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## Caught in the Trap: Pricing Racial Housing Preferences

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# CAUGHT IN THE TRAP: PRICING RACIAL HOUSING PREFERENCES

A. Mechele Dickerson\*

THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS & FATHERS ARE GOING BROKE (WITH SURPRISING SOLUTIONS THAT WILL CHANGE OUR CHILDREN'S FUTURES). By *Elizabeth Warren & Amelia Warren Tyagi*. New York: Basic Books. 2004. Pp. xv, 255. \$26.00.

## INTRODUCTION

In *The Two-Income Trap*, Harvard Law School Professor Elizabeth Warren and business consultant Amelia Warren Tyagi reach a startling conclusion: a two-income middle-class family faces greater financial risks today than a one-income family faced three decades ago. Middle-class families are caught in an “income trap” because they budget based on two incomes and face financial ruin if they lose an income or incur unexpected expenses. The authors suggest that most middle-class families cannot quickly adjust their budgets because their largest monthly expense is the fixed mortgage payment. The parents maintained that they had to allocate a significant portion of their income to housing expenses to ensure they could buy a home in a good neighborhood with good, safe schools (pp. 22-23, 29, 32). Moreover, because good schools are located in expensive neighborhoods, parents contend that they must participate in a high-priced bidding war for those homes. If their income declines or expenses increase, however, they are trapped: unable to pay the mortgage and unable to quickly reduce their living expenses (pp. 7-8).

The book never explains how parents determine what is a “good,” “safe” neighborhood or school. Housing and school segregation patterns suggest, however, that some middle-class parents consciously

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or unconsciously use “good and safe” as a proxy for predominately or exclusively “nonminority.” This Review suggests that middle-income parents can no longer afford these racial housing preferences. The Review summarizes the problems middle-class families face then argues that what is viewed as “good” and “safe” may be based more on racially biased perceptions than on reality. The Review concludes by arguing that the best way to help middle-class families avoid the income trap is to make school assignments without regard to the student’s street address and to allow parents who live in integrated neighborhoods to participate in an auction to buy a slot in their first-choice school.

## I. THE TWO-INCOME TRAP

### A. Summary

The *Two-Income Trap* uses data collected in a consumer bankruptcy project and attempts to explain why the middle class is struggling financially. While some media reports negatively portray debtors as reckless or irresponsible,<sup>1</sup> the book contends that most financially beleaguered consumers are not “the usual suspects” and, instead, are middle-class parents with children (p. 6). The modern middle-class family differs from their middle-class counterparts three decades ago primarily because both spouses now work in the market. Notwithstanding those two incomes, the book stresses that modern families are at a higher risk financially because they lack the safety net of the stay-at-home mother’s untapped income. This income could protect them if the sole breadwinner lost his job, or if the family needed extra income to pay for college expenses or unexpected medical expenses.<sup>2</sup>

The book compares consumer spending data from the 1970s and 2000 and documents that, after adjusting for inflation, today’s two-income middle-class family spends less overall on nonhousing expenditures than they did thirty years ago (pp. 16-17, 195-96). The book recognizes that some middle-class families may sometimes “fritter away” money (pp. 19, 21), but argues that the data show that most families do not face financial crises because they overspend and overconsume.<sup>3</sup> While nonhousing costs have decreased, housing costs

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1. See generally A. Mechele Dickerson, *Bankruptcy Reform: Does the End Justify the Means?*, 75 AM. BANKR. L.J. 243, 261-67 (2001) (discussing the negative image of debtors portrayed in the media).

2. Pp. 57-62. Stay-at-home spouses also were protected if the couple divorced because they could use their untapped income to support themselves if they received inadequate financial assistance from their ex-spouses. *Id.* at 7-8.

3. The book concedes that families spend more on some items (including entertainment units and home computers) now than they did thirty years ago, but documents that overall

increased dramatically largely because parents feel compelled to participate in a “bidding war” for homes in certain neighborhoods to ensure that their children attend a good, safe school (pp. 28, 31-32). Households historically spent no more than twenty-five to twenty-eight percent of gross monthly income on housing expenses. Currently, more and more families devote half of their combined income to housing expenses.<sup>4</sup>

The authors note that societal changes, including increased job instability, the lack of comprehensive health insurance, and increased divorce rates<sup>5</sup> have dramatically increased middle-income families’ financial risks.<sup>6</sup> The authors suggest that families resist radically reducing their monthly expenses if they face a financial setback because doing so would prevent them from having a “normal middle-class life,” i.e., a good job, quality education for children (day care, pre-school, K-12 and college), owning an automobile (pp. 32-33, 52), and that it would deprive them of the primary symbol of “the good life,” i.e., homeownership (pp. 8, 20, 23-38). The costs associated with a normal middle-class life prevent families from saving enough, which is okay if both parents remain employed, remain healthy, and remain married (pp. 66-67).

### B. *Solutions and Critique*

The book’s greatest attribute is its comprehensive analysis of the financial plight of the middle class. The data and proposed solutions presented in the *Two-Income Trap* will help policymakers who seek both standard and nontraditional approaches to help the financially strapped middle class.<sup>7</sup> Certainly, some of the expenditures middle-

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nonhousing spending (including spending for clothing, groceries, and major appliances) has decreased. *Id.* at 16-19.

4. P. 133. The authors criticize mortgage lenders for issuing “unmanageable mortgages” and for decreasing the requirement that buyers put down a sizeable down payment when buying a home. See JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIV., *THE STATE OF THE NATION’S HOUSING* (2003).

5. Middle-class couples have higher divorce rates than other groups. Since they barely could pay their bills with two incomes, they are especially ill-equipped to maintain two households. Pp. 83-86.

6. These families often borrow money from subprime lenders. See U.S. DEP’T OF HOUS. & URBAN DEV., *UNEQUAL BURDEN: INCOME AND RACIAL DISPARITIES IN SUBPRIME LENDING IN AMERICA* [hereinafter *UNEQUAL BURDEN*], at <http://www.hud.gov/library/bookshelf18/pressrel/subprime.html> (last visited Jan. 18, 2005). These loans are secured by the family home and often have astronomically high interest rates that make the family’s financial predicament even worse. See generally A. Mechele Dickerson, *Bankruptcy and Mortgage Lending: The Homeowner Dilemma*, 38 J. MARSHALL L. REV. (forthcoming 2005).

7. Indeed, the authors’ recommendations have been championed both by conservatives

class families may view as necessities might better be characterized as desires<sup>8</sup> and economists may question whether middle-class families' mortgage payments are disproportionately large relative to their income.<sup>9</sup> Few dispute, however, that today's middle-class families face exogenous risks that were nonexistent a generation ago.

The authors present a series of recommended actions to combat those risks and help families: save more (pp. 32-33); avert financial crisis (pp. 93-94); finance their children's preschool (p. 122) and college (pp. 45-46) education; and, avoid making unwise financial choices once they face a financial crisis (pp. 142-152). Because housing costs appear to be the primary reason families spend too much and save too little, the authors specifically urge them to avoid stretching to buy a home they cannot afford (p. 165). They then more broadly argue that a public school voucher program that allows parents to choose schools without regard to their home's location would de-escalate the bidding wars (pp. 34-36).

The most provocative finding in this recent work, and one not discussed in detail in the authors' prior works,<sup>10</sup> is that two incomes are not necessarily better than one. The authors avoid making sociological conclusions about how children are affected by both parents working outside the home<sup>11</sup> and, instead, nonjudgmentally report that not

(school vouchers, increased personal responsibility) and liberals (government subsidized preschool, consumer-credit interest-rate caps).

