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# The Problem of Intradistrict Inequality

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# THE PROBLEM OF INTRADISTRICT INEQUALITY

KRISTEN E. MURRAY\*

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## INTRODUCTION

The benefits of our public education system are supposed to be equally available to all those who choose to partake in it. However, American elementary and secondary school students have dramatically different educational experiences depending on the school in which they are enrolled. This raises an important question: where should we look to determine where any inequalities might lie?

Comparisons across our system of public education can be made in three ways: across states, across districts within a state, and within districts. Because states are afforded much deference on issues of public education, comparisons of inequalities across states are uncommon, and not particularly useful. Most of the attention has been on *interdistrict* comparisons—measuring equality between and among school districts located within a particular state, facilitated by the use of the relevant provision of the state constitution as a starting point to offset unevenness between districts.

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However, in most school systems, there is also some degree of *intradistrict* inequality, between and among schools in the same district, with the consequences of those inequalities felt most by schools in high-poverty geographic areas that tend to be lower-performing. Once wealthier neighborhood schools leverage this resource advantage, the gap widens even further, in terms of both financial and human resources.

This raises several questions. Why is intradistrict inequality so rarely part of the conversation about inequality? In what areas are these inequalities most likely to manifest? And how might we start thinking about how to address these problems within a given district?

In thinking about these important questions, one answer has become clear: in order to remedy inequalities in the public education system—in order to meaningfully reform the education system on a legal and policy level—we have to talk more about inequalities within districts than we presently do. Presently, there are inequalities within school districts that are real, growing, and, in some instances, further exacerbated by synergies between them. Such inequalities are expanding deeper into states away from urban areas, as a result of changing demographics in both urban and suburban communities. And if we do not look specifically at what's going on *within* districts, some of these inequalities can be masked by broader equalizing forces *among* districts.

This Article discusses five different factors that contribute to inequalities within school districts. Part I addresses each of these in turn: school segregation; resource inequalities; gaps in private fundraising; school district secession; and the limitations of school choice. Taken together, these factors suggest that intradistrict inequalities create a complicated and difficult problem to solve. It is therefore imperative that if we are going to talk about education reform at the intersection of law, policy, and politics, we need to also talk specifically about intradistrict inequalities. Part II thus considers initial steps that might be taken to begin to eliminate some of these inequalities.

## I. INEQUALITIES WITHIN DISTRICTS

There are many ways to make comparisons across the education system. For example, we often compare states across many categories, allowing us to make ranked lists of expenditures, performance, or allocation of resources. Such lists can potentially reveal educational inequalities across different states, but are ineffective mechanisms for offsetting inequalities for two related reasons—the lack of a federal constitutional right to an education and the deference given to states on most education issues.<sup>1</sup>

Most often, when making comparisons to determine where inequalities might lie, we compare districts within a state. According to the

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1. See, e.g., *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

2012 United States Census of Governments, there are more than 14,000 school districts across the country.<sup>2</sup> Most of these do not correspond to city, town, or county lines.<sup>3</sup> These school districts enrolled approximately 50.7 million students in public elementary and secondary schools in the fall of 2017.<sup>4</sup>

It is not surprising that in such a diverse system, inequalities exist. Comparisons between districts are more fruitful than those made between states, because state constitutional guarantees can be used to argue that such inequalities should not exist. However, remedying inequalities *between* districts can mask the inequalities that persist *within* them. There cannot be meaningful education reform without consideration of sources of inequality within school districts.

What follows is a discussion of five factors, problems, and policies that contribute and relate to intradistrict inequalities: school segregation, resource inequalities, fundraising disparities, school district secession, and school choice. Each factor is important to understand, as is the idea that synergies between them mean that existing inequalities are likely to grow if they are not addressed. Each factor is also worthy of more in-depth discussion than is possible to address in this Essay—instead, the following discussion is meant as a survey for symposium participants who may have varying amounts of familiarity with these issues and only skims the surface of the underlying principles and consequent effects.

### A. The persistent problem of school segregation

More than sixty years after the Supreme Court's decision in *Brown v. Board of Education*, many students in the United States attend schools that are far from "integrated."<sup>5</sup> In fact, many students attend schools that face "double segregation"—segregated both by both race and poverty.<sup>6</sup> The persistent problem of school segregation has many effects, some that are tangible, and others less so. And the problem thrives both in areas where schools were segregated by law and those that were not (at least not literally so). Schools that were segregated by law tend to resegregate when released

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2. U.S. CENSUS BUREAU, LISTS & STRUCTURE OF GOVERNMENTS, POPULATIONS OF INTEREST: SCHOOL DISTRICT GOVERNMENTS AND PUBLIC SCHOOL SYSTEMS (2016) [hereinafter *Public School Systems*], [https://www.census.gov/govs/go/school\\_govs.html](https://www.census.gov/govs/go/school_govs.html).

3. Richard Briffault, *The Local School District in American Law*, at 3 (2003), [https://www.hks.harvard.edu/pepg/PDF/events/SBConfPDF/papers/PEPG\\_03-02Briffault.pdf](https://www.hks.harvard.edu/pepg/PDF/events/SBConfPDF/papers/PEPG_03-02Briffault.pdf).

4. *Back to School Statistics*, NAT'L CTR. EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=372>. An additional 5.2 million students were expected to enroll in private elementary and secondary schools in the fall of 2017.

5. 347 U.S. 483 (1954).

