

# THE MIDDLE CLASS, URBAN SCHOOLS, AND CHOICE

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## INTRODUCTION

It is common knowledge that middle- and upper-class parents tend to disfavor urban public schools, and that they often move to suburbs in order to avoid having to send their children to those schools.<sup>1</sup> Thus, the condition of urban public schools contributes to suburban sprawl—that is, the movement of people and jobs from city to suburb. Because most suburbs are highly dependent on automobiles,<sup>2</sup> such sprawl makes it more difficult for people without cars to reach jobs and other destinations, as well

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1. See, e.g., Erika K. Wilson, *Gentrification and Urban Public School Reforms: The Interest Divergence Dilemma*, 118 W. VA. L. REV. 677, 680 (2015) (in recent decades, “white middle-class residents either avoided the public schools or moved out of the city once they had school-aged children.”).

2. Cf. OLIVER GILLHAM, *THE LIMITLESS CITY 4* (2002) (citing numerous definitions of sprawl, some of which emphasize automobile-oriented development).

as increasing greenhouse gas emissions and other forms of automobile-related pollution.<sup>3</sup>

This Article discusses a variety of possible solutions to the unpopularity of urban schools among middle-class parents. Part I of this Article suggests that this problem is a cause as well as a result of middle-class flight: that is, urban schools have poor reputations because their students come from lower-class backgrounds, thus causing poor test scores, thus causing poor reputations, thus causing additional middle-class flight. Part II of this Article describes the legal doctrines that have led to the status quo. Part III discusses the pros and cons of several policies that might lure middle-class families into cities, focusing on policies designed to enhance parental choice. This Article concludes that each of these solutions could make cities more appealing to affluent parents, but no solution is cost-free.

### I. THE PROBLEM: NO BAD SCHOOLS, ONLY WEAK STUDENTS

Why are urban public schools so disreputable? It could be argued that cities have a weaker tax base than suburbs and that urban schools are therefore underfunded.<sup>4</sup> But where suburban school districts are of comparable size to their big-city counterparts, urban school districts actually outspend suburban districts.<sup>5</sup> Table 1 compares suburban districts with over 50,000 students with their urban counterparts.

**TABLE 1: City vs. Suburban Spending Per Pupil<sup>6</sup>**

Atlanta Metro Area

Atlanta

12,994

3. See generally Reid Ewing et al., *Growing Cooler: The Evidence on Urban Development and Climate Change*, available at <http://www.smartgrowthamerica.org/documents/growingcoolerCH1.pdf> (more compact, urbanized development likely to lead to reduced driving, which in turn will reduce auto emissions); Maggie L. Grabow et al., *Air Quality and Exercise-Related Health Benefits from Reduced Car Travel in the Midwestern United States* (Nov. 2, 2011), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3261937/> (discussing other forms of harm from auto emissions).

4. See, e.g., Wayne Batchis, *Urban Sprawl and the Constitution: Educational Inequality as an Impetus to Low-Density Living*, 42 URB. LAW. 95, 102 (2010) (discussing “inadequate funding of America’s urban public schools” as a potent disincentive for urban life).

5. I focus on larger districts because of the difficulties of data collection where suburbia is divided into dozens of small districts. Also, it is not clear to me whether a district of one or two schools is comparable to a district with dozens of schools.

6. *Public Education Finances: 2014*, U.S. CENSUS BUREAU, at 8 (issued June 2016) available at <http://census.gov/content/dam/Census/library/publications/2016/econ/g14-aspef.pdf> (“2014 Finances”) (statistics for District of Columbia); *id.* at 25-26 (other statistics).

|                              |        |
|------------------------------|--------|
| Fulton County                | 9,638  |
| Gwinnett County              | 9,270  |
| DeKalb County                | 8,847  |
| Cobb County                  | 8,651  |
| Dallas/Fort Worth Metro Area |        |
| Dallas                       | 8,609  |
| Fort Worth                   | 8,641  |
| Plano                        | 8,374  |
| Garland                      | 8,135  |
| Arlington                    | 7,793  |
| Baltimore Metro Area         |        |
| Baltimore                    | 15,564 |
| Howard County                | 15,358 |
| Baltimore County             | 13,338 |
| Anne Arundel County          | 13,167 |
| Denver Metro Area            |        |
| Denver                       | 10,564 |
| Jefferson County             | 8,685  |
| Douglas County               | 8,182  |
| Houston Metro Area           |        |
| Houston                      | 8,451  |
| Fort Bend                    | 7,691  |

|                             |        |
|-----------------------------|--------|
| Katy                        | 8,240  |
| Washington, D.C. Metro Area |        |
| Washington                  | 18,485 |
| Fairfax County              | 13,710 |
| Montgomery County           | 15,181 |
| Prince George's County      | 13,994 |
| Prince William County       | 10,216 |
| Loudoun County              | 12,485 |

Table 1 reveals a consistent pattern: urban districts always spend more per pupil than their suburban counterparts.

Even where urban school districts significantly outspend their suburban counterparts, they fail to attract affluent families. In Kansas City, Missouri, court-ordered spending caused the city schools to spend three times as much as some suburban school districts during the 1980s.<sup>7</sup> Nevertheless, city test scores failed to improve significantly,<sup>8</sup> and the city schools continued to lose white and middle-class families.<sup>9</sup> Today, 89.4% of Kansas City students are poor enough to be eligible for subsidized meals<sup>10</sup>—a percentage higher than most big-city school districts.<sup>11</sup>

Admittedly, students in low-income areas may cost more to educate, either because of the inherent disadvantages of growing up with poverty or because these children may be more likely to suffer from limited English proficiency or learning disabilities.<sup>12</sup> Thus, it might be the case that

7. See *Missouri v. Jenkins*, 515 U.S. 70, 74-79 (1995) (describing history of desegregation litigation that led to increased spending); *id.* at 99 (stating that Kansas City schools spent between \$7,665 and \$9,412 per pupil, while suburbs spend between \$2,854 and \$5,956 per pupil).

8. See Molly G. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1352-53 (2004).

9. See Michael Lewyn, *The Law of Sprawl: A Road Map*, 25 QUINNIPIAC L. REV. 147, 167 n.26 (2006).

10. See *District Demographic Data*, MO. DEP'T OF ELEMENTARY AND SECONDARY EDUC., <http://mcde.dese.mo.gov/guided inquiry/District%20and%20Building%20Student%20Indicators/District%20Demographic%20Data.aspx> (last visited Mar. 26, 2017) (2014 data; percentage has risen from seventy-nine percent in 2006).

11. See *infra* Table 2.

12. See Wilson, *supra* note 1, at 699 (“poor students tend to have more social and academic needs due to the effects of concentrated poverty”); GENERAL ACCOUNTING OFFICE,

if city schools outspent suburbs by (for example) a ten-to-one margin, disadvantages arising from family background might be appreciably narrowed. Since this strategy has never been tried and does not seem politically feasible in today's political climate, I am agnostic about its likely success or failure.

