. The effects can still be felt today—municipalities could not fully implement existing desegregation plans because, due to housing segregation, there simply were not enough whites in urban areas to have anything close to a substantial impact.

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

65. See Milliken, 418 U.S. at 745.
66. Id. at 744–45.
71. See Parents Involved, 551 U.S. at 720; Robinson, supra note 70, at 287–88, 293–94.
II. HOUSING SEGREGATION AND FAMILY INCOME DICTATE EDUCATIONAL PERFORMANCE

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

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

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

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

72. SIEGEL-HAWLEY, supra note 3.
73. Id.
75. RICHARD D. KAHLENBERG, ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE 47 (2001) [hereinafter KAHLENBERG, TOGETHER].
76. See id. at 18.

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77. Id. at 18, 47.
78. See, e.g., Strom, and Academic Achiev
79. Richard A. K
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80. SIEGEL-HAW
81. Id.
82. See id.
83. Letter from U
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about/offices/list/ocr/
84. See Noliwe M
11, 2012), http://ide
ical pressures of economically segregated family households. The vast majority of races are sorted by socioeconomic status, which depends on inequity, which child's ability to learn depends on his parent's role as a school's support system. Richard A. Kahlenberg, advocate of socioeconomic integration, notes that middle-class parents who are less motivated to help their children perform better than students from lower-class families. 74

Polls consistently reveal that teachers care more about 'work environment' than they do about salary. They also care about school safety, whether they will have to spend large portions of their time on classroom management, and whether parents will make sure kids do their homework. 79 These polls further reveal why impoverished schools struggle to recruit quality teachers. As a result, segregated and impoverished schools are more likely to employ teachers who do not hold a degree in the subject they teach. 80 Teacher absences and long-term substitutes also tend to be more frequent. 81 All of those factors, along with added pressures from a standardized testing curriculum, contribute to the high turnover rate among teachers in poor and minority schools. 82

Finally, although teachers surveyed may not hold salaries as the highest priority in choosing where to teach, the salary disparities are telling. During the 2011–2012 school year, teachers working in schools with high percentages of black and Latino students were paid on average $1913 less annually than those teachers in the same district working in schools with low percentages of black and Latino students. 83

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

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77. Id. at 18, 47.
80. Siegel-Hawley, supra note 3.
81. Id.
82. See id.
ministrators in fear of losing funding or their jobs are forced to advocate “drill and kill” teaching methods in the classroom with the goal of instilling basic competence in the core curriculum at the expense of a more creative and engaging curriculum. To be fully accredited, a Virginia school must have a 70% passage rate in mathematics, science, and history, and a 75% passage rate in English. If a school’s scores fall below the prescribed benchmarks in any particular subject, the school will receive an “Accredited with Warning” status. If a school performs under the prescribed benchmarks for four consecutive years, it loses accreditation.

Last year, only 11 of 44 (25%) Richmond schools were rated as fully accredited, compared to 45 of 60 (75%) schools in Chesterfield and 39 of 66 schools (59%) in Henrico. Meanwhile, 28 of Richmond’s 44 schools received warning status (64%) compared to 15 of 60 in Chesterfield (25%) and 26 of 66 in Henrico (39%).

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

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85. See Siegel-Hawley, supra note 3.
87. Id.
88. Id. Thus, a school may be Accredited with Warning in, for example, English, but not history.
89. Id.
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Generally, poorer schools have lower-quality facilities. In a “Dear Colleague” letter issued in October 2014, the Office of Civil Rights (“OCR”) recognized that “the quality and condition of the physical spaces of a school are tied to student achievement and teacher retention.” The OCR further found that “[s]tudents are generally better able to learn and remain engaged in instruction, and teachers are better able to do their jobs, in well-maintained classrooms that are well-lit, clean, spacious, and heated and air-conditioned as needed.” However, having proper facilities does not merely refer to adequate upkeep of the main school building, but also the presence of laboratories, auditoriums, athletic facilities, technological facilities, libraries, and media centers. In 2014, Richmond Public Schools’ assistant superintendent for op­
operations issued a report detailing 135 critical facility needs for Richmond Public Schools that arrived after years or even decades of deferred maintenance. The maintenance included high-cost projects such as roof replacements, replacing steam boilers, and mold removal—costing the city roughly $35 million to complete. However, as part of the city’s Capital Improvement Plan, Richmond will receive a mere $7 million for maintenance during the 2014–15 fiscal year.

