Elaine Jones, the executive director of the NAACP Legal Defense Fund, has emphasized the plight of urban children from low-income families who are “locked into those schools.”¹ She believes that it is essential for our society to improve “those schools,” and for that to happen, in her view, we need to provide our urban public schools with better teachers and more money. A different approach to improving underprivileged children’s educational opportunities, however, is to enable greater numbers of families to pull their children out of “those schools” and to enroll them elsewhere. Is expanded school choice the right thing to offer to families whose children are underserved by the urban public schools to which they are currently assigned?²

Choice supporters believe it is. They see choice not only as empowering the poor family to do better by its child, but also as providing traditional neighborhood public schools with competitive pressures that will spur them to improve. More generally, they seek to extend throughout society the advantages available to better off families.

¹ Elaine Jones, Luck was Not a Factor
After all, middle-class and professional-class families have long enjoyed school choice. They primarily exercise their choice by moving to a different school district, quite often in the suburbs, taking their children to a new home where they think better schooling awaits them. In addition, approximately 11% of American families put their children in private schools at the family's expense, or they home-school their children, typically by the stay-at-home mom.

For most low-income and working-class families, however, moving to the suburbs, paying for private schools, and home-schooling are all financially infeasible. We could extend choice to low-income families by providing them with vouchers that would pay for their children’s education at private schools. Polls suggest that low-income parents are eager for this option. Right now, however, this option is a reality for but a few low-income families in America. Publicly funded vouchers for the poor are currently available only in Milwaukee, Cleveland, and in a few places in Florida. Privately funded vouchers (i.e., scholarships) are available in a large number of cities across the nation, but they only reach a relatively small number of low-income children. Some school choice advocates are eager to see a rapid expansion of public programs that

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4 Id.


6 Henig and Sugarman, supra note 3.

7 Vouchers are supposed to become available to a modest number of Colorado families, but a trial court there has invalidated the plan. See Tamar Lewin, Colorado’s New Voucher Law Is Struck Down in State Court, N. Y. Times, Dec. 4, 2003, at A24.

8 Henig and Sugarman, supra note 3.
provide vouchers for children from low-income families. Many “liberal” organizations and their leaders bitterly oppose this idea, however, because they reject privatizing schooling in principle and because they reject subsidizing religious school choice.\footnote{See Stephen D. Sugarman, \textit{Liberals and the School Choice Debate}, 67 CONGRESS MONTHLY, Nov/Dec, 2000 at p. 6.}

Because its political future is so uncertain, I put aside the private school voucher idea for the purposes of this discussion. Instead, I focus on models of school choice that do not rely on vouchers that could be used at private schools.

This means giving low-income families options within the public school sector that do not require moving their place of residence. Such options are highly feasible and, despite our common perception that children attend neighborhood schools, several types of school choice plans are already in place. Indeed, we have more choice than most people realize, and in many places the available choices are expanding. Five such public school plans are next described.

First, in some school districts children are no longer assigned to schools. Instead, all families must choose a school for their children. Both Berkeley and San Francisco, California, have plans like this,\footnote{For a description of San Francisco’s school assignment system, see http://portal.sfusd.edu/template/default.cfm?page=policy.placement.process. For Berkeley’s system, see http://www.berkeley.k12.ca.us/OS/OS_zones.html.} and for quite some time this has also been the policy in Cambridge, Massachusetts.\footnote{Cambridge’s school assignment methodology, with enumerated “diversity factors” is available at http://www.cbsd.us/Web/PubInfo/ControlledChoice.pdf.} In these public school districts, no one has priority rights at any particular neighborhood school. Families are allowed to request their closest school, but they have to list second and third choices as well. Because communities have
typically embraced this approach as a way to achieve racial integration,12 racial balance considerations have generally counted a great deal in determining who is assigned to their first choice school and who has to accept a lesser preference. However, because using racial criteria in matching schools to family preferences has recently become legally uncertain,13 some all-choice districts have instead adopted family income criteria in determining which families get their first choice school, with the goal of achieving economically-mixed schools in the context of school choice. In places like Cambridge and Berkeley, where race and income are well-connected, economic class integration will also bring substantial racial integration.