It could also be argued that urban school districts are disreputable merely because school districts are incompetently run and that better school boards or better mayors would therefore solve the problem of urban schools.<sup>13</sup> But if school maladministration were the major cause of the school gap, urban schools would perform poorly regardless of their student demographics. In fact, urban schools that can screen out low achievers perform as well as suburban schools. For example, according to U.S. News and World Report, nine of the ten best high schools in New York State are within the City of New York.<sup>14</sup> All but one of these urban schools are "exam schools" that screen out low-achieving students.<sup>15</sup>

Moreover, urban schools often perform well as long as their student bodies are relatively affluent. For example, one study of Buffalo's public schools showed a strong correlation between the share of a school's student body living in poverty and its results on standardized mathematics tests.<sup>16</sup>

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*Per Pupil Spending Between Selected Inner-City Schools and Suburban Schools Varied by Metropolitan Area*, Report to the Ranking Minority Member, Committee on Ways and Means, House of Representatives 1, 5-6 (Dec. 2002), <http://www.gao.gov/new.items/d03234.pdf>. I note that this 2002 study found that city schools were outspent by suburbs in some metropolitan areas; however, even this study found a fairly even division between regions where cities spent more and those where suburbs spent more. *Id.* at 8 (city schools better funded in Boston, Chicago, and St. Louis, while suburbs received more funding in New York and Fort Worth).

13. Cf. Michael Heise, *Law and Policy Entrepreneurs: Empirical Evidence on the Expansion of School Choice Policy*, 87 NOTRE DAME L. REV. 1917, 1937 (2012) ("criticizing the bureaucracy of urban school districts as inefficient and corrupt is a popular sport among many legislators and governors").

14. See *Best High Schools in New York* (2017), U.S. NEWS & WORLD REPORT, <http://www.usnews.com/education/best-high-schools/new-york> (last visited Mar. 27, 2017) (listing best schools as Lehman High School of American Studies, High School for Dual Language and Asian Studies, Queens High School for the Sciences, Brooklyn Latin, Baccalaureate School for Global Education, Staten Island Technical High School, Bronx High School of Science, Townsend Harris High School, one suburban school, and the High School for Math, Science and Engineering at City College of New York).

15. See CHESTER E. FINN & JESSICA A. HOCKETT, EXAM SCHOOLS: INSIDE AMERICA'S MOST SELECTIVE PUBLIC SCHOOLS 211-13 (2012) (listing all but one of the nationally ranked New York City schools mentioned in prior footnote as exam schools).

16. See Gary Orfield et al., *Better Choices for Buffalo's Students: Expanding and Reforming the Criteria Schools System*, Report to Buffalo Public Schools 1, 21 (May 2015), [http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/better-choices-for-buffalos-students-expanding-reforming-the-criteria-schools-system/BPS\\_UCLACRP\\_052315\\_v8\\_combined.pdf](http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/better-choices-for-buffalos-students-expanding-reforming-the-criteria-schools-system/BPS_UCLACRP_052315_v8_combined.pdf); see also James Traub, *What No School Can Do*, N. Y. TIMES (Jan. 16, 2000), <http://www.nytimes.com/2000/01/16/magazine/what-no-school-can-do.html?pagewanted=all> ("[New York City Schools] that performed poorly,

Similarly, pupils in Chicago's fifteen best urban schools (as measured by standardized test scores) were, on average, twenty percent low-income, while the average Chicago school's pupils are eighty-five percent low-income.<sup>17</sup> Schools dominated by low-income students tend to have poor reputations because children raised in lower-class households tend to be less intellectually stimulated at home and thus are less prepared for school.<sup>18</sup> As a result, students from lower-class households tend to achieve less even when they are in the same school as students from upper-class households.<sup>19</sup>

If urban schools with middle- and upper-class students have high test scores, it follows that urban schools have bad reputations primarily because they have more disadvantaged students than suburban schools. Thus, urban schools' ability to attract middle-class parents is limited by a vicious circle: their social makeup leads to poor reputations,<sup>20</sup> which scares off middle-class parents, which ensures a low-income student body, which ensures that these schools continue to have poor reputations.

## II. WHY ARE URBAN SCHOOLS POVERTY-PACKED?

Urban schools are dominated by low-income students in large part because of school residency requirements. State and local legislation typically requires that in order to attend a public school in a school district,

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like those that performed well, scored almost exactly as the socioeconomic status of the children in them would have predicted. You could have predicted the fourth-grade test scores of all but one of the city's 32 districts merely by knowing the percentage of students in a given district who qualified for a free lunch. Only a few dozen of the city's 675 elementary schools scored well despite high poverty rates. In other words, good schools aren't doing that much good, and bad schools aren't doing that much harm."').

17. See Daniel Hertz, *Gentrification's Impact on Neighborhood Schools' Success* (Nov. 5, 2013), <http://www.chicago-bureau.org/op-ed-gentrifications-impact-on-neighborhood-schools-success> (referring to neighborhood schools in which more than twenty-five percent of students achieved a standardized test score that "exceeds standards" and is thus on track for college); see also *id.*

18. See Michael Lewyn, *Suburban Sprawl: Not Just An Environmental Issue*, 84 MARQ. L. REV. 301, 324 (2000) (quoting statements by numerous social scientists that the quality of schooling accounts for less than half of the variation in students' academic performance).

19. *Id.* at 324-25 (citing examples).

20. And sometimes school discipline problems as well. Rightly or wrongly, many middle-class parents associate poverty-stricken urban schools with high levels of violence and disruptiveness. Cf. Michelle Parthum, *Using Litigation to Address Violence in Urban Public Schools*, 88 WASH. U. L. REV. 1021, 1023 (2011) (discussing "everyday violence of inner-city schools").

you must live in that district.<sup>21</sup> Even the most prosperous central cities generally have more poor people than many of their suburbs.<sup>22</sup> If, as suggested above, diverse schools usually have worse reputations than schools full of middle-income students, most urban schools will therefore have worse reputations than most suburban schools.

But neighborhood poverty alone does not explain why entire urban school districts have bad reputations. If a school's student body always reflected its neighborhood, schools in affluent parts of a city would have "good" schools (by that I mean schools that had high test scores and were perceived by parents as desirable) even if most city schools were undesirable. However, this is only the case where such schools draw their student bodies only from affluent neighborhoods.<sup>23</sup> But some school attendance zones draw from a larger, more socially diverse geographic area.<sup>24</sup> As a result, even schools in affluent urban areas sometimes scare off middle-class parents.