8. For example, middle-class families' perception that their children will be at a competitive disadvantage if they do not attend a quality preschool program, pp. 37-39, has little empirical support. See Beth Azar, *The Debate Over Child Care Isn't Over Yet . . .*, MONITOR ON PSYCHOL., Mar. 2000, at 32, at <http://www.apa.org/monitor/mar00/childcare.html>. But cf. Juan Antonio Lizama, *Preschool Gives Kids a Good Start/Physical, Social, Language and Thinking Skills Are Developed Through Play*, RICH. TIMES-DISPATCH, Feb. 3, 2004, at B1. Indeed, recent reports suggest that home-schooled students succeed both academically and socially in college. See generally John Cloud & Jodie Morse, *Home Sweet School: The New Home Schoolers Aren't Hermits. They Are Diverse Parents Getting Results — and Putting the Heat on Public Schools*, TIME MAG., Aug. 27, 2001, at 46. Likewise, notwithstanding car-seat laws, most middle-class families don't need expensive SUVs and, in any event, "need" them only while their children are young. Pp. 48-49 (suggesting SUV purchases might be warranted because of mandatory car-seat laws). Finally, while most people may now view Internet access, cable television, and cellular phones as nonluxuries, as the book notes, it is hard to characterize these expenditures as necessities. P. 19.

9. See Marilyn Kennedy Melia, *Overspending On Mortgage Leaves Families Vulnerable*, CHI. TRIB., Nov. 2, 2003, at C1.

10. See, e.g., Elizabeth Warren, *Bankrupt Children*, 86 MINN. L. REV. 1003, 1022-23; Elizabeth Warren, *Under Bankruptcy Clash, A Quiet Attack on Women*, CHI. DAILY L. BULL., May 20, 2002, at 6. Elizabeth Warren coauthored two previous books with Theresa Sullivan and Jay Lawrence Westbrook. See TERESA A. SULLIVAN ET AL., *AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA* (1989); TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2000).

11. But see Gwendolyn Freed, *Double Trouble: 2 Incomes Not Enough*, STAR TRIB., Sept. 20, 2003, at 1D (expressing concerns that the book will be used to castigate working

having the safety net of the stay-at-home mother's unearned income hurts the modern middle-class family. The book adroitly links housing choice to school choice, something courts and government agencies rarely do. By linking housing choice to school choice, the book demonstrates that the problems associated with urban schools increase housing costs for suburban parents. While the data presented in the book demonstrate that making school assignments based on zip codes increases housing costs, it does not consider the racial implications of the contention that the housing bidding wars exist only because parents want to live in a "good" neighborhood that has "good" schools. The next Part of this Review provides a more racialized explanation for the suburban bidding wars. I suggest that parents often make educational and housing decisions based on perception, not reality. I then argue that at least some home purchases reflect the buyers' conscious or unconscious racial biases against living in racially integrated neighborhoods and having their children attend racially integrated schools.

## II. MIDDLE-CLASS HOUSING AND EDUCATIONAL PREFERENCES

### A. *Middle-Class Behavioral Biases*

The middle-class parents in *The Two-Income Trap* contend that they have two choices: live in an affordable (typically urban<sup>12</sup>) neighborhood but have their children attend bad schools, or live in an overly expensive (typically suburban) neighborhood that has safe, good schools. Few dispute that the quality of public schools is capitalized into housing prices or that higher-income residents are targeted by advertising that markets the quality of the zoned public schools.<sup>13</sup> Some parental concerns about safety or school violence may, however, be distorted by a biased and flawed decisionmaking process. The law and behavioral choice literature suggest that people perceive

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mothers).

12. I use the terms "urban" and "inner city" as a social construct to describe neighborhoods or schools that are low-income and predominantly minority. See PEDRO A. NOGUERA, *CITY SCHOOLS AND THE AMERICAN DREAM: RECLAIMING THE PROMISE OF PUBLIC EDUCATION* 23 (2003) (discussing common uses of the terms urban, inner city, ghetto, barrio, slum and hood).

13. See, e.g., CONNIE CHUNG, JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIV., *USING PUBLIC SCHOOLS AS COMMUNITY-DEVELOPMENT TOOLS: STRATEGIES FOR COMMUNITY-BASED DEVELOPERS* 8 (Oct. 2002); Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, 80 MINN. L. REV. 825, 848 (1996); Melissa Kossler, *Growing Pains: Once in the Heart of Farm Country, the Teays Valley School District Wrestles with Rapid Development and the Changes it Brings*, COLUMBUS DISPATCH, Aug. 17, 2003, at 1 A; cf. *Capiccioni v. Brennan Naperville, Inc.*, 791 N.E.2d 553 (Ill. Ct. App. 2003) (allowing suit for negligent misrepresentation for an ad that incorrectly stated zoned school).

that they face risks from events that are discussed frequently or are otherwise memorable because those events are fresh in their minds and, thus, “available.”<sup>14</sup> This “availability heuristic” makes people believe that certain events are more common than they actually are.<sup>15</sup>

The media tends to overreport violent incidents of crime that occur in urban areas<sup>16</sup> and to sensationalize incidents of school violence, even though crime rates have dropped sharply in the last decade.<sup>17</sup> Given this, it is not surprising that middle-class families (especially white parents who have little contact with urban school children) think that urban neighborhoods and schools are much more violent than they actually are, believe that violence in schools is increasing, and conclude that they must flee from heterogeneous urban areas to homogeneous suburban ones. Likewise, stereotyping (another behavioral tendency) also may cause middle-class parents to believe they must live in certain neighborhoods. Specifically, when the costs of deliberation are high, people tend to make decisions by considering the similarities between the facts involving the decision they currently face and the facts involved with prior cases.<sup>18</sup> If middle-class parents (or people they know) have had a bad experience with certain people in a neighborhood or school, they may decide to move away from those neighborhoods or schools based on this stereotyped assessment.

### B. Perception, Reality, and K-12 Schools

Much of society’s concern over the perceived decrease in quality and increase in crime in schools appears to be based on subjective beliefs, not objective facts<sup>19</sup> and the authors acknowledge that much of what middle-class parents “believe” may be based not on reality but on “parental psychology — worry” (p. 26). Of course, not all parental perceptions and fears about either the quality or safety of public schools are flawed or otherwise unfounded, and the increased reliance

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14. See Cass Sunstein, *The Future of Law and Economics: Looking Forward: Behavioral Analysis of Law*, 64 U. CHI. L. REV. 1175, 1188 (1997).

15. Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1051, 1087 (2000); see also *id.* at 1088 (discussing a study that suggests that people believe homicides and car accidents kill more Americans than the statistically more-common events of developing diabetes and stomach cancer).

16. Rod Watson, *Coverage of Crime Often Distorts Reality*, BUFF. NEWS, May 17, 2001, at B1; see also NOGUERA, *supra* note 12, at 15.