6. See generally Gary Orfield et al., *E Pluribus . . . Separation: Deepening Double Segregation for More Students*, C.R. PROJECT (Sept. 2012), <https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students>.

from court-ordered mandates to integrate.<sup>7</sup> In other areas, neighborhood schools are often segregated by default because they are a reflection of residential neighborhood segregation.<sup>8</sup>

In the years following the Court's mandate to desegregate the schools (eventually "with all deliberate speed"),<sup>9</sup> states, school districts, and schools found ways to resist before eventually being forced to comply.<sup>10</sup> School integration in the south hit its highest levels in 1988, which is somewhere about mid-range between *Brown* and the present day.<sup>11</sup> At that point, 43.5% of southern black students attended majority white southern schools.<sup>12</sup> By 2011, the percentage had dropped to 23.2%.<sup>13</sup>

Why might this be? The Court has systematically chipped away at *Brown* since the 1970s.<sup>14</sup> Twenty years after its decision in *Brown*, the Court struck down Detroit's integration-by-busing plan and held that integration plans could not cross district lines absent proof of an interdistrict violation.<sup>15</sup> Urban school districts were thus left to deal with the task of desegregation, while at the same time white flight to the suburbs left cities with difficult problems such as decaying schools and increasing crime.<sup>16</sup>

In the late 1980s and early 1990s, the Court turned to lifting desegregation orders for school districts that met certain criteria.<sup>17</sup> Between 1990 and 2009, courts released 45% of school districts from their

7. Sean F. Reardon et al., *Brown Fades: The End of Court-Ordered Desegregation and the Resegregation of American Public Schools*, 31 J. POL'Y ANALYSIS & MGMT. (NO. 4) 876, 877 (2012).

8. Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods—A Constitutional Insult*, ECON. POL'Y INST. (Nov. 12, 2014), <http://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/> ("Certainly, Northern schools have not been segregated by policies assigning blacks to some schools and whites to others – at least not since the 1940s; they are segregated because their neighborhoods are racially homogenous.").

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

10. See generally Kimberly Jenkins Robinson, *Resurrecting the Promise of Brown: Understanding and Remediating How the Supreme Court Reconstitutionalized Segregated School*, 88 N.C. L. REV. 787, 811-37 (2010).

11. Gary Orfield, et al., *Brown at 60: Great Progress, A Long Retreat and an Uncertain Future*, C.R. PROJECT 1, 9-10 (May 2014), <https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-60-great-progress-a-long-retreat-and-an-uncertain-future/Brown-at-60-051814.pdf>.

12. *Id.* at 10.

13. *Id.*

14. See generally Robinson, *supra* note 10.

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

16. ARNOLD SHOBER, *THE DEMOCRATIC BATTLE OF AMERICAN EDUCATION: OUT OF MANY, ONE?* 74 (2012).

17. See, e.g., *Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 238 (1991) (holding that school districts that demonstrate compliance with desegregation orders and show that they will not return to their "former ways" could be released from their orders).

desegregation orders.<sup>18</sup> After the schools were released from the court orders, they started to re-segregate—they did not reach the levels of segregation experienced pre-*Brown*, but absent the influence of the court order, integration nevertheless decreased. For example, one study determined that white/black segregation begins to rise within a few years of release from a court order, and continues to increase for at least ten years.<sup>19</sup>

Conscious, voluntary integration efforts are also prohibited following the Court's 2007 decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, in which the Court determined that "explicit racial classifications" in school assignment plans were unacceptable.<sup>20</sup> Not all public schools, of course, were segregated by law—known in some contexts as *de jure* segregation—contrasted with *de facto* segregation, through which schools were segregated by circumstance or private practices.<sup>21</sup> However, such "circumstance" includes law, policy, and politics that contributed to residential racial segregation, which consequently led to segregated schools.<sup>22</sup>

For example, housing policies and practices continue to be a barrier to school integration. Exclusionary zoning remains an obstacle to affordable housing, leaving neighborhoods segregated by income-level within school districts.<sup>23</sup> A 2012 study found that loosening zoning regulations would reduce the housing cost gap and narrow the school test-score gap by four to seven percentiles.<sup>24</sup> This segregation will also persist as long as housing costs make integration cost-prohibitive. Across the 100 largest metropolitan areas, housing costs an average of 2.4 times as much (or approximately \$11,000 more per year) near a "good" public school than near a "low"-performing public school.<sup>25</sup>

Most urban schools are in areas of concentrated poverty, where the majority—sometimes a large majority—are poor.<sup>26</sup> High-poverty schools almost always perform worse than middle-income schools, sometimes by a huge margin.<sup>27</sup> This effect trickles down to the students themselves—middle-income students perform worse in high-poverty schools than they do in middle-income schools.<sup>28</sup> In 2014, 42.62% of students of color attended high-

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18. Reardon, *supra* note 7, at 882.

19. *Id.* at 899.

20. 551 U.S. 701, 735 (2007).

21. JAMES E. RYAN, FIVE MILES AWAY, A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN MODERN AMERICA 83 (2010).

22. *See generally* RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017).

23. *Id.* at 51-54.

24. Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, BROOKINGS (Apr. 19, 2012), [https://www.brookings.edu/wp-content/uploads/2016/06/0419\\_school\\_inequality\\_rothwell.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0419_school_inequality_rothwell.pdf).

25. *Id.* at 14.