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

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

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100. Id.
101. Id.
103. Letter from Catherine E. Lhamon, supra note 83, at 3.
104. Id.
105. Id.
could save a student $1021.71 on his or her college tuition. Meanwhile, a perfect score of five on an AP biology, calculus, chemistry, or physics exam is worth eight credits at VCU, and thus saves a student $2724.56 in tuition.\textsuperscript{107} To illustrate the severe gap in AP opportunities, students at Deep Run High School, which draws from wealthy neighborhoods in western Henrico, scored a three or better on 1022 AP exams in the 2013–14 school year—roughly one passing score for every 1.6 exams administered, which faired the best among the district’s thirty-two high schools in the city of Richmond and surrounding counties.\textsuperscript{108} Richmond Public Schools, meanwhile, managed only seventeen passing scores from all five of its comprehensive high schools.\textsuperscript{109}

Without a challenging curriculum that promotes advanced courses and higher learning, it comes as no surprise that the vast majority of students at high poverty schools are not on a four-year college track.\textsuperscript{110} Attending a school where the majority of students regularly attend class, engage in assignments and class discussion, and are on a college track facilitates the importance of education amongst the entire student body.\textsuperscript{111} The realities are saddening: “In high-poverty schools, a child is surrounded by classmates who are less likely to have big dreams and, accordingly, are less academically engaged and more likely to act out and cut class.”\textsuperscript{112} Students in high-poverty schools are also more likely to move during the school year, thus creating disruption in the classroom, and are “less likely to have large vocabularies, which in turn limits the ability of peers on the playground and in the classroom to learn new words.”\textsuperscript{113} The percentage of the student body that is eligible for free or reduced-priced lunch is often used as an effective way of determining a school’s poverty status.\textsuperscript{114}
Henrico students, respectively, qualified for any meal assistance, over 74% of all Richmond Public Schools students received free or reduced-price lunch.\textsuperscript{115}

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

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

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


\textsuperscript{116} See Mickelson, supra note 110, at 174–75.


The goal of education is to save the students that hinder students’ chances to succeed from the system simply, a student who was born in a safe neighborhood or she was born out of a success, and in turn, was born in a crime-ridden neighborhood, is necessarily valued less than other students. But the two students are in no way different from each other, the disadvantaged student.

This section of the paper will present examples of the two students. Part A will examine the weaknesses, and Part B will present examples of the two students.

A. School Finance

School districts rely on property taxes— the major source of educational revenue.\textsuperscript{118} Even when districts have differing amounts of fiscal resources and differing amounts of fur rate ... \textsuperscript{119} Schools have an obligation to address the educational needs of educational l
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School districts are funded by a mixture of state and local revenue—the majority of the local revenue being generated by property taxes. Educational inequities arise “because localities have differing amounts of property wealth and thus can raise disparate amounts of funding for schools with similar property tax rates . . . ” School finance reform has long been the vehicle for addressing educational equity. The ultimate goal of this type of litigation “is to increase the amount and equalize the distribution of educational resources and, in so doing, to improve the academic

120. Id.
opportunities and performance of students disadvantaged by existing finance schemes.113 Some proponents of school finance litigation scoff at the need for desegregation.122 Instead, advocates recognize the grave disparities between middle-class and poor schools and thus seek to level the playing field through increased funding to those impoverished, oftentimes predominantly minority, public schools.123

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

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

121. Ryan, Money, supra note 114, at 252.
122. Id. at 253.
123. Id.
125. Ryan & Heise, supra note 119, at 2059.
126. Id.
128. Ryan & Heise, supra note 119, at 2060.
129. Id. (noting that parents tend to reject measures that cap the revenue they can spend on their local schools); see Enrich, supra note 127, at 157.
130. Ryan & Heise, supra note 119, at 2059.