17. NOGUERA, *supra* note 12, at 26. Violent personal crime rates do, however, remain significantly higher for urban areas than suburban or rural areas. *Id.*

18. See, e.g., Sunstein, *supra* note 14, at 1188.

19. NOGUERA, *supra* note 12, at 103 (commenting that “fear drives public policy more than data or research”).

on quantitative data and laws that rank schools and rate some as “failing” or “persistently dangerous” will only increase parents’ resolve to avoid certain schools.<sup>20</sup> Parents likely are correct in concluding that where you live and go to school helps determine the quality of your life and potentially affects your life achievements.<sup>21</sup> Some public schools have high crime rates, have drug or gang problems, have inadequate supplies and facilities, are underfunded, have less-competent and demoralized teachers,<sup>22</sup> and have relatively lower test scores.<sup>23</sup>

Notwithstanding the perception that public schools are unsafe, almost ninety percent of all school children in this country attend public schools.<sup>24</sup> Moreover, while public schools are criticized,

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20. The No Child Left Behind Act attempts to make school safety statistics transparent and gives parents the right to transfer their child to a “safe” school if the school their child attends is listed on a list of “persistently dangerous” schools or if the child has been a victim of a violent criminal offense while attending her school. See 20 U.S.C. §§ 7116, 7912. See also GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., *BROWN AT 50: KING’S DREAM OR PLESSY’S NIGHTMARE?* 8 (2004). Some parents appear to select homes based on school testing scores. See, e.g., Ana Beatriz Cholo, *Investing in Public Education*, CHIC. TRIB., Mar. 30, 2003, at C1; Thomas Grillo, *Newton Home Prices Soar; Schools Seen As Key*, BOSTON GLOBE, Nov. 29, 2003, at A1; Milan Simonich, *Is This Match Made in Heaven?*, PITT. POST-GAZETTE, Oct. 4, 1998, at A1.

21. Of course, even public schools that are not “good” or “safe” may nonetheless provide valuable support to the children who attend those schools, especially if the schools are safer than the neighborhoods where the children live, or the school provides meals, health care, or clothing that the children otherwise could not afford. See NOGUERA, *supra* note 12, at 6, 40-41 (characterizing urban public schools as “important social welfare institutions”).

22. See CHUNG, *supra* note 13, at 23-25; ERICA FRANKENBERG & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., *CHARTER SCHOOLS AND RACE: A LOST OPPORTUNITY FOR INTEGRATED EDUCATION* 14 (2003); *Tell Truth on School Crime*, L.A. TIMES, July 11, 2003, at 14.

23. See ERICA FRANKENBERG ET AL., THE CIVIL RIGHTS PROJECT, HARVARD UNIV., *A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM?* 11 (2003). *But cf.* ANTHONY D. LUTKUS & ARLENE W. WEINER, NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., *THE NATION’S REPORT CARD: TRIAL URBAN DISTRICT ASSESSMENT, READING HIGHLIGHTS 2003* (Dec. 2003), at <http://nces.ed.gov/nationsreportcard/pubs/dst2003/2004459.asp> (disputing suggestion that urban areas consistently underperform). While many people may associate violence with urban schools, some of the most notorious (and horrific) crimes committed in schools have occurred (as the authors note) in middle-class or upper-class suburban districts. See also Cheryl Wetzstein, *Make Aware, or Scare? (Measuring Increase in School Violence Against Heavy Media Coverage)*, INSIGHT ON THE NEWS, July 6, 1998, at 37; Glenn Muschert, *Columbine Coverage Shook the Nation*, USA TODAY MAG., Aug. 2003, at 14.

24. See NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., *DIGEST OF EDUCATION STATISTICS, 2002: CHAPTER 1. ALL LEVELS OF EDUCATION*, at [http://nces.ed.gov/programs/digest/d02/ch\\_1.asp#1](http://nces.ed.gov/programs/digest/d02/ch_1.asp#1) (last visited Jan. 23, 2005). See generally NAT’L CTR. FOR EDUC. STATISTICS, *OVERVIEW OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS AND DISTRICTS: SCHOOL YEAR 2000-01* (May 2002), at



pilloried, and politicized, school crime rates have declined overall<sup>25</sup> Urban public schools are not bad or unsafe because of the skin color of their students. Instead, urban schools tend to have lower test scores and relatively higher reported cases of violence because their students are largely poor and data indicate that poverty (not skin tone) affects educational outcomes.<sup>26</sup>

If most families are in a trap because they want to send their children to “good” and “safe” schools, then it is imperative to discern how they determine what is “good” and “safe.” Some of their decisionmaking processes may be influenced by behavioral biases. As discussed in the next Part, however, the persistence of racially segregated housing and education in this country suggest that their stated preference for “safe” and “good” neighborhoods and schools may actually be a code for a preference to live in a nonminority<sup>27</sup> neighborhood and have their children attend nonminority schools.<sup>28</sup>

### III. RACIAL HOUSING PREFERENCES

Racially segregated neighborhoods have always existed in the United States and, unfortunately, remain the norm in many localities. From the 1930s until the 1950s, the federal government had racially discriminatory policies, including refusing to make mortgage loans to blacks, encouraging whites to use restrictive racial covenants that

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<http://nces.ed.gov/pubs2002/overview>.

25. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., INDICATORS OF SCHOOL CRIME AND SAFETY, 2003, at <http://nces.ed.gov/pubs2004/crime03/index.asp> (last visited Jan. 23, 2005).

26. FRANKENBERG ET AL, *supra* note 23, at 35. The children who attend urban schools have higher mobility rates (often because they are homeless, the children of migrant workers, or renters who tend to move more than homeowners), and these schools have higher teacher turnover rates. See also ORFIELD & LEE, *supra* note 20, at 20-21; Orfield, *supra* note 13, at 861.

27. By “nonminority” I do not mean exclusively white. Instead, I define nonminority based on parental perceptions. Since nonminorities consistently report that they prefer to live in and have their children attend integrated schools, in their minds there appears to be an acceptable, comfortable level of integration. Once there are too many minorities in a neighborhood or school, some parents conclude that the neighborhood or school is a minority one even though the number of minorities living in the neighborhood or attending the school may still be significantly less than fifty percent. See LEONARD STENHORN & BARBARA DIGGS-BROWN, *BY THE COLOR OF OUR SKIN* 33 (1999).

28. Both whites and minorities prefer that their children attend schools where their children will not be in the minority racially and also prefer schools that are not overwhelmingly minority. While whites may have a stronger preference, some affluent blacks prefer to send their children to private schools rather than public schools if most of the children in the zoned public school are lower-income. See Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729, 733 (2001).

discriminated against black prospective homeowners,<sup>29</sup> and undervaluing property in black neighborhoods.<sup>30</sup> Even when blacks overcame these obstacles and purchased a home in a white neighborhood, the neighborhood likely would resegregate either because of realtor “blockbusting” practices or because (as discussed in more detail below) white residents chose to voluntarily segregate.<sup>31</sup> While blatant housing discrimination is now illegal,<sup>32</sup> these prior policies and practices appear to cause residential segregation to persist.<sup>33</sup> In addition, notwithstanding state and federal antidiscrimination housing laws, real estate agents still “steer” minorities to minority neighborhoods and white purchasers to white neighborhoods,<sup>34</sup> the mortgage loan rejection rates for minorities is significantly higher than the rejection rates for whites with similar financial profiles,<sup>35</sup> and some lenders continue to engage in residential redlining.<sup>36</sup>

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29. See Richard H. Sander, *Individual Rights and Demographic Realities: The Problem of Fair Housing*, 82 NW. U. L. REV. 874, 878 (1988); see also Martha R. Mahoney, *Shaping American Communities: Segregation, Housing and the Urban Poor*, 143 U. PA. L. REV. 1659, 1670-71 (1995). In fact, these policies thwarted white preferences for integrated neighborhoods since it prevented blacks from getting federally funded or insured mortgages, and few homeowners of any race could afford to buy a home without that assistance. *Id.*

30. See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 150 (1993); Margalynne Armstrong, *Race and Property Values in Entrenched Segregation*, 52 U. MIAMI L. REV. 1051, 1056-57 (1998). This ranking appears to be the genesis for redlining, i.e., a rating system that characterizes black neighborhoods as riskier than white neighborhoods and prevents residents of those neighborhoods from receiving the most favorable loans. See Alex M. Johnson, Jr., *How Race and Poverty Intersect to Prevent Integration: Destabilizing Race as a Vehicle to Integrate Neighborhoods*, 143 U. PA. L. REV. 1595, 1612-13 (1995).