26. RYAN, *supra* note 21 at 13.

27. *Id.*

28. *Id.*

poverty public schools while only 7.64% of white students attended such schools.<sup>29</sup>

Why does this matter? This persistent segregation creates and will continue to create inequalities within districts. Integrated educational environments have a hugely positive impact on students' educational attainment. A great deal of research supports the notion that low-income students earn better test scores when enrolled in higher-income schools. For example, a 2010 study showed that over 5-7 years, low-income students who attended low-poverty schools significantly outperformed their low-income peers who attended moderate-income schools on math and reading tests, and by the end of elementary school had cut the initial achievement gap between them and their low-poverty peers in half.<sup>30</sup> A 2012 study also concluded that low-income students enrolled in higher-income schools do better on state exams.<sup>31</sup> Furthermore, as Professor Erika Wilson has noted, students who attend school districts with a disproportionate share of poor and minority students "do not obtain the positive-peer effects associated with schools that enroll students from different socioeconomic statuses and races."<sup>32</sup>

These benefits also have the potential to be long-lasting. For example, a 2011 study found that school desegregation and the accompanying increases in school quality led to significant improvements in adult attainments for black children born between 1945 and 1968.<sup>33</sup> Attending an integrated school had a positive effect on these students' likelihood of graduating from high school, completing more years of schooling, attending college, graduating with a four-year degree, and attending a higher-quality college.<sup>34</sup> It also reduced the likelihood that they would experience poverty or be incarcerated as an adult; at the same time, desegregation had no corresponding negative impacts on white students.<sup>35</sup> In fact, white students who attend integrated schools incur positive effects as well; for example, they are more likely to live in integrated neighborhoods and seek diverse schools for their children.<sup>36</sup>

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29. *School Poverty United States*, NAT'L EQUITY ATLAS (2016), [http://nationalequityatlas.org/indicators/School\\_poverty](http://nationalequityatlas.org/indicators/School_poverty).

30. See HEATHER SCHWARTZ, HOUSING POLICY IS SCHOOL POLICY: ECONOMICALLY INTEGRATIVE HOUSING PROMOTES ACADEMIC SUCCESS IN MONTGOMERY COUNTY, MARYLAND 32 (2010).

31. Rothwell, *supra* note 24.

32. See Erika K. Wilson, *The New School Segregation*, 102 CORNELL L. REV. 139, 187 (2016); see also Derek W. Black, *Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 B.C. L. REV. 373 (2012).

33. Rucker C. Johnson, *Long-Run Impacts of School Desegregation & School Quality on Adult Attainments*, in NBER WORKING PAPER SERIES 16664 (2011).

34. *Id.* at 18-20.

35. *Id.* at 20-23, 30-31.

36. See generally Amy Stuart Wells, et al., *How Racially Diverse Schools and Classrooms Can Benefit All Students*, CENTURY FOUND. (Feb. 9, 2016), <https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/>; Genevieve Siegel-Hawley, *How Non-Minority Students Also Benefit from Racially Diverse*

Overall, the problem of school segregation requires holistic solutions because it is a holistic problem. If we have a system where students are assigned to go to school based on where they live, we must address the fact that a complicated web of legal, social, and political factors designates where people live. However, we must also be mindful that this is the kind of problem that can look better or worse depending on whether we look at the composition of school populations *across* districts, or *within* districts.

## B. The problem of unequal resources

States and school districts often spend wildly different amounts of money per pupil. In fiscal year 2015, the national average per-pupil spending on public elementary and secondary education was \$11,392.<sup>37</sup> However, average expenditures ranged from high-average states like New York (\$21,206 per pupil) and Massachusetts (\$15,592 per pupil) to lower-end average expenditures in California (\$10,467 per pupil) and Florida (\$8,881 per pupil).<sup>38</sup>

Intradistrict spending discrepancies are less pronounced, but in some instances, schools within a given district do spend more per pupil than others.<sup>39</sup> Before *Brown*, such disparities were “rampant and followed racial lines, with all-black schools often funded at much lower levels than all-white schools.”<sup>40</sup> However, even today, “the resource disparities found across schools within districts are often as large and, in some cases, may be larger than the more widely recognized disparities across districts.”<sup>41</sup>

School funding has, of course, been a focus of much litigation, dating back to the 1970s. During this period, discussions about equality were focused on getting additional resources for urban schools based on theories of interdistrict inequality.<sup>42</sup> In such cases, litigants suing under individual state constitutional provisions had mixed results—not all litigants were successful, and further, even some successful lawsuits had little practical effect.<sup>43</sup> With no foothold at the federal level,<sup>44</sup> courts have often been reluctant to compel specific remedies from school districts and most

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*Schools*, NAT'L COALITION ON SCH. DIVERSITY (Oct. 2012), <https://files.eric.ed.gov/fulltext/ED571621.pdf>.

37. U.S. CENSUS BUREAU, PUB. EDUC. FIN.: 2015 at 12 (2017), [https://www.census.gov/govs/go/school\\_govs.html](https://www.census.gov/govs/go/school_govs.html).

38. *Id.* at 20.

39. RYAN, *supra* note 21, at 126.

40. *Id.*

41. Ross Rubenstein et al., *Rethinking the Intradistrict Distribution of School Inputs to Disadvantaged Students* 1, 11 (Apr. 2006), [https://www.law.berkeley.edu/files/rubenstein-schwartz-stiefel\\_paper.pdf](https://www.law.berkeley.edu/files/rubenstein-schwartz-stiefel_paper.pdf).

