

NOTE

THE HOUSING LOOPHOLE: HOUSING DISCRIMINATION'S IMPACT ON LONG ISLAND'S PUBLIC SCHOOL SYSTEM

I. INTRODUCTION

*Brown v. Board of Education*¹ is a landmark United States Supreme Court case holding that the racial segregation of public schools is unconstitutional.² However, over sixty years later, racial segregation in the public school system still exists.³ The effects of years of deliberate racial segregation, coupled with subtler methods of discrimination, did not and have not disappeared with one Supreme Court decision.⁴ Following *Brown*, states were no longer allowed to create explicit laws segregating public schools.⁵ However, that did not stop federal, state, and local governments from utilizing implicit discriminatory methods, including creating laws regulating other factors that heavily contribute to the racial makeup of an area.⁶ For example, on Long Island, New York, although there are no state laws allowing for or promoting segregation, the effects of the area's deep-rooted history of racist practices and inequality are evident in the public school system.⁷

1. 347 U.S. 483 (1954).

2. *Id.* at 495.

3. See 8 *Key Facts About Long Island School Districts*, ERASE RACISM (2010), http://eraseracismny.org/storage/documents/education/ERASE_Racism-long-island-district-facts.pdf; Jaime Franchi, *Long Island Segregation Drives Educational Inequality 60 Years After Brown v. BOE*, LONG ISLAND PRESS, <https://www.longislandpress.com/2014/05/17/long-island-segregation-drives-educational-inequality-60-years-after-brown-v-boe> (last visited Apr. 23, 2022).

4. See Maura McDermott & Olivia Winslow, *Long Island Divided Timeline: A History of Housing Discrimination on Long Island*, NEWSDAY (Nov. 17, 2019), <https://projects.newsday.com/long-island/real-estate-discrimination-history> (listing a timeline of major racially discriminatory events on Long Island).

5. See *Brown*, 347 U.S. at 495.

6. See The Editorial Board, *The Jim Crow South? No*, *Long Island Today*, N.Y. TIMES (Nov. 21, 2019), <https://www.nytimes.com/2019/11/21/opinion/long-island-real-estate-discrimination.html>.

7. See McDermott & Winslow, *supra* note 4; see also 8 *Key Facts About Long Island School Districts*, *supra* note 3.

This Note argues that a history of housing discrimination in the Long Island area has directly impacted the racial imbalance seen among the region's public school districts.⁸ Such an imbalance has led to inequities in other related areas, such as education funding, quality, and opportunity.⁹ This Note, as a whole, seeks to demonstrate the connection between housing discrimination and inequality within the public education system.¹⁰ Part II provides a history of residential segregation and discrimination methods from the early 1900s to modern day, and demonstrates its effects on public education.¹¹ Part III presents an inequality argument throughout Long Island school districts based upon racial composition statistics, funding data, and students' personal accounts.¹² Part IV suggests a two-fold solution: (1) consolidate Long Island's over 120 schools districts into larger, more diverse districts; and (2) following the redrawing of attendance zones, restructure the way schools are funded and residents are taxed.¹³

II. HISTORY

In order to understand Long Island's public-education system, it is crucial to account for local history.¹⁴ Public education and residential housing discrimination are so intertwined that the two concepts must be analyzed simultaneously in order to grasp the impact of both.¹⁵ The relationship between education and housing is largely the result of residential zoning and public school district boundaries.¹⁶ Students often attend the local public school located in their residential neighborhood as it is cost-free.¹⁷ Thus, where a child lives greatly affects their educational opportunities, not only during their time in the public-school system, but well after high school graduation.¹⁸

8. See *infra* Part II–IV.

9. See *infra* Part III.

10. See *infra* Part II–V.

11. See *infra* Part II.

12. See *infra* Part III.

13. See *infra* Part IV.

14. See The Editorial Board, *supra* note 6 (discussing the history of racial segregation on Long Island).

15. Halley Potter, *School Integration Is Much More Than "Busing,"* CENTURY FOUND. (July 2, 2019), <https://tcf.org/content/commentary/school-integration-much-busing/?session=1>; see John P. Dean, *Only Caucasian: A Study of Race Covenants*, 23 J. LAND & PUB. UTIL. ECON. 428, 428 (1947) ("[T]he evils of residential segregation multiply into the evils of separate stores, separate restaurants, separate schools, and separate public services—not equal and seriously too few.").

16. Potter, *supra* note 15.

17. See N.Y. EDUC. LAW § 3202 (McKinney 2019).

18. See Franchi, *supra* note 3.

This Part provides an overview of the racial segregation and discrimination on Long Island from the early 1900s to today.¹⁹ This Part seeks to provide an understanding of general racial hostility, housing discrimination, and public education inequality.²⁰ It then further describes how all three have fostered the intense and obvious racial segregation between the school districts in both Nassau County and Suffolk County.²¹

A. *History of Segregation on Long Island*

An overview of Long Island history sheds light on the roots of the racial disparities and inequalities the area faces to this day.²² The area has long been inundated with bias and prejudice.²³ The Ku Klux Klan's ("KKK") large and looming presence, beginning in the early 1900s, fostered anger among White supremacists and fear among minority populations.²⁴ KKK presence also had an impact on the housing practices used by local realtors to promote and prioritize their services to White families.²⁵ On a national scale, the National Association of Real Estate Boards ("NAREB") published a Code of Ethics forcing realtors to take the race and nationality of their buyers into account.²⁶ Further, NAREB also encouraged the use of racially restrictive covenants.²⁷

Following the conclusion of World War II in 1945, Long Island experienced an influx of veterans looking to settle in the suburbs.²⁸ White veterans and their families were presented with the opportunity to settle in newly-constructed towns, like Levittown, while Black veterans encountered the reality of racial bias and restrictive covenants.²⁹ Even

19. See *infra* Part II.A.

20. See *infra* Part II.A.

21. See *infra* Part II.C–D.

22. See McDermott & Winslow, *supra* note 4.

23. David Behrens, *The KKK Flares Up on LI*, NEWSDAY (July 11, 2009), http://brookhavensouthhaven.org/history/KKK/KKK_Long_Island.htm.

24. *Id.*

25. See McDermott & Winslow, *supra* note 4 ("The Ku Klux Klan [held] rallies at the Mineola Fair Grounds, and more than [thirty] Long Island real estate companies purchase[d] ads in the event's fundraising journal.")

26. NAT'L ASS'N OF REAL EST. BDS. CODE OF ETHICS art. 34 (1924).

27. 2: *Fair Housing History*, BUILDING BELOVED CMTY., <https://www.bbcfairhousing.org/wp-content/uploads/2018/06/History-1.1.pdf> (last visited Apr. 23, 2022).

28. KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 235 (1985).

29. Bruce Lambert, *At 50, Levittown Contends With Its Legacy of Bias*, N.Y. TIMES (Dec. 28, 1997), <https://www.nytimes.com/1997/12/28/nyregion/at-50-levittown-contends-with-its-legacy-of-bias.html>.

following the Supreme Court's ruling in *Shelley v. Kraemer*,³⁰ which essentially declared racially restrictive covenants unconstitutional when judicially enforced, the Levitt family, the creators of Levittown, continued to prohibit Black families from moving into the area.³¹ Private bias still existed and real estate practices, like blockbusting, allowed for Long Island to remain racially segregated.³²

In more modern times, real estate agents still use illegal steering practices to promote racial segregation.³³ A local investigative study by *Newsday* found that White homebuyers are often encouraged by realtors to settle in White neighborhoods, while minority homebuyers are more likely to be shown homes in minority neighborhoods.³⁴ It was also found that these same realtors often use school districts as a strategy to implicitly speak about race.³⁵ This pattern clearly illustrates how closely related education and housing truly are.³⁶

1. Pre-World War II Discrimination

Before World War II and the influx of soldiers and families moving to Long Island, discriminatory housing practices were prevalent in the area.³⁷ More broadly, ideas of white supremacy ran rampant on Long Island.³⁸ The KKK held rallies throughout Suffolk and Nassau Counties, and historians estimate that within a few years of their initial presence, one out of seven to eight Long Island residents were members of the KKK.³⁹ Put differently, by the 1920s, about 20,000 to 25,000 men and women belonged to the KKK.⁴⁰

30. 334 U.S. 1 (1948).

31. *Id.* at 20-21; Lambert, *supra* note 29.

32. Lambert, *supra* note 29; see generally Candice Frederick, *Hempstead, Segregation and Black Suburbia*, N.Y. PUB. LIBR. (Sept. 29, 2015), <https://www.nypil.org/blog/2015/09/29/hempstead-black-suburbia> ("Realtors employed blockbusting to scare whites into selling their houses to black families at inflated prices."). For a description of blockbusting, see *infra* Part II.A.2.

33. Ann Choi et al., *Long Island Divided*, NEWSDAY (Nov. 17, 2019), <https://projects.newsday.com/long-island/real-estate-agents-investigation>.

34. *See id.*

35. *See id.*

36. *See id.*

37. See generally McDermott & Winslow, *supra* note 4 (listing specific local events that illustrate Long Island's long history of racial bias).

38. See generally *id.* (explaining instances of Ku Klux Klan ("KKK") presence on Long Island). In 1923, as an act of hatred and fear-mongering, the KKK burned crosses in a dozen villages across Long Island. Behrens, *supra* note 23 (recalling cross burnings and rallies following the KKK's emergence on Long Island). More than 25,000 men and women gathered in a field in East Islip to hear KKK leaders warn that "Jews and Catholics were a danger to the nation." *Id.*

39. Behrens, *supra* note 23.

40. *Id.*

The KKK gained traction in the 1800s following the end of the Civil War and during the Reconstruction Era.⁴¹ In the South, white-hooded men terrorized former slaves through cross-burnings, destruction, and lynching.⁴² However, when the KKK began to gain prominence on Long Island, the focus of the group shifted away from Black men and women.⁴³ The KKK found a new target in Catholics and foreign-born Americans, who, by 1920, constituted twenty percent of the population.⁴⁴ Increasing foreign presence on Long Island led to cross-burnings in towns such as Freeport, Mineola, Bayshore, Babylon, Riverhead, Huntington, Sayville, Garden City, Valley Stream, and Hempstead.⁴⁵ These public displays of hatred on the part of the KKK rarely fostered any criticism from public officials.⁴⁶

KKK presence in the area had a major impact on housing—specifically, the housing options available to minority groups.⁴⁷ In 1926, a KKK rally was held at the Mineola Fair Grounds.⁴⁸ At this event, over thirty Long Island real estate companies bought advertisements in the KKK’s fundraising journal.⁴⁹ Thousands of people attended this rally at the Mineola Fair Grounds, as well as a KKK march through Freeport, and a 1929 cross-burning in Wantagh.⁵⁰

Aside from the KKK’s White supremacist ideals’ impact on housing, the real estate industry itself blatantly promoted racially discriminatory housing practices.⁵¹ In 1924, NAREB adopted a Code of

41. *See id.*

42. *Id.*

43. *Id.* This is largely the result of the fact that Long Island’s population was only two percent Black. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. Karl Grossman, *Civil Rights on Long Island: Local History Includes Slavery, A Strong and Active KKK, Legal Discrimination Against Minorities*, RIVERHEAD LOCAL (Feb. 6, 2017, 8:19 AM), <https://riverheadlocal.com/2017/02/06/suffolk-closeup-civil-rights-long-island-local-history-includes-slavery-strong-active-kkk-legal-discrimination-minorities> (stating that real estate companies were the KKK’s “biggest donors” because the companies believed that diversity in housing would lower property values).

48. McDermott & Winslow, *supra* note 4.

49. *Id.*

50. *Id.*

51. *See* CAT CLOUD ET AL., NAT’L FAIR HOUS. ALL., FAIR HOUSING SOLUTIONS: OVERCOMING REAL ESTATE SALES DISCRIMINATION 5 (2019), <https://nationalfairhousing.org/wp-content/uploads/2019/12/Fair-Housing-Solutions-Overcoming-Real-Estate-Sales-Discrimination-2.pdf> (“Housing developers, real estate professionals, and governments all promoted the use of racially restrictive covenants that precluded people of color from being able to purchase homes in the communities of their choice, based solely on race or national origin.”). Additionally, the Homeowners Loan Corporation (“HOLC”) created a system of rating neighborhoods in which one of the factors considered was race. *Id.* The HOLC would recruit real estate professionals to

Ethics.⁵² Article 34 of this Code states: “A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.”⁵³ The obvious intention of Article 34 was to prevent a realtor from introducing a minority family to a White neighborhood.⁵⁴

Even before the publication of their Code of Ethics, NAREB advocated for the use of racially restrictive covenants on property deeds in 1917.⁵⁵ A restrictive covenant is an agreement written into the deed of a piece of property that restricts the future use of that property.⁵⁶ These agreements, or covenants, run with the land, and are enforceable against future owners.⁵⁷ In 1927, NAREB created a racially restrictive covenant model for homeowners on which to base their own restrictive covenants, and it was enforceable in court.⁵⁸ By the year 1928, half of all homes owned by White people in the United States contained deeds with restrictive covenants.⁵⁹

The Federal Housing Administration’s Underwriting Manual (“Manual”), which was published in 1938, had its own provisions concerning restrictive covenants.⁶⁰ The Manual stated that restrictive covenants should run for at least twenty-five to thirty years and listed

complete surveys and maps in which they would designate the percentage of Black people living in the neighborhood. *Id.* This information was used to determine whether the neighborhood would be considered “desirable” or “hazardous.” *Id.* Neighborhoods with any percentage of Black residents were usually labeled hazardous. *Id.*

52. NAT’L ASS’N OF REAL EST. BDS. CODE OF ETHICS art. 34 (1924).

53. *Id.*; see 2: *Fair Housing History*, *supra* note 27 (noting that it was “an ethical duty” for the real estate agent to discriminate based on race and national origin).