31. See MASSEY & DENTON, *supra* note 30, at 37-38; Mary Jo Wiggins, *Race, Class, and Suburbia: The Modern Black Suburb as a “Racemaking Situation”*, 35 U. MICH. J.L. REFORM 749, 762 (2002).

32. See Fair Housing Act of 1968, 42 U.S.C. § 3604; see also *Shelley v. Kraemer*, 334 U.S. 1 (1948) (invalidating racial covenants).

33. See Leland Ware, *Race and Urban Space: Hypersegregated Housing Patterns and the Failure of School Desegregation*, 9 WIDENER L. SYMP. J. 55, 55-56 (2002).

34. *Id.* at 66.

35. See URBAN INST., U.S. DEP’T OF HOUSING & URBAN DEV., *WHAT WE KNOW ABOUT MORTGAGE LENDING DISCRIMINATION* (1999); Michael H. Schill, *Local Enforcement of Laws Prohibiting Discrimination in Housing: The New York City Human Rights Commission*, 23 FORDHAM URB. L.J. 991, 996 (1996); Joel Glenn Brenner & Liz Spayd, *A Pattern of Bias in Mortgage Loans*, WASH. POST, June 6, 1993, at A1; H. Jane Lehman, *Study: Race Factor in Loan Rejections*, WASH. POST, Oct. 24, 1992, at F1; ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), *GIVING NO CREDIT WHERE CREDIT IS DUE* (1998), at <http://www.acorn.org/ACORNarchives>.

36. Minorities often cannot get prime mortgage loans and often rely on high cost subprime loans. Indeed, the subprime lending industry appears to target minorities — even those in the upper incomes. See UNEQUAL BURDEN, *supra* note 6 (discussing findings that

Even though all discriminatory lending and most discriminatory housing practices are now illegal, neighborhoods in this country largely remain segregated. Ironically, opinion polls and surveys indicate that most people prefer to live in an integrated neighborhood and have their children attend integrated schools.<sup>37</sup> How much integration people prefer (and why they prefer it), however, appears to vary dramatically by race. Neither blacks nor whites want to live in a neighborhood (or have their children attend schools) if their race is in the minority (though racial minorities appear much more willing to live in neighborhoods where they are slightly in the minority).<sup>38</sup> Blacks appear to prefer living in racially integrated neighborhoods both because they perceive the homes in those neighborhoods are better and also because they value the concept of integration. Whites appear to prefer integrated neighborhoods only if the neighborhood remains stably integrated and the minority homeowners are in the same socioeconomic class as the existing residents.<sup>39</sup>

Despite these stated preferences and this country's increasing racial and ethnic diversity, inner cities largely remain segregated.<sup>40</sup> Likewise, despite the influx of minorities, residential segregation also remains high in the suburbs.<sup>41</sup> Indeed, since the average white person lives in a neighborhood that is eighty percent white,<sup>42</sup> the average black person lives in a neighborhood that is only thirty-three percent

almost forty percent of homeowners in upper-income black neighborhoods have subprime refinancing loans in contrast to only six percent of the homeowners living in upper-income white neighborhoods); *see also* U.S. DEPT OF HOUSING & URBAN DEV., CURBING PREDATORY HOME MORTGAGE LENDING (June 2000), at <http://www.huduser.org/publications/hsgfin/curbig.html>.

37. FRANKENBERG & LEE, *supra* note 22, at 15; Abraham Bell & Gideon Parchomovksy, *The Integration Game*, 100 COLUM. L. REV. 1965, 1986 & nn.84-86, 1987 & n.87 (2000); *cf.* Schill, *supra* note 35, at 995 (suggesting that whites prefer neighborhoods with no or just a few black residents whereas blacks prefer communities where the racial balance between blacks and whites is 50/50). Whites may, however, favor integration only if their neighborhood is not the one that is integrated. *See* Johnson, *supra* note 30, at 1609.

38. *See* Cashin, *supra* note 28, at 737-38; Camille Zubrinsky Charles, *Processes of Residential Segregation*, in URBAN INEQUALITY: EVIDENCE FROM FOUR CITIES 217, 233, 234 fig. 4.6 (Alice O'Connor et al. eds., 2001); Orfield, *supra* note 13, at 831; Sander, *supra* note 29, at 896-97 (suggesting that whites prefer neighborhoods that are eighty percent white whereas blacks prefer neighborhoods that are from thirty to sixty percent black).

39. *See* Sander, *supra* note 29, at 896.

40. *See* LEWIS MUMFORD CTR., ETHNIC DIVERSITY GROWS, NEIGHBORHOOD INTEGRATION LAGS BEHIND (Dec. 18, 2001), at [http://browns4.dyndns.org/cen2000\\_s4/WholePop/WPreport/MumfordReport.pdf](http://browns4.dyndns.org/cen2000_s4/WholePop/WPreport/MumfordReport.pdf).

41. ORFIELD & LEE, *supra* note 20, at 3, 15; MUMFORD CTR., *supra* note 40, at 4.

42. MUMFORD CTR., *supra* note 40, at 1. Of course, it is unclear whether whites avoid integrated neighborhoods because of racial preferences or because realtors steer them away from those neighborhoods.

white,<sup>43</sup> and many blacks live in virtually all-black neighborhoods,<sup>44</sup> there arguably has been little improvement in residential segregation.<sup>45</sup> While public and private discrimination may cause some residential segregation, most existing segregation patterns largely appear to be voluntary<sup>46</sup> and, notwithstanding any stated preferences, the process of “dynamic resegregation” keeps neighborhoods and schools segregated.<sup>47</sup>

Data consistently show that, once minorities integrate neighborhoods or send their children to previously segregated neighborhood schools, the neighborhoods and schools resegregate.<sup>48</sup> Studies find that white homeowners flee once a certain (often quite small) percentage of nonwhite residents move into the neighborhood and it “tips” from nonminority to minority. Though the exact tipping point is unclear, data suggest that school integration consistently fails largely because of neighborhood resegregation.<sup>49</sup> Why whites flee neighborhoods and why residential segregation persists for all income groups despite antidiscrimination laws generally is attributed to two main views. First, some commentators suggest that some whites simply dislike minorities and prefer not to be with or live near them, or that they dislike integration because they fear that it will cause white flight and, ultimately, force them to live in a predominately minority neighborhood.<sup>50</sup> Similarly, whites may prefer to live near other

43. *Id.*

44. LEONARD STEINHORN & BARBARA DIGGS-BROWN, BY THE COLOR OF OUR SKIN 31 (1999); Maria Krysan & Reyholds Farley, *The Residential Preferences of Blacks: Do They Explain Persistent Segregation*, 80 SOCIAL FORCES 937, 940, 969 (2002).

45. See MUMFORD CTR., *supra* note 40, at 29 (observing no improvement in black-white residential segregation in the New York metropolitan area in the last two decades and noting that residential segregation levels for whites, blacks, Hispanics, and Asians remain at the same levels that existed in 1960).

46. See MASSEY & DENTON, *supra* note 30, at 61, 193-200; Paul Boudreaux, *An Individual Preference Approach to Suburban Racial Desegregation*, 27 FORDHAM URB. L.J. 533, 545, n.61 (1999).

47. See Gary Orfield, *The Movement for Housing Integration: Rationale and the Nature of the Challenge*, in HOUSING DESEGREGATION AND FEDERAL POLICY 18, 21 (John M. Goering ed., 1986); Ware, *supra* note 33, at 66.