Under a second model of public school choice, some families send their children to public schools located outside their local school district. “Inter-district transfers” are formally permitted in a number of states, and, for example, in places like Iowa and Minnesota perhaps 2-3% of all children attend schools outside their district through such a program.14 In most of these inter-district transfer plans, students do not need the permission of their local district, and have the right to attend any school in another district so long as there is room for them.

In other places, this sort of choice is largely invisible and technically illegal. Parents falsify their children’s residences in order to achieve an inter-district transfer. In the area near the University of California at Berkeley, for example, many parents try to get their children into the Albany and Berkeley School Districts in this way. In


14 Henig and Sugarman, supra note 3.
Washington, D.C., as many as 10% of the children attending certain public schools do not actually live in the district zone in which they are supposed to reside to gain legal access to those schools.  

Although parents who send children to schools outside their home districts presumably think this is better for those children, these plans do not necessarily promote racial integration or specially benefit low-income minority families. However, some voluntary inter-district transfer schemes are specifically created to promote racial and economic integration. Boston’s METCO plan and the metropolitan solutions in St. Louis and Kansas City are examples.

A third school choice model combines assigned neighborhood schools with specialized “choice” schools. In those districts, parents can either send their children to the local public school or select from a menu of other schools, including “alternative schools” or “magnet schools.” The choice schools often have a special curricular emphasis, allowing districts to tailor selected programs to children’s needs and interests. Several districts, including Oakland, California, have opened, or are in the process of opening, quite a number of rather small choice schools. These small schools may share space in a building with one or more other schools. “Magnet schools” in particular have traditionally been explicitly aimed at racial integration by favoring the choices of families whose children will improve the racial balance of the school.

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15 Id. at 22-23
Charter schools provide yet a fourth model of school choice. Although nationwide less than 2% of children attend charter schools, there has been a rapid growth in the number of these schools in the past few years. There are now approximately 3000 charter schools in the 40 or so states that allow them. They are most common in Arizona, California, and Texas. Charter schools are somewhat like “alternative” schools, yet they are structured to enjoy greater freedom from state regulation and local supervision. Moreover, many charter schools are operated by profit-making educational management companies, although other charter schools are formed as non-profit organizations run by people from the local community. In many places, districts that sponsor charter schools require them to contribute to racial integration, and in some states charters are more likely to be granted to schools that will enroll low-income children.

Finally, the recently adopted federal law that is informally called “No Child Left Behind” provides a fifth model. Under this regime, the current Bush Administration is beginning to require school districts to offer alternate choices to families when their children fail to learn in the schools they have been attending. Some school districts are cooperating with this new scheme while others are resisting, at least for now. Although

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17 The Center for Education Reform posts updated lists of charter schools across the country. See, http://www.edreform.com

18 Id.

19 Id.


low-income minority pupils are disproportionately qualifying for this option, it is too
soon to know how this choice model will actually function.

These five school choice models demonstrate the great variety of approaches now
in place. Nearly 15% of American school children attend public schools chosen for them
under one of these models. If we include families who send their children to private
schools, home-school or make a school choice for their children by moving their
residence to a new school district, then probably more than half of American children
today attend a school of their family’s choice. Yet, at the same time, the amount of
choice that now exists should not be exaggerated. In many communities none of these
options is practically available to most children from low-income families who continue
to be assigned to a public school from which there may be no escape.

The public policy question, then, is whether we should be promoting more public
school choices like those described here. Can more choice mean better schooling
opportunities for more children of working-class and low-income parents? Can the
competitive pressure of increased choice prompt traditional neighborhood schools to
become more responsive to local families and improve the education of their children?
Can more choice help to promote racial integration? Or, if instead it enables minority
families to gather together in schools whose educational themes emphasize their racial or
ethnic backgrounds (e.g., bilingual-bicultural schools or schools with Afro-centric
curricula), would that be desirable? These are important questions that supporters of
social justice for all American children should be discussing as we come to the 50th
anniversary of Brown v. Board of Education.


23 Henig and Sugarman, supra note 3.