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The greatest economic segregation is occurring within the majority of the schools, not only in single-parent homes; the problem is not solved by the school district's efforts to equalize funding.131 This school district's effort to deal with such problems by injecting an inc
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131. Derek W. Ela,

132. Letter from C

133. See Ryan, Mc

134. See, e.g., Mol

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advantaged by exacerbating school finance litigation. Instead, advocates for middle-class and poor through increased predominantly minority school financing did not hold unconstitutional school financing as nearly twenty court until the U.S. Constitution's right under state litigation. Unstate funding, school districts to equate their spend or decrease their first option is to spend significant amounts on all students are to create education. The greatest combatant is likely widespread residential socioeconomic segregation. Thus, despite the influx of cash an impoverished district may receive from the state, the fact that the majority of the school's student body is poor and deals on a regular basis with the social pressures associated with being poor (i.e., single-parent homes, violent home lives, poor health care) dissolves the effect that increased funding would have as compared to an academic institution where the majority of students did not deal with such pressures. Many studies have shown that merely injecting an increased stream of revenue into such an isolated setting does little, if anything, to improve a school's academic performance.

The impact of school finance reform in Richmond schools is indicative of how this type of litigation has affected similar school districts nationwide. Despite the social deficiencies that plague its classrooms, Richmond Public Schools receive a significantly greater amount of funding per student than either Chesterfield or Henrico County schools—Richmond spends $13,022 per pupil, whereas Henrico spends $8978 and Chesterfield spends $9030. Further, there are millions of additional dollars being injected in-

133. See Ryan, Money, supra note 114, at 276–80 (arguing that “[t]he most important demographic factor affecting urban schools, which dwarfs all others, is the intense residential segregation among blacks and whites in metropolitan areas”).
to the Richmond school system annually in an effort to fix Richmond schools' facilities. However, based on the accreditation rates of Richmond Public Schools described above, increased funding has not translated to a better academic environment.

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

B. Socioeconomic Integration

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

Thus, the goal of socioeconomic integration is to address the effects of poverty on student performance by enrolling students from different socioeconomic backgrounds within the same school. This is often accomplished through redistricting or broadened freedom-of-choice plans that allow students to attend schools outside of their traditional attendance area. By doing so, students from different socioeconomic backgrounds can interact and learn from one another, fostering a more diverse learning environment.

1. The Social Equity Framework

There are many ways to achieve socioeconomic integration. One such method is through the use of freedom-of-choice plans. As stated previously, these plans allow students from different socioeconomic backgrounds to attend schools outside of their traditional attendance area. To ensure that these plans are not simply a form of racial segregation, they are subject to a strict scrutiny standard. This standard requires that plans the more a particular plan achieves racial diversity in the student body and the more the plan achieves socioeconomic diversity in the student body. If a plan is found to be racially motivated, it will be deemed unlawful.

137. RYAN, MILES, supra note 15, at 273.
139. Kahlenberg, Integration, supra note 2, at 1551–54.
lunch, while also considering census data of parental education, single-parent households, and income.\textsuperscript{140}

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

1. The Social Effects of Socioeconomic Integration

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

\textsuperscript{140} Kahlenberg, Walks, supra note 79, at 7.

\textsuperscript{141} Id.


\textsuperscript{143} See Ryan, Miles, supra note 15, at 273.


\textsuperscript{146} See id.
Nonetheless, socioeconomic integration could come under fire if a court were to determine that it was motivated by a racially discriminatory purpose. The assignment plan would then come under a strict scrutiny analysis to determine whether the integration was racially motivated. This is unlikely to happen, however, because Justice Kennedy, concurring in Parents Involved, specifically recognized avoiding racial isolation and achieving a diverse student body as compelling government interests.