48. Indeed, schools may resegregate quicker than neighborhoods because a significant percentage of minorities who integrate neighborhoods are younger and have children. See NOGUERA, *supra* note 12, at 39; Orfield, *supra* note 13, at 851.

49. See Bruce L. Ackerman, *Integration for Subsidized Housing and the Question of Racial Occupancy Controls*, 26 STAN. L. REV. 245, 251-60 (1974) (suggesting that the tipping point may range from twenty-five to sixty percent); Cashin, *supra* note 28, at 744-45 (suggesting tipping point is forty percent); Orfield, *supra* note 13, at 851; Thomas C. Schelling, *A Process of Residential Segregation: Neighborhood Tipping*, in RACIAL DISCRIMINATION IN ECONOMIC LIFE 157, 157-84 (Anthony H. Pascal ed., 1972).

50. See David R. Harris, *Property Values Drop When Black Move In, Because . . .* :

whites because “whiteness” connotes safe, stable, employed, and educated neighbors.<sup>51</sup>

The second theory suggests that economic factors cause residential segregation and white flight. Since blacks earn on average less than whites, some racial residential segregation occurs naturally because blacks cannot afford to live near their richer white counterparts.<sup>52</sup> Whites also might flee integrating neighborhoods because of their concern that property values will depreciate. Even though it is irrational to believe that a homeowner’s skin color actually affects the value of her house, data suggest that homes in minority neighborhoods tend to appreciate less than comparable homes in nonminority neighborhoods.<sup>53</sup> Indeed, whether the race of the homeowner actually causes the value of the home to decline largely is irrelevant as long as there is a negligible market of potential white buyers of homes in integrated neighborhoods or most white buyers believe that homes in integrated neighborhoods are worth less than homes in white neighborhoods. Upper- and middle-income homeowners are also said to flee integrating neighborhoods because they fear that lower-income minority neighbors will take advantage of the lower housing prices that typically follow white flight.<sup>54</sup> They fear that lower-income residents will increase taxes because the higher rates of drug use, crime, and out-of-wedlock births associated with those groups will increase the demand for social and public services.<sup>55</sup>

A final economic consideration is the belief that suburban housing is more affordable and that these areas have more jobs and other neighborhood amenities (including good schools and retail stores).<sup>56</sup> Finally, dynamic resegregation may occur because, as discussed in Part

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*Racial and Socioeconomic Determinants of Neighborhood Desirability*, 64 AM. SOC. REV. 461, 461 (1999); Sander, *supra* note 29, at 901.

51. See Mahoney, *supra* note 29, at 1661 (“For whites, residential segregation is one of the forces giving race a ‘natural’ appearance: ‘good’ neighborhoods are equated with whiteness, and ‘black’ neighborhoods are equated with joblessness.”).

52. Of course, this theory fails to explain why poor and middle class neighborhoods remain segregated. See Cashin, *supra* note 28, at 739, 741 n.58.

53. See generally Harris, *supra* note 50.

54. Cf. Cashin, *supra* note 28, at 742 (discussing a suburb that became majority black but had an increase in both income and education level). Again, the desire not to live near people of a lower economic or social class is not limited to whites. See *id.* at 751-52 (expressing the “quiet truth” that middle-class blacks also are uncomfortable living near lower-income blacks and that they “can be just as hostile to the urban poor as their white counterparts”); Orfield, *supra* note 13, at 853.

55. See Harris, *supra* note 50, at 464; Orfield, *supra* note 13, at 831.

56. Mahoney, *supra* note 29, at 1673; Orfield, *supra* note 13, at 838; Wiggins, *supra* note 31, at 773-74; Dahleen Glanton, *Lingering Lines of Discrimination: The Neighborhood is Solidly Middle Class, But Its Residents Have Trouble Getting Even a Pizza Delivered to Their Front Door*, CHI. TRIB., Mar. 1, 1998, at Perspective 1.

II.A., people make generalizations and stereotype. Predominately minority public schools have more students who live in poverty, and schools with high percentages of poor students generally tend to have higher crime rates but lower standardized test scores. Given this, middle-class parents might rationally use race as a proxy for quality, and leave racially transitioning neighborhoods and schools rather than wait to see whether the quality or safety of the integrating neighborhood or school in fact declines.<sup>57</sup>

Whatever the cause for residential and school racial segregation, it remains a fixture in our society. Urban public schools have largely been written off as unacceptable for parents who have access to better schools, and the white community overall is largely critical of (and at times hostile to) most attempts to improve these schools.<sup>58</sup> While it is unlikely that all middle-class white parents affirmatively dislike minorities, given the prominent role race has played in shaping this country's history and cultural heritage, some middle-class parents who join the suburban bidding wars either consciously or unconsciously<sup>59</sup> prefer nonminority neighborhoods and schools. Indeed, even if their beliefs about the quality of certain schools are irrational, until they are given incentives to challenge those beliefs, they will continue to participate in the bidding wars.

#### IV. RELEASING MIDDLE-CLASS PARENTS FROM THE TRAP

##### A. Pricing Housing Preferences

Middle-class parents who flee racially integrated neighborhoods and schools and participate in the bidding wars ("non-Integrationists") pay a segregation tax or premium for this race-based preference.<sup>60</sup> Standard economic theory posits that people will be forced to bear the cost of satisfying their particular preferences (in this case, to avoid

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57. See ANDREW HACKER, *TWO NATIONS BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* 27-28 (suggesting that acting on limited information is normal and may be reasonable); Johnson, *supra* note 30, at 1623 (suggesting that "it is fully possible that in certain settings, race-and sex-based generalizations are economically rational as proxies for relevant characteristics" (quoting Cass R. Sunstein, *Why Markets Don't Stop Discrimination*, SOC. PHIL & POL'Y, Spring 1991, at 22, 27)).

58. See NOGUERA, *supra* note 12, at 5; Orfield, *supra* note 13, at 871.

59. See, e.g., Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322 (1987) (suggesting that "[t]o the extent that [a] cultural belief system" influenced by race "has influenced all of us, we are all racists. At the same time, most of us are unaware of our racism.").

60. See John O. Calmore, *Racism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1101 (1998) (citing research that indicates whites would pay a thirteen percent premium to live in an all-white neighborhood).

minorities) in a perfectly competitive economy.<sup>61</sup> Yet, *all* homeowners who live in segregated neighborhoods (even the ones who do not dislike minorities and may have been steered to a segregated neighborhood by a realtor) are forced to pay this premium. Since middle-income parents of all races should share an interest in having affordable housing, they would benefit by working together to eliminate practices or actions that cause housing prices to rise unnecessarily.

The data presented in the *Two Income Trap* indicate that middle-class parents can no longer afford to pay the segregation tax without placing themselves at risk financially. Non-Integrationist parents who prefer segregated neighborhoods and schools but want to avoid financial ruin may be forced to pay for this preference by delaying or deferring home ownership. Instead, they may have to rent either a home or an apartment in a segregated neighborhood until their children graduate from high school.<sup>62</sup> While non-Integrationists ostensibly could buy a smaller suburban home, real estate prices in favored school districts suggest that even a small bungalow in these neighborhoods may no longer be a realistic option.<sup>63</sup> Of course, renting would cause parents to lose the asset that constitutes the bulk of wealth for many in the middle class (i.e., the home),<sup>64</sup> may increase their overall housing costs, and might symbolically “signal that their middle-class lives are slipping away” (p. 53). If, however, non-Integrationist parents value segregated neighborhoods and schools more than homeownership, then this may well be the best option for them.