In the late twentieth century, federal courts inadvertently exacerbated this problem through their often-futile efforts to desegregate urban public schools. In the 1954 decision of *Brown v. Board of Education*,<sup>25</sup> the Supreme Court prohibited government-mandated segregation of local schools. White parents were not eager, however, to send their children to desegregated schools—partially because of irrational racism, and partially because the white middle-class parents of sixty years ago, like today's middle-class parents, might have wanted to avoid schools filled with disadvantaged children, and most blacks then had poverty-level incomes.<sup>26</sup> So, "white flight" from integrated urban schools began. In Washington, D.C., for example, white enrollment in city schools declined

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21. See Yvonne Vissing, *Homeless Children and Youth: An Examination of Legal Challenges and Directions*, 13 J. L. SOCIETY 455, 486 (2012); *Martinez v. Bynum*, 461 U.S. 321 (1983) (upholding constitutionality of such requirements).

22. See Michael Lewyn, *How Real is Gentrification?*, 43 REAL EST. L.J. 344, 346 (2014) (citing examples).

23. See Hertz, *supra* note 17 (citing example).

24. My own life presents an example. From kindergarten through fifth grade, I attended Jackson Elementary, a highly reputed Atlanta neighborhood school with very few low-income children. But for middle school, my address put me in the attendance zone for Sutton, a school that drew not only from Jackson's rich neighborhood but from poorer areas as well. My parents quickly pulled me out of the Atlanta public school system.

25. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

26. In 1959, fifty-six percent of blacks lived below the poverty level, more than three times the white poverty level of eighteen percent. See U.S. DEP'T OF COMMERCE, *Poverty in the United States: 1959 to 1968*, Current Population Reports 1 (Dec. 31, 1969), available at <https://www.census.gov/content/dam/Census/library/publications/1969/demo/p60-68a.pdf>. By contrast, today about twenty percent of blacks have poverty-level incomes, just under twice the white poverty level of 12.7%. See THE WORLD ALMANAC AND BOOK OF FACTS 48 (Sarah Janssen ed. 2016). Thus, the income gap between blacks and whites was even larger than it is today.

by half between 1954 and 1963.<sup>27</sup> These whites generally moved to suburbs.<sup>28</sup> Suburban public schools were often heavily white, and thus were not affected by *Brown*.

But *Brown*, standing alone, did not affect all urban schools. Although the Court had outlawed explicit segregation by race, it had not yet addressed the constitutionality of facially neutral policies that tended to place white students in mostly-white schools. Urban school boards took advantage of this loophole by gerrymandering the boundaries of school attendance zones.<sup>29</sup> For example, in Kansas City, Missouri, the school board frequently shifted white neighborhoods from integrated attendance zones to nearby zones full of predominantly white schools.<sup>30</sup> The school district also placed new schools in areas that were all-white or all-black.<sup>31</sup> So in the late 1950s and early 1960s, whites in the most integrated neighborhoods were still subject to desegregation, but other urban whites could still send their children to almost all-white schools. As a result, public schools promoted “white flight” only in cities’ more diverse neighborhoods.

But in the 1968 case of *Green v. County School Board of New Kent County*,<sup>32</sup> the Court outlawed a “freedom of choice” plan that permitted each pupil to choose his or her school on the ground that the plan had failed to achieve desegregation.<sup>33</sup> And in the 1971 case of *Swann v. Charlotte-Mecklenburg Board of Education*,<sup>34</sup> the Court suggested that evidence of segregation included “building new schools in the areas of white suburban expansion farthest from Negro population centers.”<sup>35</sup> The Court added that lower courts could remedy such pro-segregation policies by altering attendance boundaries or busing students across a city in order to achieve racial integration.<sup>36</sup> So after *Green* and *Swann*, any school district that had

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27. See RAYMOND WOLTERS, *THE BURDEN OF BROWN* 16 (1992) (enrollment declined from just over 40,000 students to just under 19,000 students). Although other forces contributed to suburbanization, white enrollment declined especially rapidly in the years after *Brown*. For example, between 1951 and 1954, white enrollment declined by about ten percent (from 45,682 to 40,927 students), but between 1954 and 1957, white enrollment declined by over twenty percent (from 40,927 students to 31,626 students). *Id.*

28. *Id.* at 292 (“almost all of the white flight was to suburban public schools”).

29. See MAXWELL L. STEARNS, *CONSTITUTIONAL PROCESS: A SOCIAL CHOICE ANALYSIS OF SUPREME COURT DECISIONMAKING* 25 (2002). For example, in Washington, twelve of the thirteen elementary schools west of Rock Creek Park were eighty-five percent white; see also WOLTERS, *supra* note 27, at 30.

30. See KEVIN FOX GOTHAM, *RACE, REAL ESTATE AND UNEVEN DEVELOPMENT* 104-05 (2d ed. 2015).

31. *Id.* at 107.

32. *Green v. Cnty. Sch. Bd. of New Kent Cnty.*, 391 U.S. 430 (1968).

33. *Id.* at 439 (lower courts must “assess the effectiveness of a proposed plan in achieving desegregation”).

34. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

35. *Id.* at 21.

36. *Id.* at 27-29; see also *Keyes v. Sch. Dist. No. 1*, 413 U.S. 189 (1973) (explicitly prohibiting race-conscious attendance zones).

sought to keep white children in majority white schools could avoid or resolve lawsuits only by making every school racially integrated.<sup>37</sup> Because most urban school districts had at some point in time enacted such policies,<sup>38</sup> this category included most urban school districts.

The courts' new emphasis on racial balance meant that even in the most affluent neighborhoods, urban whites could not send their children to racially and socially homogenous schools. As a result, "white flight" from urban schools continued. By 1973, many urban school districts were already majority black.<sup>39</sup> Ultimately, racial integration became impossible in some urban school systems. For example, if a school system was ninety percent black, nearly every school in the system would be overwhelmingly black.

The courts could have responded with "metropolitan desegregation"—forcing suburban schools as well as city schools to be racially balanced—thus reducing white parents' incentives to move to suburbia. But in the 1974 case of *Milliken v. Bradley*,<sup>40</sup> the Supreme Court rejected this remedy, holding that as long as a suburb had not segregated its own schools, it had committed no constitutional violation and thus was not required to participate in school desegregation.<sup>41</sup> As a practical matter, this meant that if a suburb had no (or almost no) black children and thus had never sought to segregate them, it was not required to maintain racially balanced schools.

So, after *Milliken*, urban parents were faced with this choice: they could stay in urban schools as those schools continued to become blacker (and thus, given the high rates of poverty among urban blacks, poorer), or they could move their children to overwhelmingly white suburbs that were not subject to constant judicial supervision. Not surprisingly, most white parents chose the latter option. For example, in Boston, the site of an especially controversial busing plan, the city's juvenile white population declined by more than half during the 1970s alone—despite the fact that the

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37. See STEARNS, *supra* note 29, at 26.

38. See Myron Orfield, *Milliken, Meredith and Metropolitan Segregation*, 62 U.C.L.A. L. REV. 364, 379 (2015) (noting that southern school districts required racial segregation, while in northern school districts "widespread discriminatory practices . . . including racially gerrymandered attendance boundaries, optional attendance zones that allowed whites to avoid racially diverse schools, and school construction and expansion decisions made in locations that prevented student integration from occurring").