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

The Coleman Economic Integration Department of the United States. It was estimated that 650,000 students in the most influential district did not have an effect on the Coleman. Perhaps more significantly, the findings showed that "the social environment of the school district is an important factor in the education of a child. It is the child's academic achievement that is enhanced by interaction with middle-class peers.

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

153. See KAHLENBERG, TOGETHER, supra note 75, at 41.
155. COLEMAN REP., supra note 149, at 29; Kahlenberg, Walks, supra note 79, at 2.
156. COLEMAN REP., supra note 149, at 325.
157. Ciolfi, supra note 1, at 788.
158. See Kahlenberg, Walks, supra note 79, at 7.
159. Id.
160. Id.
Property grew by 25%, "almost five times faster than primary cities and well ahead of the growth seen in smaller metro areas and non-metropolitan communities." As a result, suburbs of primary cities were home to 1.5 million more poor residents than their primary cities. Thus, while concentrations of poverty were, in decades past, an issue to be dealt with by city governments, poverty in schools is now an issue that concerns parents of suburban students.

2. Successes of Socioeconomic Integration

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

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

162. Elizabeth Kneebone & Emily Garr, The Suburbanization of Poverty: Trends in Metropolitan America, 2000 to 2008, in METROPOLITAN OPPORTUNITY SERIES 1 (2010), http://www.brookings.edu~/media/research/files/papers/2010/12/20poverty%20kneebone/0120_poverty_paper.pdf. The study divided the United States into four categories—primary cities, suburbs, small metropolitan areas, and non-metropolitan areas. Id. at 3. Primary cities were identified as the 100 largest metropolitan areas based off the 2007 census and "1) appear first in the official metropolitan area name, or 2) are listed second or third in the official name and contain a population of at least 100,000." Id.

163. Id. at 1.

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

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

166. Id. at 5.


168. See HEATHER SCHWARTZ, HOUSING POLICY IS SCHOOL POLICY: ECONOMICALLY INTEGRATIVE HOUSING PROMOTES ACADEMIC SUCCESS IN MONTGOMERY COUNTY,
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A students. Thus, the Jefferson County integration plan looks at both the racial and socioeconomic makeup of neighborhoods in its desegregation efforts.

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

3. Concerns in the Implementation of Socioeconomic Integration

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

175. Id.
176. See infra notes 204–07 and accompanying text.
177. SIEGEL-HAWLEY, supra note 3.
179. SIEGEL-HAWLEY, supra note 3.
180. Id.
181. See supra notes 153–57 and accompanying text.
185. Id.
186. See, e.g., Ma in the Future of Education (noting that incentives created by the added costs of school consolidation will tend to be less effective than the over all costs determined th
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Socioeconomic Integration

The feasibility of socio-economic integration, though a child might attend out-of-zone students, the overall level of parental support within the school is of far less importance to a child's academic success than the overall level of parental support within the school.\textsuperscript{182}

Perhaps an even greater concern, and probably the greatest impediment to this reform, is the transportation practicality of desegregation in highly segregated metropolitan areas. No doubt, the outrage that swept the Richmond area during busing was fierce, as parents waved the banner of the importance of neighborhood schools in a child's education.\textsuperscript{183} Many parents at the time were nostalgic regarding neighborhood schools; in 1969, in fact, roughly 50\% of all students either walked or rode their bike to school.\textsuperscript{184} This idea is far less prevalent in today's world, illustrated by the fact that families choosing to send their children to non-neighborhood schools rose by 45\% between 1993 and 2007.\textsuperscript{186} However, despite some proponents arguing that socioeconomic integration can be realized without increased transportation costs,\textsuperscript{186} it is unlikely that this will be the case in Richmond. Although the Greater Richmond Transit Company, the area's public transit system, is paid for by both the city of Richmond and Henrico County, and owned by Richmond and Chesterfield County, there are only nominal bus routes carrying passengers to and from Richmond and the surrounding counties,\textsuperscript{187} thus making the prospect of a joint public school bus transit between the municipalities an arduous undertaking. Yet in Richmond, this education platform cannot be effectively implemented without cooperation between Richmond, Chesterfield, and Henrico on an appropriate, cost-effective transportation system.