Middle-class parents who prefer homeownership but also want to avoid the two-income trap may need to reduce their preference for segregated neighborhoods and make homeownership their primary preference — even if the home is in an integrated neighborhood.<sup>65</sup>

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61. Robert Cooter, *Market Affirmative Action*, 31 SAN DIEGO L. REV. 133, 139 (1994).

62. Though 66% of total US households are homeowners, there is a racial gap. Homeownership rates for whites for the year end 2000 were 72.4%, 46.3% for African Americans, 45.7% for Hispanics, and 53.2% for Asians. PATRICK A. SIMMONS, FANNIE MAE FOUNDATION, CENSUS NOTE 7: CHANGES IN MINORITY HOMEOWNERSHIP DURING THE 1990s (2001).

63. See Thomas Grillo, *Newton Home Prices Soar; Schools Seen as Key*, BOSTON GLOBE, Nov. 29, 2003, at A1.

64. James S. Jackson & Nicholas A. Jones, *New Directions in Thinking About Race in America: African Americans in a Diversifying Nation*, AFR. AM. RESEARCH PERSPECTIVES, Winter 2001, at 1, 11.

65. Behavioral economics literature suggests that preferences are not fixed and can change or be manipulated over time. See Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The Problem of Market Manipulation*, 74 N.Y.U. L. REV. 630, 672-87 (1999); Mark Kelman et al., *Context-Dependence in Legal Decision Making*, in BEHAVIORAL LAW AND ECONOMICS 61, 71 (Cass R. Sunstein ed., 2000).

Though these homes may be less valuable than those in segregated neighborhoods, becoming an “Integrationist” parent (i.e., one who prefers integrated neighborhoods or schools) and remaining in (or moving to) minority neighborhoods would help them reduce their housing costs.<sup>66</sup> The best way, however, to keep middle-class parents out of the bidding wars but also give their children a good education is to align the interests of the middle class with those of low-income minority public school children.

### B. *Converging the Interests of Middle Class Parents and Minority Public School Children*

The data in *The Two-Income Trap* clearly show the flaws of zip code school assignments. Middle-class parents who join the bidding wars are, to a great extent, acting consistent with popular beliefs about housing markets. Most nonpoor homeowners believe that they have the right to live in a neighborhood that excludes the “wrong” type of resident and to have their children attend a “good” school that excludes certain children, especially now that Supreme Court rulings permit school districts to end desegregation plans and return to (segregated) neighborhood schools.<sup>67</sup> The fact that the resident who is excluded (often illegally) is poor or a minority, and the schools in poor, minority neighborhoods are often inadequately funded, appears to be accepted as part of that property right.<sup>68</sup> Though it may be difficult to convince middle-class parents to relinquish this “right” to exclude, it may be possible to do so if their interests and those of minority public school children converge.<sup>69</sup> Stated differently, zip code school assignments both fail to eliminate the problems associated with urban schools, and exacerbate the financial woes of suburban middle-income families. Any solution that makes urban schools better should also make suburban parents better off.

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66. Armstrong, *supra* note 30, at 1064. Parents who remain in integrated neighborhoods may save enough to send their children to (segregated) private schools. Indeed, data suggest that the percentage of whites in urban cities is significantly higher than the white student enrollment in public schools. While some of this discrepancy may be caused by minorities' relatively lower ages but higher birth rates, it appears that many white urban parents send their children to private schools. See NOGUERA, *supra* note 12, at 27-28, 39; ORFIELD & LEE, *supra* note 20, at 12.

67. See *Missouri v. Jenkins*, 515 U.S. 70 (1995); *Freeman v. Pitts*, 503 U.S. 467 (1992); *Bd. of Educ. of Okla. v. Dowell*, 498 U.S. 237 (1991); see also ORFIELD & LEE, *supra* note 20, at 17-18 (discussing the resegregation of neighborhood schools).

68. See Orfield, *supra* note 13, at 853.

69. See DERRICK BELL, *SILENT COVENANTS* 69 (2004) (suggesting that blacks' interest in achieving racial equality will be accommodated only if it converges with white policymakers' interests).



## 1. *Increasing the Desirability of Public Schools*

*a. District Public School Choice.* To help decrease middle-class parents' housing costs, the *Two-Income Trap* proposes a voucher program that would be restricted to public schools. Such a program should help eliminate the controversies typically associated with private or parochial school voucher programs. Even using the term voucher, however, is likely to cause opponents of private school voucher programs (including most civil rights organizations<sup>70</sup>) to oppose a public school voucher program. Also, middle-class parents will likely oppose radical changes to the public school system unless they can be assured that the program will maintain a stable middle-class majority. Moreover, because voucher programs typically are designed to let only a few students transfer from "bad" to "good" schools, a voucher program will not raise the overall quality and safety of public schools or convince middle-class families to avoid the bidding wars.<sup>71</sup>

To convince middle-class families to avoid the bidding wars, localities should let parents apply to have their children attend the public school of their choice — regardless of its geographical location. Housing patterns suggest that some white households will remain in an integrated urban neighborhood — even if they are in the minority — if they have no school-age children.<sup>72</sup> Given this, and assuming opinion polls correctly reflect homeowners' preferences to live in integrated neighborhoods, then middle-class parents should support a carefully crafted, fully funded public school choice program. This "choice" program would need to have certain basic features. First, to allay middle and upper-class parents' apprehensions and also to ensure that all parents understand how the program works, the program must be widely publicized in a medium (and language) that is likely to reach most parents.<sup>73</sup> Second, to make the program attractive

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70. See Letter from the National Coalition for Public Education, to Omnibus Conferees Opposing D.C. Vouchers (Nov. 18, 2003), at <http://www.aclu.org/ReligiousLiberty/ReligiousLiberty.cfm?ID=14429&c=140> (opposing vouchers in Washington, D.C. school system).

71. Stephen L. Gessner, *The Dangers of Fashionable Education Reform*, 11 STAN. L. & POL'Y REV. 235, 238 (2000); Jennifer A. Henrikson, Comment, *Jackson v. Benson: School Vouchers — Offering an Apple to Private Schools; Creating a Serpent for Public Schools*, 75 CHI.-KENT L. REV. 259, 276 (1999).

72. Richard A. Smith, *Discovering Stable Racial Integration*, 20 J. URB. AFF. 1 (1998); Steven Pearlstein, *Moving Closer to a 'Living Downtown'*, WASH. POST, May 23, 2003, at E1; United Press International, *U.S. Cities Have Fewer Kids, More Singles* (June 13, 2001), at <http://www.newsmax.com/archives/articles/2001/6/13/52513.shtml>; Mark Sauer, *Downtown's Upturn; It's a Vibrant Place to Live, Even if Some Urban Ills Remain*, SAN DIEGO UNION-TRIB., Sept. 21, 2003, at E1. See Orfield, *supra* note 13, at 850, 859.

73. In general, when school systems experiment with different choice options (magnet schools, charter schools, etc.) lower income families tend to get less access to the most highly

and feasible for all parents, it must include free transportation.<sup>74</sup>

The program should force parents to rank their school preferences when their children enter primary/elementary, middle/junior high, and senior high school.<sup>75</sup> Schools that receive more applications than the available slots would conduct a lottery. Parents who do not get their first-choice school through the lottery would then be assigned to their next-ranked school. A properly administered choice program should eliminate the gross disparities between the best schools and those viewed as the “rock-bottom” schools by assigning children with lower test scores and higher delinquency and absentee rates throughout the district.