42. RYAN, *supra* note 21, at 149-51.

43. Almost every state has had such a lawsuit; litigants have won about half. *Id.* at 145.

44. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (finding no federal equal protection violation in Texas's school funding scheme).



legislatures are unwilling to come up with a solution to a problem they tried to disavow. Then, plaintiffs have to go back to court to compel action from the legislature.<sup>45</sup>

This wave of school funding litigation was concerned with equalizing funding across districts, not within them. In *Serrano v. Priest*,<sup>46</sup> the California Supreme Court held that California's school funding system violated the equal protection provisions of both the federal and state constitutions.<sup>47</sup> The Court found that the state's funding system, which relied on a local property tax base, was unlawfully discriminatory because "it makes the quality of a child's education a function of the wealth of his parents and neighbors."<sup>48</sup> The plaintiffs' victory in *Serrano* launched a series of similar challenges to other states' school funding systems.<sup>49</sup>

The undergirding principle of *Serrano* and other school funding cases was that a school district that spent more per-pupil could provide a better education than one that spent less per-pupil.<sup>50</sup> As a result, most states attempted to equalize resources across school districts.<sup>51</sup> For example, some states limited what could be collected locally while others provided a base-level allocation to every district through a combination of state and local funds.<sup>52</sup>

Still, equalizing funding disparities among districts does not address the problem of inequities *within* school districts. For example, focusing legal discussions on the disparities among New York school districts did nothing to offset inequalities *within* the New York City school district, where at one time, some individual schools spent over \$6,000 more per pupil than other schools in the city.<sup>53</sup> Similarly, even as Texas sought to equalize resources across districts, there was no consequent effect on spending differences at schools within districts.<sup>54</sup>

Of course, the schools that are usually left most wanting are those most in need. For example, one 2006 report asserted that, "[d]espite clear evidence that some students require more resources than others, less money often flows to schools serving children who need these extra resources most."<sup>55</sup>

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45. RYAN, *supra* note 21, at 122.

46. 487 P.2d 1241 (Cal. 1971).

47. *Id.* at 1244.

48. *Id.*

49. RYAN, *supra* note 21, at 135 (noting that in the two years following *Serrano*, fifty-two lawsuits were filed in approximately thirty different states).

50. *Id.* at 122.

51. MARGUERITE ROZA, EDUCATIONAL ECONOMICS: WHERE DO \$CHOOL FUNDS Go? 20 (2010).

52. *Id.*

53. Marguerite Roza & Paul T. Hill, *How Can Anyone Say What's Adequate if Nobody Knows How Money Is Spent?*, in *COURTING FAILURE* 235, 246 (Eric A. Hanushek, ed., 2006).

54. *Id.*

55. THOMAS B. FORDHAM INST., *FUND THE CHILD: TACKLING INEQUITY AND ANTIQUITY IN SCHOOL FINANCE* 9 (2006).

Such resources include classroom teachers. Teacher distribution policies often result in the highest-need students being taught by the least experienced teachers.<sup>56</sup> Newly-minted teachers are not as effective as they will eventually be; despite this, students in high-poverty and high-minority schools are disproportionately assigned to new teachers.<sup>57</sup> These students are also more likely to be taught by an out-of-field teacher (one without a major or minor in the subject).<sup>58</sup> One in three core academic classes in high-poverty secondary schools are taught by out-of-field teachers, whereas this number is one in five in low-poverty secondary schools.<sup>59</sup>

Budgeting practices also exacerbate these inequities. For example, many districts do not consider actual teacher salaries when budgeting for and reporting each school's expenditures—instead, they use averages.<sup>60</sup> When the highest-poverty schools are staffed by less-experienced teachers who typically earn lower salaries, high-poverty schools (who overpay for less experienced teachers) in effect, end up subsidizing low-poverty schools (who effectively receive a discount for their more experienced teachers' salaries).<sup>61</sup>

Historically, a lack of data regarding individual school spending and budgeting meant that inequities of this type have not been included in funding-related legislative debates or litigation.<sup>62</sup> A lack of detailed data also masks information about non-problematic spending differences; for example, some spending inequalities can be attributed to spending on students in need, such as students with disabilities.<sup>63</sup> In recent years, more school-level data has become available, and even more may be forthcoming, given the financial reporting requirements of 2015's Every Student Succeeds Act.<sup>64</sup> Inequities revealed by school-level data could prompt districts to find a way to equalize spending and other resource distribution within school districts. In the meantime, resource inequalities may remain unintended to if school finance conversations remain focused on interdistrict inequalities.

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56. Heather G. Peske & Katie Haycock, *Teaching Inequity: How Poor and Minority Students Are Shortchanged on Teacher Quality*, EDUC. TRUST 2-3 (2006).

57. *Id.* at 2.

58. *Id.*

59. *Id.* at 2-3.

60. *Id.* at 10.

61. CATHERINE BROWN ET AL., HIDDEN MONEY: THE OUTSIZED ROLE OF PARENT CONTRIBUTIONS IN SCHOOL FINANCE 2 (2017), available at <https://www.americanprogress.org/issues/education-k-12/reports/2017/04/08/428484/hidden-money/> [hereinafter HIDDEN MONEY].

62. RYAN, *supra* note 21, at 126.

63. *Id.* at 127.

64. Every Student Succeeds Act, 20 U.S.C. § 6311 (2016) (requiring that districts publicly report per-pupil spending by school starting in December 2019).

**C. A growing gap in private fundraising and overall parent influence**

One area where inequality within districts is most starkly apparent is where home and school associations<sup>65</sup> have the ability to raise money to support a particular school. According to a 2017 report by the Center for American Progress, schools that serve one-tenth of 1% of American students collect 10% of the estimated \$425 million that home and school associations raise each year.<sup>66</sup>

These home and school associations generally support schools with very low levels of poverty. Almost all of the wealthiest associations come from schools in which less than one-third of the students were eligible for free or reduced-price lunches (a commonly-used proxy for the relative wealth of school families).<sup>67</sup> For example, Horace Mann Elementary School in Washington, DC is one of the most affluent schools in the District. Only 6% of Horace Mann students come from low-income families.<sup>68</sup> In 2014, the Horace Mann Parent-Teacher Association (PTA) raised over \$300,000 in parent donations and membership dues for future programming.<sup>69</sup>

This private fundraising gap is widening. According to a 2014 study, there was a 200% increase the number of home and school associations from 1995-2010; these groups raised \$300 million more in 2010 than they did in 1995.<sup>70</sup>

The effect of these associations' fundraising and buying power is real. In 2014, the Horace Mann PTA spent over \$470,000 to support programs at the school.<sup>71</sup> Among other things, this money pays for additional art, music, and physical education teachers and for additional supplies and materials for classroom teachers.<sup>72</sup>

Some school districts have attempted to close this gap by placing restrictions on home and school association spending. For example, the New York City Department of Education restricts local PTAs from paying for

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65. This Essay uses the term "home and school" association to refer to the support association/organization through which parental involvement in the school takes place. Such groups are also known as "parent-teacher" or "parent-teacher-student" associations or organizations.