\textsuperscript{184} Kahlenberg, \textit{Walks}, supra note 79, at 10.

\textsuperscript{185} Id.

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

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

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

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

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

A. Court-Ordered Remedial Action via the Virginia Constitution

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

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

190. 411 U.S. 1, 28 (1973); see Ciolfi, supra note 1, at 775.
191. See Ciolfi, supra note 1, at 796–97.
192. See, e.g., Robinson v. Cahill, 303 A.2d 273, 295 (N.J. 1973) (holding that New Jersey's financing scheme violated the state's "thorough and efficient" education clause); DeRolph v. State, 677 N.E.2d 733, 740 (Ohio 1997) (holding that Ohio's elementary and secondary public school financing system violated the state constitutional provision mandating that the state provide a thorough and efficient system of common schools throughout the state).
194. Ciolfi, supra note 1, at 797.
195. See id. at 797–98.
scribed standards of quality . . . "\(^{196}\) Thus this “districting clause” creates “an affirmative duty for legislators to draw boundary lines in a manner that promotes quality education . . . "\(^{197}\) By implication, the Board of Education is thus charged to draw district lines that avoid concentrations of poverty. As this article has sought to demonstrate, in Richmond, and indeed throughout the country, coming from an impoverished household and attending a school with the majority of the classmates impoverished has a devastating effect on that student’s educational ceiling.

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

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

\(^{196}\) VA. CONST. art. VIII, § 5(a).
\(^{197}\) Ciolfi, supra note 1, at 806.
\(^{199}\) VA. CONST. art. VIII, § 1.
\(^{200}\) See Ciolfi, supra note 1, at 777.
\(^{201}\) 8 VA. ADMIN. CODE § 20-131-300 (2015).
\(^{202}\) Ciolfi, supra note 1, at 806.
The scope of this portion of Article VIII was discussed in Scott v. Commonwealth, which held that:

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

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

Districting falls under the jurisdiction of the Virginia General Assembly and the Virginia Board of Education—the Virginia Board of Education has constitutional authority to define district boundaries, but the General Assembly may institute conditions. Despite this constitutional authority, Virginia Code section 22.1-25 holds that: (1) the Commonwealth’s school divisions must remain “as they exist[ed] on July 1, 1978 . . . until further action of the Board of Education,” (2) “[n]o school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city affected,” and (3) “[n]o change shall be made in the composition of any school division if such change conflicts with any joint resolution expressing the sense of the General Assembly. . . .” This statute, implemented seven years after the annexation moratorium, spun the web of entrenchment that exists today between Virginia’s schools and its magisterial districts.
One could argue the unconstitutionality of the statute under state law, as the General Assembly is merely authorized to ensure that district boundaries bolster the standards of quality. Putting aside the fact that the statute was almost certainly implemented to maintain the de facto racial segregation of urban and suburban school districts, the fact that the statute utterly fails to promote the standards of quality—as evidenced, for example, by the disparities in the school districts of Richmond and its surrounding counties—a court could strike the entire law as the standards of quality could never realistically be achieved based on the 1978 district lines. In summary, those district lines codified in Virginia Code section 22.1-25(A)(1) diminish, rather than promote, the standards of quality protected under Article VIII.

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

209. Ciolfi, supra note 1, at 811–12.

could the court order opening the gates.

The districting process is no different for litigation than for courts. But though judges would agree with Merhige’s consens of the public school system, they would sidestep the issue of urban segregation and its impact on education. The Virginia Constitution contains no provisions for litigation that would allow a court to strike section 22.1-25 as unconstitutional. Instead, the courts would have to agree with Merhige’s consensual process as a means of achieving social justice.