The program must be designed to prevent parents from moving to another neighborhood to circumvent the program’s results. That is, if parents can reapply by moving to another part of the school district, they will have an incentive to move (or claim they moved) to get another chance to apply for their first-choice school. To prevent this, if the family moves before their child is scheduled to attend the next level of education (i.e. middle/junior high or senior high), the child’s school placement would not change, thus eliminating the incentive to join the bidding wars. Of course, a choice program will only succeed if middle-class parents’ housing decisions truly are motivated by the quality of the public schools — not by a preference to avoid integrated neighborhoods and schools. If parents’ primary preference is to avoid living near minorities, then even a program that ensured that their children would attend safe, quality public schools will not prevent them from fleeing a racially transitioning neighborhood.

*b. Metropolitan Public School Choice.* In urban school districts with a declining white population and an increasing percentage of low-income minority students, a district-only choice program will not prevent middle-class flight, because it could not keep a middle-class white majority in each school. Even Integrationist parents in these districts might resist having their children attend schools that are overwhelming minority. Indeed, if most schools in a district are viewed as bad, even Integrationist parents would likely join the bidding wars. Because a district program would have a limited geographical scope, middle-income parents could move to another district and, thus, avoid having to place their children in minority schools. To prevent this,

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regarded schools. See FRANKENBERG & LEE, *supra* note 22, at 13.

74. See, e.g., Charles Mas, *Navigating the School Choice Maze*, SEATTLE PRESS, Dec. 30, 1998 (discussing transportation logistics in school choice program).

75. To decrease the disruption to children who are already attending schools, their parents should be allowed to opt out of the choice system and keep their children in their existing buildings. Once a child reaches the next school level (i.e., junior high/middle school or senior high), s/he would be assigned to a school based on the choice program.

school districts and localities (or states) should enact a metropolitan-wide school choice program.<sup>76</sup> Data suggest that metropolitan or countywide desegregation efforts have helped stem white flight, and that the school districts that have had the most stable white enrollments are in areas with metropolitan desegregation plans that help ensure that the majority of students in each school will be middle class.<sup>77</sup> While courts generally cannot order a county- or metropolitan-wide mandatory busing program, nothing prevents localities from voluntarily creating one.<sup>78</sup>

### C. *Choice + Private Auction*

For some areas, a school choice program alone would not give middle-class parents adequate incentives to avoid participating in the housing bidding wars. A choice program alone is especially unlikely to attract middle-class parents in districts whose schools have significant resource and personnel disparities.<sup>79</sup> For example, even Integrationist parents likely would refuse to let their children attend school in an aging facility that lacks modern technology or other desirable amenities that newer schools, or schools located in nonminority neighborhoods, tend to have.<sup>80</sup> Moreover, as some research suggests that teachers in lower socioeconomic schools are less qualified and have less experience than those in richer suburban schools, even parents who are committed to the principles of racial integration would resist having their children taught by teachers they feel are unqualified.<sup>81</sup>

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76. Because whites may soon be the minority in a number of states, not even a metropolitan-wide plan could ensure that they will be in the majority. Implementing a metropolitan wide choice program will, however, at least decrease the likelihood that whites will always be in the overwhelming minority in the schools in any given school district. See Orfield, *supra* note 13, at 831.

77. ORFIELD & LEE, *supra* note 20, at 30-31; Orfield, *supra* note 13, at 831, 841-44. In fact, one of the most successful integration plans was that of Charlotte, North Carolina, where there had been a countywide desegregation plan until the school district was forced to end the plan after being sued by a white parent. See ORFIELD & LEE, *supra* note 20, at 36-37.

78. Expanding the choice program beyond district boundaries would need to be voluntary because of the United States Supreme Court's edict in *Milliken v. Bradley*, 418 U.S. 717, 745 (1974), that school desegregation orders must be limited to single districts unless there is proof that the districts engaged in racially discriminatory acts to cause the interdistrict segregation.

79. These disparities generally are caused by low parental involvement in the public schools or decreased participation in efforts to lobby school boards to increase resources to individual schools. See NOGUERA, *supra* note 12, at 84-86. Race and economics are, again, factors, as low-income parents tend to be less involved with their children's schools. *Id.*

80. See JONATHAN KOZOL, *Savage Inequalities: Children in America's Schools* 98 (1991).

81. FRANKENBERG & LEE, *supra* note 22, at 14; NAT'L CTR. FOR EDUC. STATISTICS,

Until school districts can equalize personnel, resources, and facility disparities,<sup>82</sup> the choice program should include an auction option available only for parents who live in racially integrated neighborhoods.<sup>83</sup> The auction would be restricted to Integrationist parents to penalize non-Integrationist parents for their racially biased (or hostile) views, and to compensate parents who are willing to further the societal interest in having integrated neighborhoods and schools. Ultimately, this will help prevent the resegregation of neighborhoods, and may induce some middle-class parents to live in urban metropolitan areas.<sup>84</sup> Moreover, being able to increase the odds that your children can attend the “best” school may give non-Integrationist parents an incentive to live in an integrated neighborhood. Under a choice + auction program, Integrationists parents whose children are not assigned to their first-choice school (School A) should have the option of buying a slot at that school from the parent of a child assigned to School A. The parent of a School A child might be willing to sell the slot even if School A is perceived as being the “good” school if the parent prefers the geographical location

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SCHOOL AND STAFFING SURVEY (2003), at <http://nces.ed.gov/surveys/sass>; RESOURCES FOR INDISPENSABLE SCHOOLS AND EDUCATORS (RISE), *Program Seeks to Close the Gap, Quality Counts 2003* (Jan. 7, 2003), at [http://www.risenetwork.org/news\\_rel\\_close\\_gap.html](http://www.risenetwork.org/news_rel_close_gap.html) (interpreting the Schools and Staffing Survey).

82. To eliminate existing disparities, school systems should make sure “good” teachers are in all schools by paying bonuses to “good” teachers who are willing to teach in schools viewed as “bad.” Only teachers whose students have performed well on the state’s standardized tests, those who are viewed as “master” teachers by their principals, or are curriculum leaders should be offered this bonus incentive. School disparities also could be eliminated by increasing the attractiveness of “bad” schools (for example, by giving the school a disproportionate share of new technology, equipment or supplies, addressing its facility maintenance needs before the needs of other schools, allowing smaller classes and student/teacher ratios, by giving the teachers in the school greater flexibility in the classroom, etc.), or by randomly assigning teachers to schools. While random assignments may initially cause some teachers to quit, if teachers receive more money to teach in “bad” schools *and* the school system gives those schools proportionately more resources than “good” schools, over time teachers will stop resisting assignments to “bad” schools.

83. Because available data suggest that neighborhoods resegregate when more than twenty percent of minorities moved into the neighborhood, an integrated neighborhood should be defined as one that has at least twenty-five percent of minorities. This percentage may not be the “ideal” for either whites or blacks. See Sander, *supra* note 29, at 896 (suggesting that optimal white/black ratio for whites is 80/20 while the range for blacks is 70/30 to 40/60).