54. See NAT’L ASS’N OF REAL EST. BDS. CODE OF ETHICS art. 34 (1924); see also 2: *Fair Housing History*, *supra* note 27.

55. 2: *Fair Housing History*, *supra* note 27.

56. See *Restrictive Covenant*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/restrictive_covenant (last visited Apr. 23, 2020).

57. *Id.*

58. 2: *Fair Housing History*, *supra* note 27. An example of such a model covenant is:

1. The restriction that no part of said premises shall in any manner be used or occupied directly or indirectly by any negro or negroes, provided that this restriction shall not prevent the occupation, during the period of their employment, of janitors’ or chauffeurs’ quarters in the basement or in a barn or garage in the rear, or of servants’ quarters by negro janitors, chauffeurs or house servants, respectively, actually employed as such for service in and about the premises by the rightful owner or occupant of said premises.

Id.

59. *Id.* In addition to restrictive covenants, the National Association of Real Estate Boards also encouraged the formation of Homeowner’s Associations to “protect” new subdivisions. *Id.*

60. FEDERAL HOUSING ADMINISTRATION, UNDERWRITING MANUAL § 980(3) (1938) <https://www.huduser.gov/portal/sites/default/files/pdf/Federal-Housing-Administration-Underwriting-Manual.pdf>.

suggestions for restrictive covenants.⁶¹ Among these suggestions were prohibiting the number of dwellings on a piece of property, prohibiting nuisances, controlling designs, and prohibiting “the occupancy of properties except by the race for which they are intended.”⁶² Restrictive covenants, along with other discriminatory housing practices shaped the racial makeup of Long Island.⁶³ The prevalence of race-restrictive covenants in the area remained high throughout and following the end of World War II.⁶⁴

2. Post-World War II Discrimination

Following the end of World War II in 1945, soldiers flocked to the suburbs to settle.⁶⁵ The Federal Housing Administration, following the end of World War II, had a major impact on American life and what we today consider the American Suburb.⁶⁶ The Federal Housing Administration’s efforts to improve housing conditions and facilitate reasonable financing was aided by the Servicemen’s Readjustment Act of 1944.⁶⁷ The Servicemen’s Readjustment Act of 1944, also known as the GI Bill, created a Veterans Administration (“VA”) program which would help sixteen million soldiers buy a home following the end of World War II.⁶⁸

61. *Id.*

62. *Id.* Other restrictive covenant suggestions included: allocating areas for use as single-family housing, apartments, and business structures, specifying the placement of buildings to assure light and air quality, and prohibiting the re-subdivision of lots. *Id.*

63. *See* Dean, *supra* note 15, at 428 (“The restrictive covenant becomes a vehicle for racism when property owners in a neighborhood agree not to rent or sell their property to [Black people] or other ethnic minorities. Widespread use of the restrictive covenant limits the housing available to [minorities] and condemns them to . . . overcrowded dwellings”).

64. *See* McDermott & Winslow, *supra* note 4 (listing discriminatory practices used on Long Island throughout its history); Choi et al., *supra* note 33 (noting the racially discriminatory practices still used today).

65. JACKSON, *supra* note 28, at 235.

66. *Id.* at 203.

67. *Id.* at 204. Abraham Levitt and his two sons, William and Alfred, built more than 140,000 houses in these so-called “Levittowns.” *Id.* at 234.

68. *Id.* at 204. However, the GI Bill discriminated against Black veterans before they even returned to the United States after serving in World War II. Erin Blakemore, *How the GI Bill’s Promise Was Denied to a Million Black WWII Veterans*, HIST. (Apr. 20, 2021), <https://www.history.com/news/gi-bill-black-wwii-veterans-benefits>. Lawmakers began drafting the GI Bill in 1944. *Id.* Some Southern Democrats feared that Black veterans could use their veteran status to gain sympathy from the public and advocate against Jim Crow laws. *Id.* Thus, the GI Bill was to be administered by individual states rather than the federal government. *Id.* When Black veterans returned from overseas, they were met with challenges in terms of receiving the benefits of the GI Bill. *Id.* Some Black veterans could not receive benefits due to a dishonorable discharge. *Id.* Other veterans, who did qualify for benefits, were not able to access facilities due to the nature of segregation, and, at other times, physical intimidation tactics were used to keep Black veterans from

Although federal programming played a large part in shaping the suburbs, the Levitt family had a significant impact on post-World War II housing.⁶⁹ The Levitts began building homes on Long Island in 1929, beginning in Rockville Center.⁷⁰ In 1934, they built a 200-unit subdivision known as “Strathmore” in Manhasset.⁷¹ The Levitts built 2,250 houses in Roslyn in 1946 priced beyond the average means of a veteran.⁷²

Also in 1946, the family acquired 4,000 acres of potato farms in the Hempstead area, which they planned to develop into homes.⁷³ Upon clearing the farmland and the completion of construction, these Levittown homes were initially only available to veterans.⁷⁴ Many of the first purchasers of these houses were young families.⁷⁵ Levittown was one of the largest housing developments created by a single developer, consisting of 17,400 separate homes and 82,000 residents.⁷⁶ Home prices were low, allowing veterans to achieve their American dream.⁷⁷

Unfortunately, but unsurprisingly, Levittown and the Long Island suburbs did not represent the American dream for all veterans.⁷⁸

the post-war benefits they deserved. *Id.* In terms of housing, although the GI Bill promised low-interest mortgages and other loans, said loans were not administered by the Veterans Association. *Id.* Thus, financial institutions were given the discretion to refuse mortgages and loans to Black people. *Id.* A process known as redlining also made it difficult for Black veterans to purchase homes following the war. *Id.* Redlining is the process of marking maps by race to note the risk of lending money or providing insurance to those living in the area. *Id.* Shockingly, in 1947, only two out of more than 3,200 GI Bill home loans in thirteen Mississippi cities went to Black homebuyers. *Id.* In New York and northern New Jersey, less than 100 of the 67,000 GI Bill mortgages went to non-Whites. *Id.*

69. JACKSON, *supra* note 28, at 234 (calling the Levitts the family who had the greatest impact on postwar housing in the United States).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* Following tree removal, the Levitts intended to build houses in twenty-seven distinct steps. *Id.* Each crew was trained in one specific step and would perform that step on every home, similar to the method used in an assembly line. *Id.*

74. *Id.* at 235, 237 (“On a single day in March 1949, fourteen hundred contracts were drawn, some with families that had been in line for four days.”).

75. *Id.* at 235. William Levitt saw the demand for housing following the war, as well as the opportunity that Long Island’s potato fields represented. *See id.* at 234-35.

76. *Id.* at 235.

77. *Id.* at 236.

78. Lambert, *supra* note 29. Similarly, the GI Bill did not represent opportunity for all veterans returning from serving in World War II. Blakemore, *supra* note 68. In fact, the discriminatory intent and effect of the GI Bill has had long-lasting consequences. *See id.* According to Ira Katznelson, “there was no greater instrument for widening an already huge racial gap in postwar America than the GI Bill.” IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA 121 (2005). By the time the GI Bill ended in July of 1956, eight million World War II veterans had received education or training, and 4.3 million home loans were handed out. Blakemore, *supra* note 68.