39. *Id.* at 390 (noting that decline of white enrollment was already widespread); *id.* at 400 (Detroit schools seventy-two percent black); WOLTERS, *supra* note 27, at 16 (Washington already ninety-five percent black); ADRIENNE D. DIXON & CELIA K. ROUSSEAU, *CRITICAL RACE THEORY AND EDUCATION: ALL GOD'S CHILDREN GOT A SONG* 118 (2014) (only thirty-three percent of Memphis students white).

40. *Milliken v. Bradley*, 418 U.S. 717 (1974).

41. *Id.* at 745 (finding no constitutional violations by school districts in Detroit suburbs). *Cf.* Orfield, *supra* note 38, at 406-16 (criticizing decision).

city's single adult white population declined by only three percent.<sup>42</sup> Similarly, in the dozen years after the federal courts required Washington, D.C. to integrate all of its schools, its white public school population declined by seventy percent, while the single adult white population decreased by only six percent.<sup>43</sup> Eventually, many black middle-class parents followed suit.<sup>44</sup> In some places, racial segregation actually increased during the age of so-called desegregation: in the Northeast, the percentage of blacks in majority white schools actually declined between 1968 and 1980.<sup>45</sup>

In the 1990s, the Supreme Court dismantled many desegregation orders issued by lower courts, holding that the urban school districts involved had done as much as possible to desegregate their schools.<sup>46</sup> In fact, the Court now holds that where no desegregation order is in effect, the Constitution may *prohibit* school districts from considering a school's racial balance when assigning students.<sup>47</sup> This means that school districts may not gerrymander school boundaries either to promote or to prevent racial balance. But the damage to cities has been done: urban school districts are stuck with high poverty rates and bad reputations and (despite the occasional wave of gentrification) are rarely attracting middle-class parents.

It could be argued that the rise of gentrification is making urban public schools attractive to middle-class parents again and that the anti-urban policies of the late twentieth century are no longer relevant.<sup>48</sup> But as Table 2 shows, large urban school districts continue to have miniscule white enrollments and high levels of low-income students.

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42. See Lewyn, *supra* note 18, at 328. Thus, it seems unlikely that white flight was unrelated to public schools.

43. *Id.*

44. See Orfield, *supra* note 38, at 432 (describing suburbanization among nonwhites).

45. *Id.* at 422 (noting decline from thirty-three percent to twenty percent). However, this percentage increased modestly in the South and Midwest. *Id.* Orfield explains that the South has more countywide school districts, which means that whites would have to travel significantly further to find a suburban district to flee to. *Id.* at 421.

46. *Id.* at 420.

47. See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 732 (2007) (plurality opinion) (“[R]acial balancing is not permitted.”). I note, however, that the reach of this decision is unclear. A four-justice plurality flatly rejected the consideration of racial balancing, while Justice Kennedy’s concurrence is less clear. *Id.* at 782, 787-89 (Kennedy, J., concurring) (desegregation plan at issue not “narrowly tailored to achieve its own ends” and thus unconstitutional; however, schools may adopt race-conscious measures in order to achieve a diverse student body).

48. See, e.g., Wilson, *supra* note 1, at 698 (“While urban schools in most gentrifying areas are still undoubtedly predominately minority and poor, an increasing number of young middle-class white residents with children are deciding to give the urban public schools a chance.”).

**TABLE 2: Race and Class in Urban<sup>49</sup> School Districts for Selected<sup>50</sup> Older Cities<sup>51</sup>**

|               | Percent low-income<br>(that is, eligible for<br>subsidized school<br>lunch) | Percent white non-<br>Hispanic |
|---------------|---|--------------------------------|
| New York      | 66.1  | 15.0                           |
| Chicago       | 84.9  | 9.2                            |
| Philadelphia  | 85.5  | 14.3                           |
| San Francisco | 57.5  | 10.8                           |
| Detroit       | 81.0  | 2.6                            |
| Washington    | 53.8  | 11.5                           |
| Boston        | 71.7  | 13.2                           |
| Baltimore     | 84.1  | 8.0                            |
| Milwaukee     | 82.3  | 13.9                           |
| Minneapolis   | 65.7  | 36.4                           |
| Cleveland     | Not available   | 14.8                           |
| St. Louis     | 68.4  | 9.9                            |

49. By “urban” I mean school districts limited to a major city, as opposed to suburban districts or countywide districts which include both a city and its suburbs (such as Los Angeles United, which includes some suburbs as well as the city of Los Angeles).

50. In particular, this table includes cities with available relevant data that: (1) are “inelastic” cities (that is, cities that are unable to annex their suburbs, and thus trapped within their mid-twentieth century boundaries); and (2) had over 500,000 people in 1950. See DAVID RUSK, *CITIES WITHOUT SUBURBS: A CENSUS 2010 PERSPECTIVE* 75 (2013) (defining “inelastic” cities); *THE WORLD ALMANAC AND BOOK OF FACTS*, *supra* note 26, at 614 (listing cities’ 1950 populations). I focus on these cities because elastic cities are often in less dire shape; a city that can annex hundreds of square miles may, by taking over its suburbs, make “white flight” inconvenient. *Cf. supra* note 45 and accompanying text (noting that geographically enormous counties were able to integrate schools).

51. *Digest of Education Statistics, Table 215.10*, NATIONAL CENTER FOR EDUCATION STATISTICS (2014), [https://nces.ed.gov/programs/digest/d14/tables/dt14\\_215.10.asp?current=yes](https://nces.ed.gov/programs/digest/d14/tables/dt14_215.10.asp?current=yes).

|            |      |      |
|------------|------|------|
| Pittsburgh | 69.4 | 33.6 |
| Cincinnati | 65.3 | 26.8 |
| Buffalo    | 74.9 | 22.2 |

In sum, parents seek suburban schools because urban public schools have bad reputations. Urban schools have bad reputations because many of their children come from disadvantaged backgrounds. As a result, these children are less prepared for school than middle-class children. These schools have a high concentration of poverty due to the structure of state and local attendance zone laws, which ensure that a city's schools must be at least as diverse as their juvenile populations. The concentration of poverty is also a result of the federal courts' school desegregation rulings, which prevented cities from creating separate zones for their whitest, most affluent neighborhoods. Thus, government at all levels is responsible for the low status of urban schools.