B. Barriers Created by Virginia’s Independent Cities

Voluntary consolidation is a necessary process among independent cities and counties. According to Merhige’s consensual process, the General Assembly would also benefit from programs offered by the State. However, local governments would have to make the decision to make consolidation efforts.

The Virginia Constitution contains no provisions for litigation that would allow a court to strike section 22.1-25 as unconstitutional. Instead, the courts would have to agree with Merhige’s consensual process as a means of achieving social justice.
The statute under which the independent districts were authorized to enter into agreements of urban consolidation is utterly unconstitutio­n­al, for example. If Richmond and Henrico and Chesterfield all decided that the entire law as it currently stands should be achieved by consolidation, those district boundaries could diminish, rather than be re­asserted under Ari­ контура.

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

The Virginia Constitution expressly recognizes cities as separate municipal entities from counties. This is a phenomenon completely unique to Virginia, as thirty-eight of the country’s forty-one independent cities are in Virginia—Baltimore, St. Louis, and Carson City, being the exceptions. The nature of Virginia’s...
independent cities as independent political and municipal entities is the root of Virginia’s local government problems, and it has led to severe socioeconomic disparities between cities and surrounding counties. Virginia’s independent cities are not politically associated with any county, even though they may be completely surrounded by one. City residents in Virginia pay taxes and vote only in their city, unlike residents of cities in every other state, where city residents pay county taxes and elect county government officials. What has arisen is a separate and oftentimes adversarial relationship between Virginia’s independent cities and its surrounding counties.

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


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

215. See Sorrell & Vik, supra note 212, at 7.

216. Id. at 2.

217. Id.

218. Id. at 1.

219. Id.

220. See Roberts, supra note 213, at 1557 (explaining that as counties began to deliver services traditionally associated with cities, the county residents no longer needed to rely on annexation by the city).
municipal entities and, it has led them and surrounding not politically as may be completely pay taxes and vote in every other state, except county governments and oftentimes dependent cities and towns.

City's power to annex cities accommodated growth. Annexation, even necessary because municipal services with annexation programs, these parts of county officials between cities and counties, of an annexation of other parts of the formation of a separate city's tax base. More sophisticated now less of a quid pro quo.

In the late 1960s, as described above, white flight was amplifying in Richmond. The city had an increasing black population—a vast number of students attending Richmond Public Schools were black, and blacks were, after years of segregation, finally making inroads politically. In 1969, a court-negotiated annexation agreement between the city and Chesterfield County placed 44,000 mostly white Chesterfield residents into the city of Richmond and dropped Richmond's black population to 42%. The outcry from the newly elected black city council, as well as from residents of the annexed area of northern Chesterfield County led the Virginia legislature to take action; the following year, the General Assembly imposed a moratorium on all new annexations for cities with populations greater than 125,000, which "[a]s a practical matter . . . applied only to the Richmond metropolitan area." The city, which since 1742 had used annexation to reflect population and economic growth eleven times, was now locked into its boundaries. That moratorium was broadened in 1987 to include all Virginia cities, and continues to this day. Meanwhile, Henrico and Chesterfield counties have been granted annexation immunity by the General Assembly, which survives even if the moratorium is one day lifted. The issue is not scheduled to hit the General Assembly floor until 2018.

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

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

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221. See supra note 39 and accompanying text.
222. See CAMPBELL, supra note 7, at 167, 170-71.
223. Id. at 171-72.
225. CAMPBELL, supra note 7, at 174.
226. See Sorrell & Vilk, supra note 212, at 3.
227. Id.
228. Id.
230. Id.
1970, the year before the moratorium, Richmond had a larger population than Charlotte.\footnote{Population of the 100 Largest Urban Places: 1970, U.S. BUREAU OF THE CENSUS, https://www.census.gov/population/www/documentation/twps0027/tab20.txt (last visited Oct. 1, 2015).} But over the next two decades, Charlotte merged its municipal services, including its school system, with surrounding Mecklenburg County, and implemented progressive banking laws that would drive three prominent Richmond banks south to the Charlotte area.\footnote{See CAMPBELL, supra note 7, at 186–87.} The economic disparities between the two cities are vast to this day.