Levittown's history is tainted as one of intense racial bias.⁷⁹ The homes in Levittown were not only uniform in terms of architecture and style, but in terms of the race of its occupants.⁸⁰ Clause 25 of a standard lease of a Levittown home included an option to buy the home, but also stated that the homes "could not 'be used or occupied by any person other than members of the Caucasian race.'"⁸¹ "Levittowns" were infamously known for their use of racially restrictive covenants, and Levittown, Long Island was no exception.⁸²

Restrictive covenants were a legal but cunning way to keep the suburbs White.⁸³ Initially, some White residents attempted to fight the racist practices of the town.⁸⁴ Other White residents claimed that they were unaware of the race-restrictive covenants when they moved into their homes and were severely disturbed when they found out.⁸⁵ Even more disturbed, however, were the Black veterans and their families.⁸⁶ They were denied the hope and opportunity that the Levittown suburbs promised.⁸⁷ According to Hofstra University's Dr. Barbara M. Kelly, "[b]ecause Levittown promised affordable housing, with no down payment, it offered hope to the [Black] working class when no other community did – but that hope was quashed . . ."⁸⁸ Following World War II, "blacks thought things had changed, but they hadn't, and Levittown became a microcosm of that frustration."⁸⁹ Although Levittown has become a symbol for post-World War II housing

However, Black veterans were left behind, the effects of which can be seen today in the wealth gap between White and Black people in general. *Id.* According to the United States Census, the median income for White households in 2019 was \$76,057, while for Black households it was \$46,073. *Id.*

79. *See* Lambert, *supra* note 29.

80. *Id.*

81. *Id.* Another Levittown, near Philadelphia, experienced intense discrimination. *See id.* In 1957, angry White mobs threw rocks in a protest against Black families moving into the area. *Id.*

82. *See id.* An example of a Levittown restrictive covenant is: "The tenant agrees not to permit the premises to be used or occupied by any person other than members of the Caucasian race, but the employment and maintenance of other than Caucasian domestic servants shall be permitted." Philip S. Gutis, *Levittown, L.I., at 40: Once a Solution, Now a Problem*, N.Y. TIMES (Sept. 21, 1987), <https://www.nytimes.com/1987/09/21/nyregion/levittown-li-at-40-once-a-solution-now-a-problem.html>.

83. Dean, *supra* note 15, at 428.

84. Lambert, *supra* note 29. A group of protestors formed the Committee to End Discrimination in Levittown. *Id.* The group protested by handing out pamphlets condemning "Jim Crowism." *Id.*

85. *Id.* One former resident stated, "In those years, even liberal people like ourselves tended to take residential segregation for granted, without approving it. None of us went out into the street to change it." *Id.*

86. *See id.*

87. *Id.*

88. *Id.*

89. *Id.*

opportunity and, conversely, discrimination, the town is not alone in its practices.⁹⁰

The legality of race-restrictive covenants essentially came to an end in 1948 with the Supreme Court decision in *Shelley v. Kraemer*.⁹¹ A unanimous Court held that race restrictive covenants alone did not violate the Fourteenth Amendment.⁹² However, although the Court ruled that private individuals may abide by and follow the terms of a racially restrictive covenant, such private individuals may not seek judicial enforcement of the covenant.⁹³ Put more simply, racially restrictive covenants do not violate the Fourteenth Amendment, but if a party were to try to enforce the covenant in court, such is considered state action.⁹⁴ Thus, it would violate an individual's Fourteenth Amendment protection against discriminatory state action.⁹⁵

Following this landmark Supreme Court decision, the Levitts were forced to abandon race-restrictive covenants in the deeds of the homes in their housing developments.⁹⁶ Although formally abiding by the law, Levittown continued to accept only White families.⁹⁷ William Levitt explicitly told the press in 1949, “[t]he policy that has prevailed in the past is exactly the same policy that prevails today. It is the same policy that all builders in this area have adopted, and the elimination of the clause has changed absolutely nothing.”⁹⁸ Black veterans would attempt to buy homes in Levittown only to be turned away by salesmen.⁹⁹ After 1948, the town quickly filled up with White families, with few minority residents arriving during the 1950s.¹⁰⁰

90. See Dean, *supra* note 15, at 248 (conducting a study of racially restrictive covenants in Queens, Nassau, and Southern Westchester counties); 2: *Fair Housing History*, *supra* note 27 (noting that the proliferation of restrictive covenants occurred across the country).

91. 334 U.S. 1, 21 (1948).

92. *Id.* at 13 (“So long as the purposes of those agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated.”).

93. *Id.* at 20-21.

94. *Id.*

95. *Id.* The Supreme Court noted that an individual's freedom from discrimination by a state in terms of property rights is “among the basic objectives” of the Fourteenth Amendment. *Id.* at 20.

96. *Id.* at 20-21; McDermott & Winslow, *supra* note 4.

97. McDermott & Winslow, *supra* note 4.

98. DAVID KUSHNER, *LEVITTOWN: TWO FAMILIES, ONE TYCOON AND THE FIGHT FOR CIVIL RIGHTS IN AMERICA'S LEGENDARY SUBURB* 43 (2009).

99. *Id.* at 44. In a *New York Times* article from 1997, a Black veteran recalled his experience with Levittown, New York: “When I hear ‘Levittown,’ what rings in my mind is when the salesman said: ‘It’s not me, you see, but the owners of this development have not as yet decided whether they’re going to sell these homes to Negroes.’” Lambert, *supra* note 29. Fifty years later, this veteran, Eugene Burnett, could still recall “the feeling of rejection on that long ride back to Harlem.” *Id.*

100. Lambert, *supra* note 29; McDermott & Winslow, *supra* note 4.

Following the gradual trickling in of minority families to predominantly White Long Island suburbs, new discriminatory practices developed.¹⁰¹ More specifically, realtors began employing fear tactics known as “blockbusting.”¹⁰² Blockbusting is the process of a real estate agent roaming the neighborhood, knocking on doors, and warning homeowners that incoming Black homebuyers will negatively impact their property value.¹⁰³ These tactics were successful because of the coupled interests of the parties involved: White homeowners deeply feared plummeting property values and realtors were motivated to maximize their own monetary gain.¹⁰⁴ Tactics such as this were both efficient and lucrative for real estate agents.¹⁰⁵ Agents would often buy homes at low prices from White homeowners who wanted to sell as soon as possible.¹⁰⁶ They would then sell these same homes to minority homebuyers at high prices.¹⁰⁷ Agents would then pocket the difference.¹⁰⁸

In 1961, the New York Secretary of State, Caroline K. Simon, issued Rule 17, which prohibited blockbusting.¹⁰⁹ This was the first regulation of its kind in the country and, in some sense, it actually worked.¹¹⁰ For instance, the regulation allowed the state to discipline a Suffolk County real estate agent.¹¹¹ This agent had gone door-to-door in

101. McDermott & Winslow, *supra* note 4.

102. Frederick, *supra* note 32.

103. McDermott & Winslow, *supra* note 4.

104. *Id.*; Neil P. Buffett, *Blockbusting on Long Island: The Case of Gerald Kutler and the 1962 Legal Battle Against Real Estate Bias in North Bellport, New York*, LONG ISLAND HIST. J., http://lihj.cc.stonybrook.edu/2017/articles/blockbusting-on-long-island-the-case-of-gerald-kutler-and-the-1962-legal-battle-against-real-estate-bias-in-north-bellport-new-york/#_ednref9 (last visited Apr. 23, 2022) (“Realtors incited panic, purchased low, and then sold high.”).