### III. USEFUL BUT IMPERFECT SOLUTIONS

As long as affluent suburbs are allowed to create separate school districts,<sup>52</sup> there may be no easy way to make poverty-packed municipalities more popular. However, urban life could become more popular if the government broke the link between residence and schooling. If this was the case, parental choice would expand, for city residents would not be limited to public schools in urban neighborhoods. If the government subsidizes your health insurance through Medicare (or you benefit from some other form of government-subsidized insurance), you are not limited to attending

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52. I note, however, that state or federal authorities could quickly eliminate the "school-generated sprawl" problem by eliminating this option. If a state or region wished to make every school demographically identical, it could abolish suburban school districts, place every school in the region in one giant school district, and assign students to schools in a way that ensured that every single school had the same socio-economic makeup. If this were the case, parents would have little incentive to move to suburbs. However, it seems to me that this policy would be so unpopular with suburbanites as to be beyond the realm of political feasibility. Moreover, in metropolitan areas that spread across hundreds or thousands of square miles, it might be costly as well; where rich and poor areas are ten or twenty miles from each other, students might have to be bused many miles to reach their assigned school. And in the absence of land use regulations that prevented developers from building suburbs outside the school district, parents might move even further into suburbia to escape the new super-district. On the other hand, a radically libertarian state could make suburbs less popular by simply eliminating public schools; if this was the case, prestigious schools would be no more likely to concentrate in suburbs than any privately provided good or service. However, this too seems so far beyond the bounds of feasibility as to be not worth extended discussion.

the doctors or hospitals closest to your home. So why should schooling be any different?<sup>53</sup>

Americans have experimented with several policies designed to increase school choice, including: (1) voucher systems including private schools; (2) “open enrollment” systems that do not affect private schools, but allow urban students to attend suburban public schools; (3) charter schools; and (4) exam schools. Each of these techniques may reduce sprawl if properly designed, but all have financial and social costs.

### (1). Universal Vouchers

The most market-oriented, anti-sprawl education policy is some form of a voucher system. Under the purest form of a voucher system, parents who choose to avoid public schools would be “given a voucher, a piece of paper redeemable for a designated sum of money if, and only if, it is used to pay the cost of schooling your child at an approved school.”<sup>54</sup> If vouchers were extended to private schools, parents would arguably have little reason to avoid city neighborhoods; they could stay in the city and attend private schools for the same amount of money that they would spend on public schools (that is, zero).

However, as long as a voucher system supported both private schools and existing public schools, two practical difficulties might make the system either less effective or more costly. First, some private schools are more expensive than public schools. Public schools spend roughly \$11,000 per pupil<sup>55</sup>—roughly comparable to the average private school tuition.<sup>56</sup> However, many private schools are far more expensive. The average nonreligious private school costs \$17,000 per year<sup>57</sup> and some

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53. Admittedly, one significant difference exists between medicine and education: because most patients only occasionally seek medical attention, there is no reason why a patient must commit to seeing the same doctor or hospital every day. By contrast, children attend school every day for half a year; as a result, a school needs to know in advance how many children to plan for. Otherwise, schools would be overwhelmed if the number of pupils suddenly increased from week to week. Thus, schools need to know their student bodies near the start of an academic year. But current residency requirements are not necessary to achieve this goal. If students throughout a city or region were allowed to choose schools a few months before the first day of classes, schools would know the size of their student bodies a few months in advance and could govern themselves accordingly.

54. MILTON FRIEDMAN, *FREE TO CHOOSE* 161 (1980).

55. See *Public Education Finances: 2014*, *supra* note 6, at 28. Of the 100 largest school systems, only about twenty spend more than this amount. *Id.* at 25-26.

56. See *Average Private School Tuition Cost (2016-17)*, PRIVATE SCHOOL REVIEW, at <http://www.privateschoolreview.com/tuition-stats/private-school-cost-by-state> (last visited Apr. 2, 2017).

57. See Derek W. Black, *Civil Rights, Charter Schools, and Lessons to Be Learned*, 64 FLA. L. REV. 1723, 1774 n.291 (2012).

charge as much as \$20,000 to \$30,000 tuition.<sup>58</sup> It logically follows that if vouchers covered the entire cost of private school tuition, educational costs to taxpayers would increase.

On the other hand, if vouchers merely covered the cost of the average public school, they might cover less than half of some private schools' tuition—arguably not enough to discourage most parents from choosing suburban public schools.<sup>59</sup> But even so, such a partial discount would still do something to encourage parents to stay in cities and would thus improve upon the status quo.<sup>60</sup>

A second difficulty is that even a limited voucher system might increase municipal costs, because the government's public school expenses would not decrease as fast as its private school expenses would increase. Imagine a voucher system in which the money follows the child—that is, if each voucher is \$10,000, and a school loses a child to a private school, that school loses \$10,000. Some of the public schools' costs are presumably fixed, such as the costs of buildings and maintenance.<sup>61</sup> So if a public school that spends \$10,000 per pupil loses ten pupils under a voucher system, its costs will decrease by less than \$100,000.

A voucher system that fails to account for this difficulty might starve public schools that lose students, causing those schools to lose resources or even be closed due to fiscal scarcity—a result that may be harmful for students in those schools and that may even make declining

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58. See, e.g., *Tuition & Financial Assistance*, ATLANTA JEWISH ACADEMY, <http://www.atljewishacademy.org/admissions/161-tuition-financial-assistance> (last visited Mar. 27, 2017) (high school tuition just over \$24,000); *Tuition*, NICHOLS SCHOOL, <https://www.nicholsschool.org/admissions/international-students/tuition> (last visited Mar. 27, 2017) (similar tuition at secular private school in Buffalo); *Tuition & Fees For The 2016-17 School Year*, JACK M. BARRACK HEBREW ACADEMY, <https://www.jbha.org/admissions/tuition-and-fees.php> (last visited Mar. 27, 2017) (high school tuition just over \$30,000). *But cf.* Terry M. Moe, *Beyond the Free Market: The Structure of School Choice*, 2008 B.Y.U. L. REV. 557, 572 (2008) (Milwaukee vouchers of \$6,000 per child “enough to pay for tuition at virtually all private schools in that city”).

59. I note that voucher systems actually in existence are generally targeted towards the poor or to special-needs students. Moe, *supra* note 58, at 569-70 (citing examples); Lewyn, *supra* note 18, at 372 n.515 (citing other examples). However, these programs are irrelevant to the purpose of this Article, which is to discuss programs that might encourage middle-class families to stay in cities.

60. My discussion assumes, of course, that parents of children at more expensive schools would be able to add vouchers onto their school tuition. Some commentators oppose such “add-ons” because they wish to prevent more affluent parents from buying their way into more expensive schools. See Moe, *supra* note 58, at 573. This argument might make sense in the context of a voucher program designed to help poor people escape failing urban schools. But a prohibition on “add-ons” makes no sense in the context of an anti-sprawl program, since a major purpose of the program is to encourage affluent parents to stay in cities.

61. *Id.* at 579.

schools' neighborhoods less desirable.<sup>62</sup> To prevent this outcome, a voucher city has two choices: to keep public school spending constant (thus increasing overall education spending) or to fund private schools at some level below the average per pupil expenditure in order to reduce fiscal harm to public schools. Under the latter scenario, parents would be able to save less private school tuition than would otherwise be the case, thus reducing the anti-sprawl impact of vouchers.

## (2). Public Schools Only

As noted above, a voucher program that includes private schools would either be more costly than the status quo or would be somewhat limited; more costly if it funded all private school tuition or more limited if it only partially funded some schools' tuition.