66. HIDDEN MONEY, *supra* note 61.

67. *Id.* at 6.

68. *Id.* at 2.

69. *Id.*, citing Form 990 Return of Organization Exempt from Income Tax, Horace Mann Elementary PTA (2014).

70. Ashlyn Aiko Nelson & Beth Gazley, *The Rise of School-Supporting Nonprofits*, ASS'N EDUC. FIN. & POL'Y, 541, 551 (2014), [https://aefpweb.org/sites/default/files/edfp\\_a\\_00146.pdf](https://aefpweb.org/sites/default/files/edfp_a_00146.pdf).

71. HIDDEN MONEY, *supra* note 61, at 8, citing Form 990 Return of Organization Exempt from Income Tax, Horace Mann Elementary PTA (2014).

72. *Id.*

teachers in core subjects such as math, science, English, and history.<sup>73</sup> However, such restrictions do not necessarily affect the ultimate amount of money these groups might raise. A 2017 report from the Center for American Progress compared parent fundraising in two school districts in Maryland—Montgomery County and Anne Arundel County—both of which sit just outside Washington, DC.<sup>74</sup> Montgomery County does not allow parent contributions to influence school staffing, while Anne Arundel County has no such restriction.<sup>75</sup> The two districts are demographically similar, although Montgomery County serves twice as many students and Anne Arundel County is much less racially diverse.<sup>76</sup> The spending restriction in Montgomery County did not appear to have a negative effect on fundraising. From 2012-2014, fundraising looked similar in the two districts.<sup>77</sup> In both districts, schools serving the most affluent students raised much more money than those serving high-poverty students, and parents donated a similar share of their families' overall budgets.<sup>78</sup>

Other school districts have also tried to close the fundraising gap by pooling district-wide donations and distributing them equally to all schools. For example, the Santa Monica-Malibu Unified School District decided to do this in 2011.<sup>79</sup> The benefit of this decision flowed mostly to the lower-income schools in the district, which is overall fairly wealthy. Of the eleven elementary schools in the district, four in Santa Monica qualify for Title I aid, the federal financial assistance provided to high-poverty schools under Title I, Part A of the Elementary and Secondary Education Act.<sup>80</sup> In contrast, Malibu is a much wealthier community with no Title I elementary schools, although 12% of the Malibu student population qualifies for free or reduced-price lunch.<sup>81</sup>

The regulation left open an option for parents to make individual donations designated for certain expenses, including campus beautification,

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73. N.Y. CITY DEPT. OF EDUC., REGULATION OF THE CHANCELLOR A660(III)(D)(5)(c) (2017).

74. HIDDEN MONEY, *supra* note 61, at 8-10.

75. *Id.* at 8-9; Montgomery County's policy states that "funds raised by fund-raising groups cannot be used to employ anyone to work in the schools during the regular school day." *Id.* (citing *School-Related Fund-Rising*, BD. EDUC. MONTGOMERY COUNTY, <http://www.montgomeryschoolsmd.org/departments/policy/pdf/cnd.pdf>).

76. HIDDEN MONEY, *supra* note 61, at 9.

77. *Id.* at 9-10 (stating that according to available data, Montgomery County home and school associations raised around \$70/student while Anne Arundel County's raised around \$60/student).

78. *Id.* at 10 (stating that according to available data, the ten most affluent Montgomery County schools' home and school associations raised at least \$700,000 in 2014 (\$170/student) while those in Anne Arundel County raised at least \$240,000 (\$100/student)).

79. Santa Monica-Malibu Unified Sch. Dist., BP 3290, Acceptance of Gifts (2011), [http://www.smmef.org/uploads/BP\\_3290\\_Acceptance\\_of\\_Gifts.pdf](http://www.smmef.org/uploads/BP_3290_Acceptance_of_Gifts.pdf).

80. Dana Goldstein, *PTA Gift for Someone Else's Child? A Touchy Subject in California*, N.Y. TIMES (Apr. 8, 2017), <https://www.nytimes.com/2017/04/08/us/california-pta-fund-raising-inequality.html>.

81. *Id.*

technology, and field trips.<sup>82</sup> However, expenses for items such as teacher salaries or curricular programs must be handled by the Santa Monica-Malibu Education Foundation, which redistributes any money raised across all schools in the district.<sup>83</sup> Opponents of the policy feared that the new regulation would cause a drop in donations, a decrease in enrollment, or a loss of school programs.<sup>84</sup> However, according to Santa Monica-Malibu Education Foundation data, total donations did not drop in the first few years under the new policy.<sup>85</sup> At the same time, some Malibu parents boycotted the fund.<sup>86</sup> Malibu parents have also responded by seeking to form their own school district, as discussed *infra*.<sup>87</sup>

Proponents of these types of fundraising efforts defend them as an important part of parent involvement and argue that schools do this type of fundraising to offset the lack of Title I funding not available to wealthier schools.<sup>88</sup> However, active parent involvement does not only involve monetary donations. In relation to poor parents, middle-income and affluent parents are not only more likely to have money to donate to individual schools, they are also more likely to be active and engaged in the life of the school—which can be a key factor in school success.<sup>89</sup> They are also more

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82. *Mission & History*, SANTA MONICA-MALIBU EDUCATION FOUNDATION (2017), <http://www.smmef.org/about/mission-history>.