The moratorium on annexation has a crippling effect on Richmond as an independent city. The ability to annex is crucial to the economic stability of an independent city, and Richmond had used its annexation power consistently since its foundation.\footnote{See Annexation History Map, ARCGIS, http://www.arcgis.com/home/webmap/viewer.html?webmap=2;ec3c09aecc1c4c8a8cdd9bf6599116 (last visited Oct. 1, 2015).} In large part due to the high volume of governmental, educational, non-profit, and religious institutions within the city limits, Richmond was initially unable to collect taxes on nearly 20% of its real property.\footnote{CAMPBELL, supra note 7, at 182.} Virginia’s independent cities in general “continue to have a larger tax burden, more fiscal stress and less ability to develop than before the moratorium.”\footnote{Sorrell & Vlk, supra note 212, at 5.} Yet while the independent cities struggle for economic growth, often, the wealthier counties are growing faster than the cities they surround.\footnote{Id.}

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

Because of the entrenched history of Virginia’s independent cities and the Commonwealth’s desire to align municipal entities and school divisions, voluntary school consolidation has driven many residents to boarder counties in search of better schools.\footnote{See Golfi, supra.}\footnote{Sorrell & Vlk, supra note 212.} school districts are created through local government divisions of the Commonwealth for the purpose of providing educational services.\footnote{See EDWARDS, supra note 212, at 931.} For example, the City of Charlottesville, and Albemarle County, the increase in jurisdictions has detracting new economic opportunities from the ten cities, six counties, and the region.\footnote{Tony German, Pulling Together, THI 240.} Essentially, the consolidated school districts consolidate several towns, Roanoke County, and Bevy of proposals to the
and school divisions, achieving socioeconomic integration through voluntary school reform efforts between Richmond and its surrounding counties is very much an uphill battle. There is no constitutional requirement that school districts align with local government divisions, but that has been the norm across the Commonwealth for over a century. It may be impossible to overturn Virginia's annexation laws, as most counties nowadays, including those counties bordering Richmond, possess highly sophisticated municipal entities. However, that fact alone does not kill any opportunity for educational reform, or an opportunity to create a working relationship between the Richmond area municipalities as it relates to the establishment of a Greater Richmond School District. For example, the independent cities of Bedford, Charlottesville, Franklin, Lexington, and Radford voluntarily surrendered their annexation authority over their respective surrounding counties in favor of a revenue sharing plan with the surrounding counties. The relationship between Charlottesville and Albemarle County has existed successfully since 1982. Further, the increased willingness for cooperation between multiple jurisdictions has been undertaken with the specific goal of attracting new economic opportunity. For instance, in recent years, the ten cities, six counties, and one town that make up the Hampton Roads region announced a joint effort to attract businesses to the region. Establishing such a relationship between Richmond and its surrounding counties may be the first step toward a consolidated school system.

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

237. See Ciolfi, supra note 1, at 807–08.
238. Sorrell & Vlk, supra note 212, at 4.
the bill. However, Emporia and Williamsburg, both independent cities, though with far fewer residents than Richmond, have consolidated their school systems with their surrounding counties.

Williamsburg and James City County consolidated their public schools in the mid-1950s and have operated jointly ever since. About 90% of the students attending Williamsburg-James City County Public Schools reside in James City County, while the rest live in the City of Williamsburg. The school board is comprised of five elected officials from the county and two appointed members from the city. The district has some 11,000 students in three high schools, three middle schools, and nine elementary schools. The City of Emporia, meanwhile, merged all municipal services with surrounding Greensville County in an effort to cut costs between the jurisdictions. The district now is comprised of two elementary schools, a middle school, and a high school. The school board has six members, two of whom are from the city of Emporia, the rest from various Greensville County districts.

While these districts are significantly smaller than any of Richmond, Chesterfield, or Henrico, their ability to consolidate despite the political barriers is nonetheless significant.