By contrast, a school choice program limited to public schools would avoid these fiscal problems, for the state could simply forbid public school districts from discriminating on the basis of residence. If a popular school district wanted to avoid radical increases in enrollment, it would have to use a lottery to decide which students were admitted. This plan might discourage sprawl by making prestigious suburban schools available to urban parents. If both students from affluent families *and* students from poor families entered these schools, the class differences between urban and suburban schools might be erased in the long run. Such an open enrollment program might actually be more egalitarian than the status quo.

A school choice program limited to public schools may be even more politically infeasible than universal vouchers for two reasons. First, it would require a considerable investment (either public or private) in transportation, since students in search of good schools might wish to go all over a metropolitan area. Either government will have to buy many more school buses or parents will have to spend a lot more time transporting their children to faraway schools. Second, suburbanites will be unwilling to pay property taxes for schools that other people's children will attend.<sup>63</sup> Thus,

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62. Cf. Wilson, *supra* note 1, at 712 (criticizing closure of schools in distressed neighborhoods because even academically deficient schools are "one of the most stable institutions in poor minority urban areas" and vacant school buildings "can exacerbate blight [and] become a magnet for crime"). It could be argued that these schools should be allowed to close. But if, as suggested above, a school's perceived quality reflects its social makeup, when low-income students of failing schools move to a nearby school, that school could become equally undesirable. If this was the case, the students who switched schools would still be in a failing, unpopular school, *and* be would be stuck with a longer commute.

63. See Aaron Y. Tang, *Privileges and Immunities, Public Education, and the Case for Public School Choice*, 79 GEO. WASH. L. REV. 1103, 1134-35 (2011). For example, suburban school districts refused to accept students under Cleveland's voucher program; apparently, they did not want urban children even if the state paid their expenses. See *Zelman v. Simmons-Harris*, 536 U.S. 739, 747 (2002) ("None of the public schools in districts adjacent to Cleveland have elected to participate.").

states might have to take over school financing.

I note that most states have in fact enacted “open enrollment” plans allowing some inter-district transfers.<sup>64</sup> However, these policies are essentially toothless. In thirty states, school districts are not compelled to participate.<sup>65</sup> Thus, suburban school districts need not accept urban students. Even in the remaining states, state laws contain loopholes that give suburbs ample discretion to reject urban students.<sup>66</sup> For example, New Mexico’s statute provides: “Local school boards may admit school-age persons who do not live within the school district to the public schools within the school district when there are sufficient school *accommodations* to provide for them.”<sup>67</sup> Thus, suburban school districts can easily exclude urbanites by claiming insufficient “accommodations.”<sup>68</sup> Moreover, open enrollment statutes do not grant students the right to be transported across district lines, which means that students will not be able to attend an out-of-district school unless parents transport them.<sup>69</sup> Thus, existing open enrollment laws do not make it particularly easy for urban students to attend suburban schools and, therefore, do not eliminate the pro-sprawl bias of education law.

### (3). Charter Schools

Since the first charter school opened in 1991, forty-two states have authorized charter schools.<sup>70</sup> A charter school is a hybrid between a private school and a public school. Charters are publicly financed to some extent<sup>71</sup> and do not charge tuition,<sup>72</sup> but they often receive less public money than traditional public schools.<sup>73</sup> These schools are governed by their trustees rather than by public officials and are exempt from most personnel rules

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64. See Tang, *supra* note 63, at 1113 (“forty-two states have enacted policies authorizing some form of inter-district open enrollment”).

65. *Id.* at 1114.

66. *Id.*

67. N.M. STAT. ANN. § 22-12-5(A) (2011) (emphasis added).

68. See Tang, *supra* note 63, at 1115 (budgetary considerations are major motive for districts’ refusal to allow inter-district transfers).

69. *Id.* at 1119.

70. See Preston C. Green III et al., *The Legal Status of Charter Schools in State Statutory Law*, 10 U. MASS. L. REV. 240, 243 (2014).

71. *Id.* at 261-63 (discussing litigation over charter schools’ use of public funds).

72. See Wendy Parker, *From the Failure of Desegregation to the Failure of Choice*, 40 WASH. U. J.L. & POL’Y 117, 125 (2012).

73. See Noelle Quam, *Big Philanthropy’s Unrestrained Influence on Public Education: A Call for Change*, 21 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 601, 621 (2015) (“On average, charter schools receive sixty-one percent of the government funding that their district counterparts receive.”).

governing public schools<sup>74</sup> as well as from state laws governing student discipline.<sup>75</sup>

In theory, charter schools, like private schools financed by vouchers, could provide a palatable alternative to urban public schools, causing middle-class parents to shun suburban public schools.<sup>76</sup> But in fact, the majority of charter school students are low-income,<sup>77</sup> and charter schools tend to have academic achievement levels roughly comparable to those of nearby public schools.<sup>78</sup>

Why have charter schools generally failed to attract middle-class parents? States generally do not allow charters to choose their students. Instead, state laws generally provide that when a charter cannot accommodate all interested families, it must either follow a “first come, first served” admissions policy or use a lottery to choose its students.<sup>79</sup> From an egalitarian perspective, this policy makes sense because it prevents charters from becoming enclaves dominated by the privileged.<sup>80</sup>

But from a “sprawl control” perspective, this policy is less helpful. If charters are not selective, they will often have student bodies that resemble traditional urban public schools (as is in fact the case).<sup>81</sup> If parents do not wish to send their children to poverty-packed urban public schools, they will also not wish to send their children to poverty-packed urban charter schools.

One possible alternative is state legislation allowing charters to be as academically selective as private schools or urban “exam schools.”<sup>82</sup> If

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74. See Green et al., *supra* note 70, at 243.

75. *Id.* at 265-67; see also Kaylee Niemasik, *Teen Pregnancy in Charter Schools: Pregnancy Discrimination Challenges Under The Equal Protection Clause and Title IX*, 22 MICH. J. GENDER & L. 55, 60-61 (2015).

76. It could also be argued that competition from charter schools forces public schools to improve in order to retain students. See Niemasik, *supra* note 75, at 60. Because this article is about urbanism rather than education policy, the wisdom of that argument is beyond the scope of the article.

77. *Id.* (fifty-four percent of charter school pupils low-income). Similarly, only thirty-nine percent of charter school students are white, as opposed to fifty-six percent of students in traditional public schools. See Parker, *supra* note 72, at 138 n.100.

78. Parker, *supra* note 72, at 150.

79. *Id.* at 125.

80. *But cf.* Wilson, *supra* note 1, at 713 (arguing that lotteries are insufficiently egalitarian because “gentrified families who tend to have more time, resources and cultural capital to navigate the lottery process are more likely to apply and gain admission to the better charter schools”). I note that charter schools are in a no-win position from the perspective of egalitarian critics: if they enroll middle-class families, they exclude the poor—but if they do not, they are just another way to concentrate poverty.