105. McDermott & Winslow, *supra* note 4; Buffett, *supra* note 104.

106. McDermott & Winslow, *supra* note 4.

107. *Id.*

108. *Id.*

109. *Id.* Rule 17, the law prohibiting blockbusting, stated:

[N]o broker or salesman shall solicit the sale, lease or the listing for sale or lease, of residential property on the ground of loss of value due to the present or prospective entry into the neighborhood of a person or persons of another race, religion or ethnic origin; nor shall he distribute material or make statements designed to induce a residential property owner to sell or lease his property due to a change in neighborhood.

Buffett, *supra* note 104. If realtors violated the rule, a public hearing with the presentation of evidence and testimony would ensue. *Id.* Those found guilty of blockbusting would have their real estate licenses suspended or revoked. *Id.*

110. McDermott & Winslow, *supra* note 4.

111. *Id.* In September of 1962, a hearing was held concerning blockbusting activities in North Bellport. Buffett, *supra* note 104. Local residents testified that they had been approached by Bellport real estate agent Gerald Kutler regarding the possible sale of their homes. *Id.* One witness alleged that Kutler had left a business card on her doorstep and, after a telephone call, agreed to appraise her home. *Id.* Kutler told the witness that he could not sell the home for more than \$9,600

Bellport warning about plummeting home values due to the arrival of “colored people.”¹¹² The agent had handled the sale of more than fifty homes in the area and, after this incident, had his real estate license revoked.¹¹³ Even though New York State had the power to remedy the situation, residents continued to report discriminatory practices.¹¹⁴ In 1963, 275 homeowners in Hempstead reported to the state that they received daily phone calls, mail, and door-to-door visits by realtors.¹¹⁵ Finally, in 1969, the state legislature outlawed blockbusting.¹¹⁶ Soon after, the federal government, and later, state and local governments, began providing additional protections for homeowners and homebuyers.¹¹⁷

B. Fair Housing Act and Comparable New York State Laws

The U.S. Congress addressed discriminatory housing practices in 1968 with its passage of the federal Fair Housing Act.¹¹⁸ As one of the final legislative achievements of the Civil Rights era, the Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, and disability.¹¹⁹ After the enactment of this law, a seller could no longer refuse to sell, rent, or negotiate the sale

“due to the fact that two doors away . . . there were colored people living.” *Id.* Another witness testified that when she was approached about selling her home, Kutler advised her that “they were coming in and the house would soon lose its value.” *Id.* “They” was understood to mean “the colored people.” *Id.*

112. McDermott & Winslow, *supra* note 4.

113. *Id.*

114. *Id.* In 1979, Richard McCabe, a research tester, approached an agent about purchasing a home in Elmont, New York. Shawn G. Kennedy, *Free Service in Nassau Seeks to Avert Blockbusting*, N.Y. TIMES (Aug. 26, 1979), <https://www.nytimes.com/1979/08/26/archives/brooklyn-pages-free-service-in-nassau-seeks-to-avert-blockbusting.html>. The agent avoided doing so, but McCabe persisted. *Id.* Finally, the agent stated, “you don’t want to live there. The neighborhood is changing and lot of Black families are moving in.” *Id.* The agent had lied. *Id.* In fact, only about five percent of Elmont’s population of 30,000 people (in 1979) was Black. *Id.* Leading up to 1979, residents began to notice that agents and brokers were continuously steering Black and minority groups to certain parts of Elmont and discouraging White families from buying any homes at all in Elmont. *Id.*

115. McDermott & Winslow, *supra* note 4.

116. *Id.*

117. *See infra* Part II.B. A local organization took the issue of remedying racial discrimination, blockbusting, and other steering tactics into their own hands, providing even more protections for Long Island residents. Kennedy, *supra* note 114. The Gateway to Nassau organization, in the 1970s, consisted of volunteers matching up sellers with prospective homebuyers at no cost to either party. *Id.* Gateway also had a telephone information service and published a newsletter. *Id.* According to member of the Executive Board of Gateway to Nassau, James Regan, the organization worked to ensure that anyone who wanted to live in the county had a chance, regardless of race. *Id.*

118. Fair Housing Act, 42 U.S.C. § 3604 (2012).

119. *Id.*

or rental of a dwelling with the purpose of discriminating against one of the groups designated in the law.¹²⁰

In 1991, the New York legislature passed the New York State Human Rights Law, which afforded the same protections as the Fair Housing Act, and then some.¹²¹ The New York law additionally afforded protections for discrimination based on creed, age, sexual orientation, marital status, and military status.¹²² A separate section of the law specifically states, “[t]he opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination . . . is hereby recognized as and declared to be a civil right.”¹²³

Local county laws also provide buyers and renters with certain protections concerning housing.¹²⁴ Suffolk County passed their own Human Rights Law in 2015.¹²⁵ This law prohibits housing discrimination and provides an alternative hearing process to hold the discriminator accountable.¹²⁶ Suffolk County, according to this law, provides protections for those with a certain “group identity,”¹²⁷ those with a veteran status, and victims of domestic violence, and the county offers protection from discrimination based on a lawful source of income.¹²⁸ Nassau County has its own Human Rights Law as well, which protects those with a “protected status” from, among other things, housing discrimination.¹²⁹ Pursuant to the Nassau County law, “protected status” includes discrimination based on race, creed, color, gender, disability, age, religion, source of income, sexual orientation, ethnicity, familial status, marital status, or national origin.¹³⁰ It is also important to note that the State of New York provides a right to

120. *See id.*

121. *See* Human Rights Law, N.Y. EXEC. LAW § 296 (McKinney 2019).

122. *Id.*

123. *Id.* § 291.

124. *See* SUFFOLK CNTY., N.Y., CODE § 528-9 (2015); NASSAU CNTY., N.Y., LOCAL L. NO. 9-2006 (2006).

125. § 528-9; SUFFOLK CNTY., N.Y. CODE § 528-13 (2015).

126. § 528-9.

127. *Id.* Suffolk County Human Rights law defines “group identity” as:

The actual or perceived race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, or familial status of any individual, as well as the actual military status of any individual. This definition shall include visible traits of an individual, such as natural hair texture, protective hairstyles and the donning of religious garments or items.

SUFFOLK CNTY., N.Y. CODE § 528-6 (2020).

128. § 528-9.

129. § 9-2006.