83. *Id.* (“In the new model, PTAs and Booster Clubs at each school can fundraise for equipment, materials and student experiences like field trips and assemblies. Funds for additional personnel are raised through district-wide fundraising by the Education Foundation.”).

84. Goldstein, *supra* note 80; Jason Islas, *Santa Monica – Malibu School Board Approves Controversial Gift Policy*, THE LOOKOUT (Dec. 1, 2011), [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2011/December-2011/12\\_01\\_2011\\_Santa\\_Monica\\_Malibu\\_School\\_Board\\_Approves\\_Controversial\\_Gift\\_Policy.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2011/December-2011/12_01_2011_Santa_Monica_Malibu_School_Board_Approves_Controversial_Gift_Policy.html).

85. Goldstein, *supra* note 80.

86. Jonathan Friedman, *Santa Monica School Board Member Says Malibu Parents Boycotting Educational Foundation*, SANTA MONICA LOOKOUT (May 16, 2016), [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2016/May-2016/05\\_16\\_2016\\_Santa\\_Monica\\_School\\_Board\\_Member\\_Says\\_Malibu\\_Parents\\_Boycotting\\_Education\\_Foundation.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2016/May-2016/05_16_2016_Santa_Monica_School_Board_Member_Says_Malibu_Parents_Boycotting_Education_Foundation.html).

87. Goldstein, *supra* note 80; Jonathan Friedman, *Santa Monica School Board Members Support Malibu Split, Questions Remain*, SANTA MONICA LOOKOUT (Dec. 2, 2015), [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2015/December-2015/12\\_02\\_2015\\_Santa\\_Monica\\_School\\_Board\\_Members\\_Support\\_Malibu\\_Split\\_Questions\\_Remain.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2015/December-2015/12_02_2015_Santa_Monica_School_Board_Members_Support_Malibu_Split_Questions_Remain.html).

88. *See, e.g.*, Brian M. Rosenthal, *As Parents Raise Cash, Schools Confront Big Gap*, SEATTLE TIMES (Jan. 28, 2012), <https://www.seattletimes.com/seattle-news/as-parents-raise-cash-schools-confront-big-gap/> (“Members of the PTA-fundraising powerhouses say they are simply balancing out a public-funding formula that allocates significantly more money to low-income schools.”); Goldstein, *supra* note 80 (“Leaders at several overachieving PTAs also said their generosity addressed another kind of inequality: Their schools did not benefit from Title I, the federal taxpayer-funded program for schools that serve large numbers of poor children.”).

89. RYAN, *supra* note 21, at 169 (“These parents are more likely to set high expectations for their children, which is then translated into the school’s culture. These

likely to “monitor” principals and teachers and to complain about subpar performance—they have “clout” to bring about improvements to the school and even the district.<sup>90</sup> Lower-income schools tend to have lower levels of parent involvement overall, as well as less overall intradistrict influence.<sup>91</sup> This, combined with the fact that urban districts often have less political pull at the state level, leaves lower-resourced schools with few options to offset the resource gap.<sup>92</sup>

Overall, it is difficult to argue that parent support—whether financial or in some other form—should be stunted. At the same time however, the fact that varying levels of parent support can contribute to inequalities within school districts is a concept that should not be ignored.

#### D. The ability of school districts to secede

A different type of inequality is related to school district secession.<sup>93</sup> After *Brown*, lower federal courts consistently held that school district secession was impermissible if the secession would lead to racial concentration or an imbalance of resources between the new districts.<sup>94</sup> In so doing, the courts thwarted efforts by southern school districts seeking to avoid compliance with *Brown*. However, in 1974, the Supreme Court weakened lower courts’ ability to support desegregation efforts by ruling that interdistrict integration programs were only permissible in instances where there had been an interdistrict violation.<sup>95</sup> The opinion gave school district boundaries “near-sacred status.”<sup>96</sup>

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parents, in part because they have more time, are also more likely to volunteer in school, to attend conferences, and to be involved in parent-teacher organizations.”)

90. *Id.* at 169.

91. *Id.* at 14 (“There is not enough pressure within urban districts, from parents, to ensure that existing resources are used wisely and that expectations remain high for all students.”).

92. *Id.* at 14 (“[U]rban districts lack the political muscle on the state and federal levels to ensure that workable policies are implemented wisely and that they are accompanied by sufficient resources. The lackluster track record of urban districts also makes them unsympathetic to many legislators.”).

93. *See generally*, Wilson, *supra* note 32.

94. *See, e.g.*, Stout v. Jefferson Cty. Bd. of Educ., 448 F.2d 403, 404 (5th Cir. 1971) (“[W]here the formulation of splinter school districts, albeit validly created under state law, have the effect of thwarting the implementation of a unitary school system, the district court may not . . . recognize their creation.”); Lee v. Macon City Bd. of Educ., 448 F.2d 746, 752 (5th Cir. 1971) (“The city cannot secede from the county where the effect—to say nothing of the purpose—of secession has a substantial adverse effect on desegregation of the county school district. If this were legally permissible, there could be incorporated towns for every white neighborhood in every city.”).