81. In fact, charter schools are more heavily nonwhite than, and may be even more racially segregated than, traditional urban public schools. See Parker, *supra* note 72, at 138 n.100 (only thirty-nine percent of charter school students white, as opposed to fifty-six percent of traditional public school students); *id.* at 140-42.

82. See *supra* note 15 and accompanying text (describing exam schools).

this was the case, charter schools might look like urban private schools: less selective schools might continue to be dominated by the disadvantaged, but the most selective schools would attract middle-class parents who wished to stay in the city but avoid typical urban public schools.

On the other hand, if existing charter schools were to convert to selective charters, charter slots for weaker students might disappear, thus reducing choices for such students.<sup>83</sup> If this was the case, selective charter schools could actually reduce some parents' educational choices. It is unclear to what extent this would occur; individual schools would have to weigh their desire to attract middle-class pupils against their desire to fill as many seats as possible.

#### (4). Exam Schools

As noted above, some urban school districts have academically selective "exam schools" that achieve results better than those of most suburban schools.<sup>84</sup> Why have these exam schools failed to attract most middle-class parents?

Most cities' exam school systems are insufficient to meet potential demand for two reasons. First, exam schools are often limited to high school. For example, St. Louis's only exam school is a high school, as are seven of Chicago's eight exam schools and all of the exam schools in Baltimore, Washington, Detroit, and Cleveland.<sup>85</sup> Almost no exam school begins in the early grades; of the over 200 exam schools listed in one book about the subject, only six begin before fourth grade.<sup>86</sup> But by the time their children reach high school age (or even middle school age), some middle-class parents have already moved to suburbia. So for exam schools to attract middle-class parents, they should begin in the early grades.

Second, there are not enough exam schools to meet potential middle-class demand. For example, St. Louis has just over 7,000 people enrolled in its high schools,<sup>87</sup> but its lone exam school, Metro High School,<sup>88</sup> has only 335 students.<sup>89</sup> Similarly, Buffalo's City Honors (the

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83. Cf. Wilson, *supra* note 1, at 713 (suggesting that this is already the case because "charter schools tend to deny students with behavioral problems and students with disabilities" and public schools have less money to educate such students as a result of competition from charter schools).

84. See FINN & HOCKETT, *supra* note 15 and accompanying text.

85. See *id.* at 205-14.

86. *Id.* at 205-15.

87. See MO. DEP'T OF ELEMENTARY AND SECONDARY EDUC., *St. Louis City*, <http://mcde.dese.mo.gov/guidedinquiry/District%20and%20School%20Information/Missouri%20School%20Directory.aspx?rp:DistrictCode=115115> (last visited Mar. 27, 2017).

88. See FINN & HOCKETT, *supra* note 15, at 209.

89. See *St. Louis City*, *supra* note 87 (go to "St. Louis City-Summary Reports," then to "School District Report Card-Building," then find Metro High).

city's lone exam school, which begins in fifth grade)<sup>90</sup> has just over 1,000 students,<sup>91</sup> about six percent of the city's fifth through twelfth grade enrollment.<sup>92</sup> In these school districts, children who are not among the top five percent of students must attend the less prestigious traditional public schools. A family deciding whether to invest in a city might be able to guess with reasonable certainty whether its children will be among the top fifty percent of district children, but might not be able to guess whether their children will be among the top five percent. It logically follows that a school district wishing to lure parents to suburbia should probably have enough exam schools to accommodate a much higher number of children—perhaps the top quarter or top third.

However, creating new schools might be more expensive than allowing the formation of charter schools. Charter schools are only partially publicly financed,<sup>93</sup> while exam schools are completely publicly financed and thus a bigger drain on governmental resources. To avoid increasing overall education spending, a school system might be tempted to reduce spending on the remaining non-exam schools. Because the latter schools would contain the hardest-to-educate students, reducing spending on such schools might be inequitable and even counterproductive in the long run (assuming *arguendo* that reduced school spending in fact led to reduced life opportunities for the non-exam school students).

##### (5). Choice vs. Equity

It could be argued that all of these proposals could increase social segregation, for if urban middle-class parents are allowed to choose selective schools (whether they be private, public, or charter), these schools might be almost entirely middle- or upper-class.<sup>94</sup> If this was the case, children from lower-income households might be stuck in hyper-segregated, homogenously poor schools. But this concern accurately describes the status quo: poor children are stuck in troubled schools in cities and low-income suburbs, and most other children attend middle-class

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90. See FINN & HOCKETT, *supra* note 15, at 211.

91. See *City Honors Sch-F Masten Park Enrollment* (2014-2015), <https://data.nysed.gov/enrollment.php?year=2015&instid=800000052908> (last visited Mar. 27, 2017).

92. See *Buffalo City School District Enrollment* (2014-2015), <https://data.nysed.gov/enrollment.php?year=2015&instid=800000052968> (last visited Mar. 27, 2017) (total enrollment 18,764).

93. See *supra* notes 71 & 73 and accompanying text.

94. I note, however, that this is *not* currently true of exam schools. See FINN & HOCKETT, *supra* note 15, at 32 (students in exam schools generally about as likely to be eligible for subsidized lunches as all public high school students); *id.* at 33-34 (fifty-two percent of Chicago exam school students, fifty-one percent of Philadelphia exam school students, forty-six percent of Washington, D.C. exam schools students, and forty-one percent of Boston exam school students eligible).

suburban schools. Unless the state or federal government wipes out homogeneously affluent suburban schools,<sup>95</sup> segregation by social class is inevitable. Our only choice is whether to continue the current system of separate municipalities for the poor and the middle and upper classes (which combines school segregation *and* residential segregation) or whether to allow affluent parents to attend the middle-class schools they crave *without* moving to suburbs.<sup>96</sup> Even if the latter system causes the same amount of school segregation as the status quo, neighborhoods would be less segregated because some parents who are unwilling to send their children to diverse schools might be willing to live in diverse neighborhoods.

It could also be argued that if school boards hired the right teachers or created the right curriculum, middle-class households would choose even the most socially diverse schools over suburbia. One way of testing this theory is to examine the most successful charter schools. If better teachers could bring the middle-class back to urban schools, the best urban charters would have achieved this goal. But, in fact, this has not consistently been the case. For example, the film “Waiting for Superman” describes Locke High School and KIPP LA Prep School in Los Angeles as unusually successful charter schools.<sup>97</sup> But in both schools, over ninety percent of students are still poor enough to be eligible for government-subsidized lunches.<sup>98</sup> Thus, it seems unlikely that education reform alone will solve the problem of school-related sprawl.

A related argument is that if schools spent more on social services, urban schools would improve enough to become attractive to middle-class

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95. See *supra* note 52 (discussing this option).

96. Or homogeneously middle- and upper-class city neighborhoods. See Wilson, *supra* note 1, at 715 (suggesting that Washington, D.C. has altered school attendance zones to exclude lower-class students from city’s best performing middle and high schools); Hertz, *supra* note 17 (noting that Chicago’s most affluent areas tend to have city’s highest test scores).