130. *Id.*

education free from discrimination, even though the issue of racial division between school districts is still prevalent.¹³¹ It is equally important to note that although New York, Suffolk County, and Nassau County all have laws prohibiting housing discrimination, housing discrimination is still heavily present on Long Island today, just in subtler ways than before.¹³²

C. Modern Day Discriminatory Methods

Today, real estate agents use a variety of tactics to “steer” potential homebuyers to certain neighborhoods.¹³³ Under the Fair Housing Act, “steering” is the process of an agent influencing a homebuyer’s choice of neighborhood based upon the buyer’s race, color, religion, gender, disability, familial status, or national origin.¹³⁴ This significantly limits the opportunities and communities available to certain minority homebuyers.¹³⁵ Such steering can often be subtle and hard to prove.¹³⁶ Often, it seems as though the helpful agent is simply trying to offer a

131. Compare Human Rights Law, N.Y. EXEC. LAW § 291 (McKinney 2019) (“opportunity to obtain education . . . without discrimination”), with *infra* Part III (discussing how the public school systems on Long Island violate the New York State Human Rights Law).

132. See Choi et al., *supra* note 33.

133. *Id.*; see Chelsea Levinson, *What’s Steering in Real Estate? A Buyer’s Guide to Neighborhood Segregation*, HOMELIGHT (Sept. 16, 2020), <https://www.homelight.com/blog/buyer-what-is-steering-in-real-estate> (noting that steering is not a modern-day concept and has been studied and documented since the 1970s). In December of 1985, the New York State Attorney General’s Office filed a federal lawsuit against four Nassau County real estate companies. Michael Winerip, *Real-Estate Steering on L.I. Charged*, N.Y. TIMES (Dec. 11, 1985), <https://www.nytimes.com/1985/12/11/nyregion/real-estate-steering-on-li-charged.html>. At the time, officials called it “the most ambitious New York State attack against suburban housing discrimination on a countywide basis.” *Id.* The reported practices of these real estate agencies included: showing Black and White couples different home listings; allowing White couples, but not Black couples, to view listings without an appointment; showing White clients homes in their requested price range while showing Black clients homes out of their requested price range; and acting indifferent to Black homebuyers. *Id.*

134. See Choi et al., *supra* note 33. Steering not only hinders the number of options available to minority homebuyers, but, on a larger scale, lowers home values and ownership rates among minority populated areas. Levinson, *supra* note 133. Steering contributes to a lower demand of housing in Black neighborhoods, according to research from the American Center for Progress. *Id.* Thus, homes in Black neighborhoods do not appreciate in value as much as homes in White neighborhoods, making it difficult for Black homeowners to accumulate as much wealth. *Id.*

135. Levinson, *supra* note 133. Subtle, but effective, steering plays out in a myriad of ways in the real estate industry. See *id.* Agents may show more listings to White homebuyers than to minority homebuyers or discourage a White homebuyer from living in minority areas. *Id.* More specifically, this discouragement takes the form of warning White buyers of safety concerns by citing to recent crime or “bad schools” in minority areas. *Id.* In terms of minority homebuyers, agents will often not warn them of safety concerns in the community and often assume that these clients want to live in areas predominated by people of the same race, limiting showings to these areas. *Id.*

136. Choi et al., *supra* note 33.

homebuyer advice based on their experience and expertise concerning the area.¹³⁷ However, the advice is not always as helpful or innocent as it seems.¹³⁸ To steer homebuyers, agents often make pointed comments, positive or negative, about a certain area.¹³⁹ The Fair Housing Act protects a buyer's ability to choose housing free from discrimination, and, thus, agents violate the Fair Housing Act—whether implicitly or explicitly—by steering.¹⁴⁰

Long Island is illustrative of the issue of steering practices.¹⁴¹ The area is not immune from the steering techniques of real estate agents and the subsequent effects of these discriminatory practices.¹⁴² Pursuant to a groundbreaking investigative study, a local Long Island news outlet, *Newsday*, published an article titled “Long Island Divided.”¹⁴³ The three-year investigation conducted by *Newsday* drew some alarming conclusions about race and housing on Long Island.¹⁴⁴ The article concluded that Black homebuyers are likely to experience discrimination almost half of the time that they hire a real estate broker.¹⁴⁵ Well-known brokers often directed White buyers towards areas with the highest White representation and minority buyers to more integrated neighborhoods.¹⁴⁶ Those same brokers also avoided doing business in communities with largely minority populations.¹⁴⁷

The investigatory method in this study involved the use of testers.¹⁴⁸ More specifically, two testers would go undercover as

137. *Id.* It is important and valuable for real estate agents to serve their clients by offering their knowledge of the areas. Levinson, *supra* note 133. However, such services must be equal and professional towards both White and minority homebuyers. *Id.* Agents should give their clients the option to make their own educated decisions through a presentation of objective information. *Id.* Real estate agents should allow the buyer to make decisions about which neighborhood and home is the best fit for them. *See id.*

138. Choi et al., *supra* note 33.

139. *See id.*

140. *Id.*

141. *See id.*

142. *Id.*

143. *Id.*

144. *Id.* Following the publication of this investigation in 2019, former New York Governor Andrew Cuomo introduced three regulations enforcing anti-discrimination education. Liz Dominguez, *Steering Unveiled in Newsday Report, New York Announces Regulations to Combat Buyer Discrimination*, RISMEDIA (Dec. 26, 2019), <https://rismedia.com/2019/12/26/steering-new-york-buyer-discrimination>. The new regulations require all agents to give their clients a stat-generated form that notifies them of their fair housing rights. *Id.* Pursuant to the regulations, firms must post these rights in the windows of their offices and provide and record anti-discrimination education for their employees. *Id.*

145. Choi et al., *supra* note 33.

146. *Id.*

147. *Id.*

148. *Id.*

homebuyers.¹⁴⁹ Both testers would visit an agent in hopes of purchasing a home.¹⁵⁰ The only difference between the two testers was their race.¹⁵¹ All other variables were kept constant.¹⁵² Both testers had similar financial backgrounds and asked for identical terms for houses located in the same areas.¹⁵³ The study then compared the reactions of the real estate agents.¹⁵⁴ Eighty-six of these tests were conducted all over Long Island.¹⁵⁵

In forty percent of the tests, the results proved that minority testers received unequal treatment when compared to White testers.¹⁵⁶ Black testers experienced unequal treatment forty-nine percent of the time; Hispanic testers received unequal treatment thirty-nine percent of the time; and Asian testers experienced unequal treatment nineteen percent of the time.¹⁵⁷ In eight percent of the tests, agents put minority homebuyers in a box by placing certain restrictions on their options, while accommodating the comparable White testers.¹⁵⁸ For example, while White testers were shown listings without any conditions, some agents refused to provide listings or house tours to minority testers until their financial qualifications were approved.¹⁵⁹

149. *Id.*; see generally Levinson, *supra* note 133 (“Since the late 1970s, the Department of Housing and Urban Development (HUD) has studied steering by sending test pairs of buyers out in cities across the U.S. to measure how they’re treated by agents.”).