95. Milliken v. Bradley, 418 U.S. 717, 741 (1974) (“[T]he notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools. . . .”).

96. *Fractured: The Breakdown of America’s School Districts*, ED BUILD 7 (June 2017), <https://edbuild.org/content/fractured/fractured-full-report.pdf>.

A few hundred school systems in the country are still bound by desegregation court orders that followed *Brown*.<sup>97</sup> These districts are bound by the Supreme Court's 1972 decision that the constitutionality of a municipal secession from a school district under a federal court desegregation order must be assessed based on the effect of the secession, not the motivation of the officials behind the secession effort.<sup>98</sup>

According to a 2017 EdBuild study, at least seventy-one communities across the country have attempted to withdraw from their school district since 2000.<sup>99</sup> Of these seventy-one, only nine were prevented from doing so.<sup>100</sup> These secession attempts usually occur when a wealthy community within a school district wants to break away from the existing district, such as in the Santa Monica-Malibu district discussed *supra*.

Thirty states currently allow for some form of secession, and some states make the process much easier than others.<sup>101</sup> Of the thirty states that permit secession, only one requires action by the state legislature and only four require any action from voters in the district left behind.<sup>102</sup> Six states have laws that require consideration of how the split will affect racial and socioeconomic diversity or equality of opportunity for groups of students.<sup>103</sup> Nine require consideration of the effect on funding,<sup>104</sup> while six require that efficiency be considered.<sup>105</sup> Only three states—California, Nebraska, and Wyoming—require all three of these considerations.<sup>106</sup>

When permitted, these secessions convert *intradistrict* inequality into *interdistrict* inequality. For example, after a 2013 change to Tennessee law that now allows school secessions in municipalities with school district populations of 1,500 or more and the support of a majority of municipal voters, six wealthy communities broke off from the Shelby County school

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97. Yue Qiu & Nikole Hannah-Jones, *A National Survey of School Desegregation Orders*, PROPUBLICA (Dec. 23, 2014), <http://projects.propublica.org/graphics/desegregation-orders>.

98. *Wright v. Council of Emporia*, 407 U.S. 451, 464 (1972) (noting that secession would substantially impede integration because the original school district would be 72% black and 28% white while the newly created district would be 52% black and 48% white).

99. *Fractured*, *supra* note 96 at 6.

100. *Id.* Forty-seven attempts were successful, six attempts never moved into formal proceedings, and nine were ongoing at the time of the report. One recently-resolved case of note involved the Jefferson County School District in Alabama, from which the City of Gardendale sought to secede. The Eleventh Circuit recently ruled against the secession attempt and the school district has said it will not appeal. *Stout ex rel. Stout v. Jefferson Cty. Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018); *Gardendale Will Cease Efforts to Create New School System*, AL.COM (Feb. 28, 2018), [http://www.al.com/news/birmingham/index.ssf/2018/02/gardendale\\_will\\_cease\\_efforts.html](http://www.al.com/news/birmingham/index.ssf/2018/02/gardendale_will_cease_efforts.html).

101. *Fractured*, *supra* note 96 at 1, 6.

102. *Id.* at 13.

103. *Id.* at 7.

104. *Id.* at 13.

105. *Id.*

106. *Id.*

district in 2014, leaving behind lower-income schools in Memphis.<sup>107</sup> The new districts have an average student poverty rate of 11%, which is lower than that of Beverly Hills.<sup>108</sup> In contrast, one-third of students in the legacy district live below the poverty line and the budget in the new district was cut by 20%.<sup>109</sup> In the wake of these secessions, the “left behind” districts are likely to face huge resource deficits, and may find themselves in a deepening hole because of them. Chief among these is the racial and socioeconomic segregation that follows the secession of a wealthy community from a larger district.<sup>110</sup> “Departing” districts also frequently “take” infrastructure like school buildings and teachers, and the left-behind district receives nowhere near what they need to remain on equal footing to where they stood as part of the larger district.<sup>111</sup> In addition to the lost resources, “left behind” districts must then deal with increased costs because smaller school districts tend to have significantly higher administrative costs than larger systems.<sup>112</sup> The remaining district is also likely to encounter a decrease in intangible resources like political clout. These future interdistrict inequalities are an outgrowth of intradistrict inequality that incentivizes better-off members of a community to seek independence and control through secession.

#### E. The limitations of school choice

School choice programs, in theory, offer potential relief to students in districts where such programs exist. However, because of the limitations on how choices are offered and exercised, they are also a source of potential inequalities within districts.

Interdistrict school choice plans do not do much to offset inequalities among districts. They mostly exist “on paper” and are either voluntary or only require that districts accept out-of-district students when space is available.<sup>113</sup> As a result, very few students—less than 1% of all public school students—cross district lines to attend public school.<sup>114</sup>

Under the No Child Left Behind Act, students had the right to transfer out of “failing” schools—those that did not meet certain assessment

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107. *Id.* at 9.

108. *Id.* (citing *Small Area Income and Poverty Estimates*, U.S. CENSUS BUREAU (2015), <http://www.census.gov/did/www/saipe/>).

109. *Fractured*, *supra* note 96, at 9.

110. *Id.* at 16.

111. Wilson, *supra* note 32, at 202 (noting that the new school district often pays a facilities replacement fee that is far less than what the legacy school district considers to be an adequate amount).

112. See, e.g., Ulrich Boser, *Size Matters: A Look At School-District Consolidation*, CTR. FOR AM. PROGRESS 1, 6 (Aug. 2013), <https://www.americanprogress.org/wp-content/uploads/2013/08/SchoolDistrictSize.pdf>.