97. See Diane Ravitch, *The Success of Charter Schools is A Myth*, in MARGARET HAERENS & LYNN M. ZOTT, CHARTER SCHOOLS: OPPOSING VIEWPOINTS 34, 38, 45 (2012).

98. See *KIPP Los Angeles College Preparatory School*, GREATSCHOOLS, <http://www.greatschools.org/california/los-angeles/12371-KIPP-Los-Angeles-College-Preparatory-School/details/#Students> (last updated Mar. 22, 2017) (ninety-three percent of students eligible for reduced-price lunches); *Alain Leroy Locke College Prep Academy*, GREATSCHOOLS, <http://www.greatschools.org/california/los-angeles/24830-Alain-Leroy-Locke-College-Prep-Academy/details/#Students> (last updated Mar. 22, 2017) (ninety-one percent). I note that these schools also have test scores well below those of prestigious suburban schools—a fact suggesting the difficulty of overcoming the problems caused by a poor home environment. *2015 Test Results for English Language Arts/Literacy and Mathematics*, CALIFORNIA ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS, <http://caaspp.cde.ca.gov/sb2015/Search> (last visited Mar. 27, 2017) (Thirteen percent of KIPP students and three percent of Locke students reached highest “Standard Exceeded” score in reading, as opposed to thirty-six percent in suburban Beverly Vista Elementary School and thirty-one percent in suburban Beverly Hills High.).

parents. For example, one commentator writes that Cincinnati has improved test scores through adding “health care, counseling, adult education, and cultural events . . . [in] community learning centers.”<sup>99</sup> In other words, more spending yields better results, which in turn brings middle-class people into the school system.

It may be true that Cincinnati’s schools have improved modestly in recent years. Although the state of Ohio’s “Report Card” for that school district is dominated by Ds and Fs, some of the district’s test scores have improved.<sup>100</sup> Nevertheless, any argument based on Cincinnati’s alleged success fails for several reasons. First, as noted above, there is little correlation between a school district’s spending level and its prestige: urban school districts that spend more than their suburbs nevertheless fail to attract middle-class students.<sup>101</sup> Second, the claim overlooks the nationwide failure of social spending to prevent middle-class flight from urban schools: during the late twentieth century, government spending on education and other social services increased massively<sup>102</sup>—yet middle-class flight continued to occur.<sup>103</sup> Third, the use of Cincinnati’s improvement to support the argument that increased government spending improves education rests on a slender factual basis: between 2012 and 2015, education spending in Cincinnati actually *decreased* from \$14,719 per pupil to \$13,626 per pupil.<sup>104</sup> Also, between 2007 and 2015, Cincinnati’s spending increased but by less than the statewide average. Cincinnati’s spending increased from \$12,021 per pupil to \$13,626 per pupil (a sixteen percent increase), while in the average Ohio school district, spending increased from \$9,343 per pupil to \$10,973 per pupil (a seventeen percent

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99. Wilson, *supra* note 1, at 730.

100. *Cincinnati City School District, 2014-15*, Ohio School Report Cards 1, (Aug. 21, 2016), available at [http://reportcard.education.ohio.gov/Archives%20TS/043752/043752/043752\\_2014-2015\\_DIST.pdf](http://reportcard.education.ohio.gov/Archives%20TS/043752/043752/043752_2014-2015_DIST.pdf) (giving the Cincinnati school district an F for graduation rates, achievement indicators met, and closing racial gaps, but giving the district an A on “value added”—that is, yearly progress for grades four through eight).

101. See *supra* Tables 1 & 2 (city districts outspend suburban districts).

102. See *Digest of Education Statistics, Table 164*, NAT’L CTR. FOR EDUC. STATISTICS, (May 1995) <https://nces.ed.gov/programs/digest/d95/dtab164.asp> (spending per pupil tripled in constant dollars between 1959 and 1990); AXEL R. SCHAFER, PIETY AND PUBLIC FUNDING: EVANGELICALS AND THE STATE IN MODERN AMERICA 42-44 (2012) (describing increases in other social service spending).

103. It could be argued that without such spending increases, urban schools would be even worse. But even if this was so, it seems clear that this benefit was inadequate to prevent middle-class parents from preferring suburban schools.

104. See *District Profile Reports (Cupp Report)*, OHIO DEP’T OF EDUC., CTR. FOR SCH. FIN., <http://education.ohio.gov/Topics/Finance-and-Funding/School-Payment-Reports/District-Profile-Reports> (last updated Feb. 28, 2017) (data for FY 2012 and 2015). For data on an individual year, click the links on the page for a specific year. Then to find data on a specific school district, go to the links in the middle of the yearly report.

increase).<sup>105</sup> Fourth, Cincinnati was not appreciably more successful in attracting middle-class students; the percentage of low-income students decreased between 2008 and 2014, but only from 67.8%<sup>106</sup> to 65.3%.<sup>107</sup>

### CONCLUSION

Every conceivable school assignment policy involves trade-offs between cost, urbanism, choice, and equity. The current system discourages urban life, provides limited choices, and is highly inequitable (insofar as it limits educational opportunities for urban students). However, it may be less costly than some alternatives.

A voucher system that pays all students' private school tuition would maximize parental choice and maximize parental ability to escape troubled urban schools, but would be highly costly. A system that pays a fixed amount regardless of a school's tuition would be cheaper but would do less to discourage sprawl. Under that system, many private schools would continue to be more expensive than suburban public schools.

A "public schools only" voucher system would be highly egalitarian in that even students who would not gain admission to academically selective private schools would be eligible for the program. In addition, such an open enrollment system would increase parental choice and might effectively enable parents to escape troubled urban schools. However, spending on transportation costs might increase. In particular, public spending would increase if the government funded more buses to suburbia, and private spending on cars would increase otherwise.

By contrast, there is no obvious reason why selective charter schools would be more costly than the status quo. However, their impact on urbanism is less predictable. If Americans created selective urban charter schools in large numbers, such schools might successfully compete with suburban public schools. But if existing charter schools turn into selective schools, choice might be impaired for students who would be unable to attend such schools.

The creation of more exam schools would avoid this problem. A city that built new exam schools would by definition be creating more choices for parents—choices that would cater to high achievers and thus make urban schools more appealing for middle-class parents. So urbanism and choice favor this policy. On the other hand, any educational expansion creates a difficult trade-off between cost and equity: new schools would be costly unless financed on the backs of existing schools.

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105. *Id.* (data for FY 2006 and FY 2015).

106. See *Digest of Education Statistics, Table 94*, NAT'L CTR. FOR EDUC. STATISTICS (Oct. 2010), [https://nces.ed.gov/programs/digest/d10/tables/dt10\\_094.asp](https://nces.ed.gov/programs/digest/d10/tables/dt10_094.asp) (2008 data).

107. See *supra* Table 2.

In sum, there is a wide variety of school reforms that would make urban life more palatable to middle-class parents—but no reform is cost-free.