150. Choi et al., *supra* note 33.

151. *Id.*

152. *Id.*

153. *Id.* It should be noted that “[p]aired testing offers a uniquely effective tool for directly observing differential treatment of equally qualified homeseekers, essentially catching discrimination in the act.” MARGERY AUSTIN TURNER ET AL., HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES 2012 xii (2013), https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf. However,

[P]aired testing cannot capture all forms of housing discrimination that might occur during a house search. For example, it does not encompass differences in advertising practices that may limit a homeseeker’s knowledge about available housing options. It cannot measure differences in treatment that might occur after the initial inquiry—when homeseekers submit applications, seek mortgage financing, or negotiate lease terms.

Id.

154. Choi et al., *supra* note 33.

155. *Id.* Thirty-nine of the tests compared Black and White testers, thirty-one compared Hispanic and White testers, and sixteen compared Asian and White testers. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* In a 2012 Housing and Urban Development study, it was found that well-qualified minority homebuyers are just as likely to get an appointment to learn about a housing unit when compared to equally-qualified White homebuyers. TURNER ET AL., *supra* note 153, at 39. However, when unequal treatment does occur, minority homebuyers learn about and view fewer homes and apartments than White homebuyers. *Id.* This raises the cost of the housing search for minority buyers while also limiting their potential housing options. *Id.*

159. Choi et al., *supra* note 33.

Unsurprisingly, the discussion of school districts between the agent and the tester were often used as vehicles for discriminatory steering.¹⁶⁰ Since assessing school districts is often an important component of the house search, such a conversation is common.¹⁶¹ However, although such a conversation is meant to ensure quality educational opportunities for families and children, this discussion was found to be one that limited such opportunities.¹⁶² According to *Newsday* reporter Olivia Winslow, “fair housing experts say that touting or disparaging schools can put agents in jeopardy because talking about school districts can be taken as a euphemism for race.”¹⁶³ The *Newsday* study observed agents repeatedly steering White testers away from Amityville school district.¹⁶⁴ One agent stated, “Do you really want your future children going to Amityville School Districts?”¹⁶⁵ Another agent stated, “[I]f you’re in Massapequa you only want school district 23. You don’t want 6 in Massapequa because that takes in Amityville and you’re not gonna like those schools.”¹⁶⁶ A real estate broker suggested to one tester to follow the school bus and “see the moms that are hanging out on the corners.”¹⁶⁷

Public education can be both a community’s selling point and its detriment.¹⁶⁸ A realtor’s damaging assumptions about what a White tester, or a minority tester, is seeking in both a neighborhood and a school district perpetuates the significant racial segregation seen today on Long Island.¹⁶⁹ This continuing cycle of leading White homebuyers to White areas and minority homebuyers to minority areas has a great

160. *Id.*; see JAMES H. CARR ET AL., 2019 STATE OF HOUSING IN BLACK AMERICA 10 (2019) https://www.nareb.com/site-files/uploads/2019/09/NAREB_Shiba2019_small-compressed.pdf (“[R]acial steering reinforces existing, significant patterns of racial segregation, that can further limit Blacks access to higher quality schools, broader recreational opportunities, safer streets, and higher home appreciation.”).

161. Choi et al., *supra* note 33.

162. *Id.* For example, conversations about a school’s low test scores or “a community with declining schools” can become a euphemism for racial differences in the community. *Id.*

163. *Long Island Divided: Testing the Divide*, NEWSDAY, <https://projects.newsday.com/long-island/real-estate-investigation-videos> (last visited Apr. 23, 2022). In 2014, the National Association of Realtors stated, “Discussions about schools can raise questions about steering if there is a correlation between the quality of the schools and neighborhood racial composition.” Choi et al., *supra* note 33.

164. Choi et al., *supra* note 33.

165. *Id.*

166. *Long Island Divided: Testing the Divide*, *supra* note 163.

167. *Id.*

168. *Steering, Schools, and Equal Professional Service*, NAT’L ASSOC. REALTORS (June 9, 2014), <https://www.nar.realtor/articles/steering-schools-and-equal-professional-service> (stating that “schools play an important role in a homebuyer’s decision”).

169. See Choi et al., *supra* note 33.

negative and unequal effect on the quality of education available to students.¹⁷⁰

D. History of Race and Public Education on Long Island

Brown v. Board of Education is a landmark United States Supreme Court case that ended compulsory racial segregation in the public-school system.¹⁷¹ Prior to this 1954 decision, states were permitted to create laws that promoted the segregation of public schools.¹⁷² Such a law was upheld in the pre-*Brown* case, *Roberts v. City of Boston*.¹⁷³ In *Roberts*, the Massachusetts Supreme Court trusted the judgment and experience of the general school committee and upheld separate primary schools for children of different races.¹⁷⁴ *Roberts* was later used to justify the “separate but equal” doctrine in *Plessy v. Ferguson*.¹⁷⁵ Almost sixty years after *Plessy*, the Supreme Court decided that “separate but equal” schools for racial minorities were inherently unequal and violated students’ Fourteenth Amendment right to equal protection of the laws.¹⁷⁶

It is well-known and well-documented that *Brown* was met with much resistance in the South.¹⁷⁷ In 1958, the Court had to reinforce the unconstitutionality of segregation in public schools in *Cooper v. Aaron*.¹⁷⁸ This case involved the Little Rock Nine, a group of nine Black students enrolled at Little Rock Central High School in 1957.¹⁷⁹ The local school board, following violent resistance from parents, students, and the governor of Arkansas himself, brought suit seeking a postponement of desegregation until the chaos in Little Rock subsided.¹⁸⁰ The Supreme Court refused to postpone desegregation and ruled that state officials and legislatures were bound by United States Supreme Court decisions.¹⁸¹ In *Brown*, the Court interpreted the

170. Franchi, *supra* note 3.

171. 347 U.S. 483, 495 (1954).

172. *Id.* at 487-88.

173. 59 Mass. 198, 201 (5 Cush. 1849).

174. *Id.* at 209.

175. 163 U.S. 537, 544-45 (1896).

176. *Brown*, 347 U.S. at 495 (“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate education facilities are inherently unequal.”).

177. *The Southern Manifesto and “Massive Resistance” to Brown*, NAACP LEGAL DEF. & EDUC. FUND, <https://www.naacpldf.org/ldf-celebrates-60th-anniversary-brown-v-board-education/southern-manifesto-massive-resistance-brown> (last visited Apr. 23, 2022).

178. 358 U.S. 1, 19 (1958).

179. *Landmark Cases: Cooper v. Aaron (1958)*, THIRTEEN, https://www.thirteen.org/wnet/supremecourt/democracy/landmark_cooper.html (last visited Apr. 23, 2022).

180. *Id.*

181. *Cooper*, 358 U.S. at 18.