113. RYAN, *supra* note 21, at 9.

114. *Id.*



benchmarks.<sup>115</sup> However, the choices were limited to public schools located in the same district, and effectively left urban students with no choice at all if they found themselves in a district with few alternatives and no option to cross district lines into suburban schools.<sup>116</sup> Only about 1% of students executed these transfers.<sup>117</sup>

Intradistrict choice seems like a natural part of any solution to offset intradistrict inequalities. Here, I use the term “school choice” to refer to all options offered by and within a certain school district; this might include magnet schools or charter schools. However, these options have limitations, and in some circumstances exacerbate inequalities. Magnet schools and specialized schools, for example, necessarily have capped enrollments, and some also require certain levels of academic achievement for students to be admitted.<sup>118</sup> Charter schools are also limited in the amount of seats they can offer, often resorting to a lottery system to determine enrollment.<sup>119</sup> Well-connected parents or principals may have political power or connections that can help shape enrollments as well. Overall, introducing the concept of choice does not mean access is equally available.

Some school districts have attempted to equalize opportunity by offering access to traditional public schools to all students district-wide. However, this does not mean that parents and students can or will exercise choices that will remedy such inequalities. For example, New York City has centralized and streamlined the high school assignment process. Future high school students can apply to twelve different high schools through a single High School Application.<sup>120</sup> However, despite this breadth of choice, a 2013 study noted that low-achieving students were more often matched to schools that were lower-performing than those of all other students.<sup>121</sup> This occurred despite the fact that lower-achieving and higher-achieving students were equally likely to be matched to their top choice.<sup>122</sup> Students were also more likely to favor schools that are closer to home, and thus, lower-achieving

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115. See generally Lance D. Fusarelli, *Restricted Choices, Limited Options*, 21 EDUC. POL’Y 132 (2007).

116. RYAN, *supra* note 21, at 9.

117. Alyson Klein, *ESSA Clears Our Underbrush on School Improvement Path*, 36 EDUC. WEEK, no. 6, 2016 at 4, 7. See also Fusarelli, *supra* note 115, at 133.

118. *What Are Magnet Schools*, MAGNET SCHS. AM. (2017), <http://magnet.edu/about/what-are-magnet-schools#1499667889100-039b81ce-813c>; RYAN, *supra* note 21, at 186-87.

119. *Charter Schools FAQ*, NAT’L ALLIANCE PUB. CHARTER SCHS. (2018), <https://www.publiccharters.org/about-charter-schools/charter-school-faq>.

120. *High Sch.*, N.Y. CITY DEP’T OF EDUC., <http://schools.nyc.gov/ChoicesEnrollment/High/default.htm>. This does not include New York’s twelve specialized high schools, which are more akin to magnet schools. *Specialized High Sch.*, N.Y. CITY DEP’T OF EDUC., <http://schools.nyc.gov/ChoicesEnrollment/High/specialized/default.htm>.

121. Lori Nathanson et. al., *High School Choice in New York City: A Report on the School Choices and Placements of Low-Achieving Students*, RES. ALLIANCE FOR N.Y. CITY SCH. iv (2013), [https://steinhardt.nyu.edu/scmsAdmin/media/users/sg158/PDFs/hs\\_choice\\_low\\_achieving\\_students/HSChoiceReport.pdf](https://steinhardt.nyu.edu/scmsAdmin/media/users/sg158/PDFs/hs_choice_low_achieving_students/HSChoiceReport.pdf).

122. *Id.* at 9.

students were more likely to have an initial choice that was less selective and lower-performing.<sup>123</sup> Choice can open doors, but not every student is equally likely or able to walk through.

Parents and students also have to know that choices exist before they can attempt to exercise them. Even with the best of intentions, it is almost impossible to make sure everyone has equal information about existing choices.

Often, students who exercise school choice leave low-performing neighborhood schools for some other option, and the neighborhood schools are left to deal with consequences such as lower enrollment and allocation of district resources. Thus, students and families who do not (or cannot) exercise a choice are left to deal with the resource inequalities left in the wake of those who do. Choice may create an opportunity for equalization for some, but ultimately the remaining inequalities are borne by certain students and families.

## II. FINDING A WAY TO EQUALITY WITHIN DISTRICTS

These five factors, considered separately and then taken together, demonstrate the complicated web that is intradistrict inequality. Each of these issues raises questions about inequality within districts; with deeper consideration comes the realization that there are synergies among these different concepts. For example, charter schools, a popular choice option, often lack integrated school populations. In another instance, school fundraising restrictions in at least one case have led to issues regarding school secession. There is an interrelationship among these five factors that exacerbates problems and means that inequalities are likely to grow, in urban and suburban districts alike.

What is the way forward? This Essay has taken the position that we must use law, policy, and politics to remedy intradistrict inequalities if we are going to have meaningful education reform. Solving problems across districts can leave intradistrict inequalities in place—or, worse, unidentified.

There are many first steps that could be taken. Some involve getting better information and data so that we can be sure where inequalities lie. Some involve changing attitudes—about diversity, about resource-sharing, about community. Some involve district-level practices such as budgeting procedures, teacher assignments, and private-fundraising. Parents must also be reassured that the benefits of equality flow in all directions;<sup>124</sup> reeducation is a critical part of the solution to the problem of intradistrict inequality.

School districts must, by will or by force, find a way to resolve these intradistrict inequalities. To do so will not be easy. However, as John Dewey

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123. *Id.* at 16.

124. RYAN, *supra* note 21, at 298.

wrote in 1915, “What the best and wisest parent wants for his own child, that must the community want for all of its children.”<sup>125</sup>

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125. JOHN DEWEY, *THE SCHOOL AND SOCIETY* 19 (2d ed. 1915).