84. This solution is similar to a federal initiative that assists school systems that operate desegregated schools by providing housing counseling programs or housing down payment and credit assistance programs. U.S. DEP’T OF JUSTICE, HOUSING AND CIVIL ENFORCEMENT SECTION, SCHOOLS AND HOUSING OPPORTUNITIES INITIATIVE, at [http://www.usdoj.gov/crt/housing/housing\\_init.htm](http://www.usdoj.gov/crt/housing/housing_init.htm) (last updated Mar. 1, 2000). Some individual cities also provide incentives to residents who move into an area where they are in the overwhelming minority. See Wiggins, *supra* note 31, at 765-66; Orfield, *supra* note 13, at 868.

of a school perceived as being of lesser quality (School B) or if the parent simply needs the money a seller parent is offering.<sup>85</sup>

The school district should participate in the auction by, at a minimum, matching potential buyer and seller parents, and buyer parents should be required to pay a fee to cover the system's costs of administering the auction. A potential consequence of the choice + auction program is that it might increase the educational costs for Integrationist middle-class parents who do not get their first-choice school.<sup>86</sup> While they will be required to pay both the school system's broker fee and the market price for the slot at School A, the choice + auction program would help middle-class parents overall avoid the high, fixed mortgage costs associated with suburban homes in certain districts, and will let them separate their educational and housing decisions. Since purchasing a slot is a one-time expenditure, unlike a fifteen- to thirty-year mortgage obligation, parents could more easily decrease their monthly expenses if they face a financial crisis since the purchase will not be an ongoing expense.<sup>87</sup> While the market ultimately would determine the cost of school slots, rational-buyer parents would not offer more than private tuition costs. In addition, given the price differential between housing in markets viewed as

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85. In addition, if School B has a higher minority enrollment or has more minority teachers and the parent of a School A child is a minority, that parent might prefer School B's racial composition and be willing to sell her slot at the "better" School A. Maureen Downey, *Black Schools White Schools; With Court-Ordered Busing Fading and Races Choosing to Live Separately, Classrooms are Heading Back to Where They Started — Segregated*, ATLANTA J. & CONST., June 22, 2003, at 1E (discussing reluctance of some minority parents to send their children to overwhelmingly white schools); see also Mark S. Lewis, Am. Ass'n of Colleges for Teacher Educ., *Supply and Demand of Teachers of Color*, EDUCATIONAL RESOURCES INFORMATION CENTER DIGEST 94-8 (1994), at <http://www.ericdigests.org/1996-3/supply.htm> (discussing view held by some middle class black parents that segregated schools benefit their children because they provide minority teacher role models).

86. For example, assume a white parent lived in an integrated neighborhood whose school had been forty percent white, and the parent's child is assigned to a school which had a ninety-five percent minority population and was widely viewed as bad or unsafe before the auction. Despite their preferences for integrated schools, these parents likely would enter the auction, and potentially attempt to buy a slot in their neighborhood school, to avoid having their child attend what they perceive as a rock-bottom integrated school. The choice + auction program would, thus, force these parents to pay to attend an integrated school that would have been free but for the program.

87. Of course, lenders may attempt to convince families to borrow against their home equity to finance the slot purchase, thus converting a one-time expenditure into an ongoing monthly expense. Though some middle-class families may find themselves back in a high, fixed mortgage trap, there would be a net decrease in the number of middle-class families in the trap, since, over time, the gross inequalities in schools will disappear, some parents would be assigned to School A and would not need to finance the purchase of the slot, and parents would need to borrow only the amount needed to finance the purchase of a School A slot at their child's existing school level (i.e., elementary, middle, high school) since they would re-enter the lottery system (and have the opportunity to apply for a new School A) once their child reached the next level.

having “good” schools and markets viewed as having poor schools, the price of a slot would need to be quite high before the choice + auction program would be more expensive than the suburban bidding wars.<sup>88</sup>

Potential homeowners and parents who prefer both integrated neighborhoods and good, safe schools would have an incentive to aggressively advocate for the choice + auction program. Non-Integrationist parents who expected a dramatic increase in the value of their suburban homes may resist any program that stems the rapid appreciation. The choice + auction system should not be rejected for this reason, though, since it will not eliminate all of their expected profits (since people will always move to affluent neighborhoods for reasons other than the neighborhood schools). Moreover, rejecting the choice + auction system merely to protect the property interests of homeowners who made racially-biased housing purchases is morally repugnant and, essentially, would force Integrationist parents to subsidize the race-based preferences of people who prefer segregated schools and neighborhoods.<sup>89</sup> Indeed, if the homeowners’ property fails to appreciate as rapidly as they had anticipated, then this “loss” should be viewed as an additional segregation penalty and as a way to force them to internalize the costs of their race-based preferences.

Anything other than a purely random assignment may, over time, lead to dynamic resegregation since some parents may live in an integrated neighborhood simply to have the right to participate in the auction. Once they get their child into their school of choice, some may move to a segregated neighborhood (especially if this was their primary preference all along). Moreover, the auction may, over time,

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88. There is often a threefold difference between the housing stock in cities perceived to have “good” schools and those with “bad” schools. See Melissa Data, *Home Sales by Zip Code*, at <http://www.melissadata.com/lookups/homesales.asp> (last visited Feb. 21, 2004). According to the website, average home sale prices in February 2004 for several Massachusetts towns were as follows: Newton (\$829,000); Wellesley (\$975,000); Dorchester (\$356,000); Roxbury (\$319,000). Average prices in several Washington, D.C. metro areas were as follows: Bethesda (\$648,000); Chevy Chase (\$750,000); Anacostia (\$196,000). Average prices in Bay Area in California were as follows: Palo Alto (\$960,000); San Francisco (\$934,000); East Palo Alto (\$563,000); Emeryville (\$351,000). Because, however, those neighborhoods will no longer be able to capitalize the value of the zoned “good” school in the housing prices, demand for suburban housing should decrease and housing prices ultimately should stabilize.

89. For example, zip code school assignments help to keep concentrated levels of poverty in certain, typically urban, schools. Integrationist parents who do not want their children to attend schools that have high poverty concentrations may feel compelled to participate in the bidding wars. These parents would benefit from the choice + auction program since they could remain in an integrated neighborhood but avoid having their children attend schools with high concentrations of poverty. Rejecting the choice + auction program because of the racial views of non-Integrationist parents would increase the housing costs of Integrationist parents in order to protect the racial preferences of non-Integrationist parents.

cause a bidding war for School As and may cause those schools to re-segregate if they are perceived as being better than others based on the income level or racial composition of the student population. Even if these unintended consequences occur, the benefits of the choice + auction program still outweigh the risks. First, once parents realize that they cannot move to a neighborhood to ensure that their children will attend nonminority schools, then at least some neighborhoods that might have re-segregated may instead remain stably integrated, and those parents can avoid the housing trap. While some parents may choose to move to a segregated neighborhood after they participate in the choice + auction system, others may choose to remain in the integrated neighborhood both because they no longer need to move to get a “good” school and also because their preference for segregated neighborhoods may change once they actually live near minorities.<sup>90</sup> Thus, even if some neighborhoods and schools do re-segregate, the auction system should at least retard the process.

### CONCLUSION

Policymakers often resist enacting policies that benefit minorities if they perceive that those policies will harm nonminorities or suburbanites.<sup>91</sup> If public schools are more attractive to all parents, however, fewer middle-class parents will be caught in the two-income trap, neighborhood re-segregation should decrease, and urban public schools will stop being viewed as dumping grounds for those who lack better options. To a great extent, black and brown children in urban schools are the miner’s canaries for all families: society’s failure to heed the warnings raised by their inadequate schools ultimately will cause harm to the children of suburban middle-income parents.<sup>92</sup> Improving the lives of poor urban children will help them *and* middle-class families. While a school choice program would not have neighborhood integration as its primary goal, converging the interests of middle-class parents and minority school children ultimately will help parents avoid the two-income trap, tackle the longstanding problems associated with urban public schools, and prevent the seemingly intractable problem of neighborhood re-segregation.

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90. See ORFIELD & LEE, *supra* note 20, at 24-25 (suggesting that whites’ proximity to blacks in schools and neighborhoods increases the likelihood that they will have cross-racial friendships and will have a higher comfort level with members of other races and that children who attend integrated schools express a greater desire to live in a multiracial setting).

91. See BELL, *supra* note 69, at 69.

92. LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 11 (2002).