242. Barber, supra note 229.
243. About WJCC, WILLIAMSBURG JAMES CITY COUNTY PUBLIC SCHOOLS, http://wjcschools.org/web/about-wjcs/ (last visited Oct. 1, 2016); E-mail from Woodrow Harris, Emporia City Council Member, to author (Dec. 2, 2014, 12:30 EST) (on file with author).
244. THE THOMAS JEFFERSON PROGRAM IN PUBLIC POLICY, AN ANALYSIS OF ADVANTAGES AND DISADVANTAGES OF SEVERAL OPTIONS FOR PRODUCING EXCELLENCE IN EDUCATION IN WILLIAMSBURG CITY (K-12) 7-8 (2009).
245. Id. at 10.
248. E-mail from Woodrow Harris, Emporia City Council Member, to author (Dec. 2, 2014, 12:30 EST) (on file with author).
Economic persuasion would ultimately be the best way to facilitate a deal between Richmond, Chesterfield, and Henrico. The first step would be to form an economic partnership that creates joint returns for all municipalities. A starting point may be a joint public transportation system that is paid for and operated by Richmond, Chesterfield, and Henrico, and that has numerous bus routes going into and out of all the three jurisdictions. A consolidated school system would inevitably result in more interdistrict transportation. An effective public transit system running between Richmond, Chesterfield, and Henrico would increase the feasibility of the jurisdictions transporting students across city and county lines.

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

CONCLUSION

The district lines drawn by the Board of Education work to segregate the wealthy from the poor. As a result, poor students in Richmond are not receiving the adequate educational opportunities mandated by the Virginia Constitution, while suburban schools flourish. Socioeconomic integration is the best way to instill true reform in Richmond Public Schools. Redistricting the division lines to ensure no more than half of any school's student body receives free or reduced-price lunch will raise the academic ceiling for impoverished students currently attending low-performing schools. However, because of the significant poverty level already in existence in the majority of schools in the city of Richmond, an effective socioeconomic integration plan will never be achieved without the involvement of Chesterfield and Henrico counties.
Incorporating as much school choice as possible on the part of individual families would certainly lessen the political burdens, as Chesterfield and Henrico families would likely never agree to mandatory assignment programs. The most effective, and likely most lasting, method to ensure real reform in the Richmond area schools is for the city of Richmond, Chesterfield County, and Henrico County to voluntarily enter into a mutually beneficial partnership. The consolidation avenues offered under Article VIII, although ideological, are likely too dubious at this juncture to be given merit by most Virginia courts. Yet, due to the uninhibited municipal independence enjoyed by the counties over the past half-century, it is unlikely that either Chesterfield or Henrico will be inclined in the near future to voluntarily join forces with the city to create a consolidated Greater Richmond School District.

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

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POLICE BODY CAMERA CAUTION, FERGUSON, MISSOURI

On August 9, 2014, Michael Brown, an unarmed black teenager, was shot by a police officer in the street.1 The incident happened in Ferguson, Missouri, a predominantly black area.2 Several days of rioting, looting, and law enforcement tactics, and more than 50 arrests, followed. Missouri Governor Jay Nixon declared a state of emergency to restore order in the region.3

Following Mr. Brown’s death, international and national attention focused on racial discrimination and police brutality.4 There is no question that Michael Brown was killed because many believe that the officer was not justified in using deadly force against a 12-year-old black.5 There is no doubt that Mr. Brown was shot with a 9mm semi-automatic weapon, and that he had his hands raised in surrender when Death instigated the fatal shot.6

Critics also noted that racist statements about people of color were made by various and racially motivated police officers and officials.

Unfortunately, the only way to prevent a tragedy like that is dispositional.

1. Ralph Ellis, Few in Ferguson, Do Not Want to Leave, St. Louis Post Dispatch, 2014/08/16/us/missouri
2. See id.
3. See id.
4. See id.
c=0.
6. Ellis, Hann, id.
7. Id.