Fourteenth Amendment to prohibit racial segregation in the public schools; thus, the states were bound by that decision.¹⁸² Further, a Southern Virginian Senator coined the term “Massive Resistance,” which referred to a collection of laws passed in response and resistance to *Brown*.¹⁸³

Long Island, New York also continually resisted integration of the public schools, both before and after the Supreme Court’s 1954 ruling.¹⁸⁴ Before *Brown*, in 1895, the Amityville School District attempted to exclude Black children from a \$70,000 new schoolhouse.¹⁸⁵ Black parents offered the school board two options: (1) admission of all non-White students into the new school; or (2) a boycott of the old, segregated, and rundown school.¹⁸⁶ The district admitted the children as their parents argued that they voted in favor of the new school’s construction with the understanding that the school would be integrated.¹⁸⁷ Later, in 1913, an organized group of Black students marched to the White public school in Roslyn and demanded admission.¹⁸⁸ By 1917, Roslyn’s all-Black school was closed.¹⁸⁹

Racial tensions remained high on Long Island post-*Brown*.¹⁹⁰ In 1961, the town of Hempstead had almost four all-Black or all-White schools.¹⁹¹ New York State ordered the district to end the racial imbalance, and White families proceeded to flee the community.¹⁹² Two years later, the State Education Commissioner ordered an end to segregation in the Malverne School District.¹⁹³ The desegregation plan in Malverne followed an appeal to the state commissioner by the parents of Black children who were declined admission to two mostly White schools.¹⁹⁴ A rezoning plan was upheld in *Olson v. Board of Education*¹⁹⁵ as the Eastern District cited to *Brown* and the students’ Fourteenth Amendment right to equal protection under the laws.¹⁹⁶ In

182. *Id.*

183. *The Southern Manifesto and “Massive Resistance” to Brown*, *supra* note 177.

184. McDermott & Winslow, *supra* note 4.

185. Robert T. Farrell, *A Long-Ago Win for School Integration*, *NEWSDAY* (Feb. 25, 2011, 3:19 PM), <https://www.newsday.com/a-long-ago-win-for-school-integration-1.2713006>.

186. *Id.*

187. *Id.*

188. Carlton Mabee, *Control by Blacks Over Schools in New York State, 1830-1930*, 40 *PHYLON: ATLANTA UNIV. REV. RACE & CULTURE* 29, 37 (1979).

189. *Id.*

190. *See* McDermott & Winslow, *supra* note 4.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Olson v. Bd. of Educ.*, N.Y., 250 F. Supp. 1000, 1002 (E.D.N.Y. 1966).

195. *Id.*

196. *Id.* at 1006, 1010.

another case, *Blocker v. Board of Education*,¹⁹⁷ a federal judge ruled that a ninety-nine percent Black school violated the Fourteenth Amendment.¹⁹⁸ The district judge ordered the school board to desegregate the elementary school system by the fall term of the same year.¹⁹⁹ Additionally, in 1977, the State Education Commissioner ordered schools to desegregate in Rockville Centre.²⁰⁰ However, the desegregation plan was met with much administrative delay and contention from the public.²⁰¹

After the Supreme Court handed down its ruling in *Brown v. Board of Education II*,²⁰² lower courts were obligated to enforce desegregation “with all deliberate speed.”²⁰³ Although New York courts faced resistance from local school boards regarding integration plans, Long Island was eventually formally desegregated.²⁰⁴ However, as with any law or ruling met with significant resistance, bias and prejudice found its way around the law, ultimately diminishing the legacy and purpose of *Brown v. Board of Education*.²⁰⁵

197. 226 F. Supp. 208 (E.D.N.Y. 1964).

198. *Id.* at 227, 230.

199. *Id.* at 230; see *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 301 (1955) (remanding the case “to the District Courts . . . [and] to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases”).

200. McDermott & Winslow, *supra* note 4.

201. See Shawn G. Kennedy, *School Integration in Rockville Centre Is Put off for Year*, N.Y. TIMES (Aug. 23, 1977), <https://www.nytimes.com/1977/08/23/archives/school-integration-in-rockville-centre-is-put-off-for-year-school.html>. In 1977, New York State Commissioner of Education Ewald B. Nyquist issued an order on his last day in office to integrate six elementary schools in Rockville Center, affecting 4,000 students in the district. *Id.* However, his successor, Gordon M. Ambach, resisted integration by postponing implementation of the plan for one year. *Id.* The postponement order mandated training sessions for staff, curriculum review, and orientation sessions for parents and students. *Id.* Further, a group consisting of four White couples and one Black couple filed a complaint with the Department of Education following the initial integration order. *Id.* The complaint noted that minority enrollment at one of the elementary schools had passed fifty percent and was, thus, “racially identifiable.” *Id.*

202. *Brown II*, 349 U.S. at 294.

203. *Id.* at 301.

204. See *Blocker*, 226 F. Supp. at 230; see *Olson v. Bd. of Educ.*, 250 F. Supp. 1000, 1010 (E.D.N.Y. 1966).

205. See Choi et al., *supra* note 33 (noting that real estate agents use steering as a way to maintain the current racial makeup of local communities); Elissa Nadworny & Cory Turner, *This Supreme Court Case Made School District Lines a Tool for Segregation*, NPR (July 25, 2019), <https://www.npr.org/2019/07/25/739493839/this-supreme-court-case-made-school-district-lines-a-tool-for-segregation> (“All of this is very connected. The schools. The housing. The government. All of this is a part of the structural racism which is still very much in place in Long Island.”).

III. LEGAL ISSUE: RACIAL IMBALANCES LEAD TO UNEQUAL EDUCATION AND OPPORTUNITY

Long Island has a long history of racial segregation and housing discrimination.²⁰⁶ This history has led to segregation between residential communities.²⁰⁷ School district boundaries are drawn around these communities, ultimately perpetuating segregation and inequality between districts.²⁰⁸ This segregation promotes a lack of quality education for poor and minority neighborhoods, and ample opportunity for wealthy White neighborhoods.²⁰⁹ The current system is in violation of the New York State Human Rights Law's protection of education free from discrimination.²¹⁰

Clearly, residential segregation matters.²¹¹ It shapes communities, lives, and opportunities.²¹² Residential location affects education, job opportunities, healthcare, and access to reliable transportation.²¹³ It logically follows that deciding on a location to settle is an important life decision.²¹⁴ Further, school quality is among the many factors discussed during the home search.²¹⁵ Society values the idea of high-quality education.²¹⁶ However, interestingly enough, people, especially in the United States, are more hesitant to value the importance of residential integration, despite how closely related education and housing are.²¹⁷ Put

206. See McDermott & Winslow, *supra* note 4.

207. The Editorial Board, *supra* note 6.

208. 8 *Key Facts About Long Island School Districts*, *supra* note 3, at 4.

209. See *id.* at 3 (setting forth statistics that prove school districts with a large minority-makeup are underfunded).

210. See Human Rights Law, N.Y. EXEC. LAW § 291 (McKinney 2019).

211. Kimberly Quick & Richard D. Kahlenberg, *Attacking the Black-White Opportunity Gap That Comes from Residential Segregation*, CENTURY FOUND. (June 25, 2019) <https://tcf.org/content/report/attacking-black-white-opportunity-gap-comes-residential-segregation>.

212. See *id.*

213. *Id.*

214. 7 *Factors to Consider When Buying Your First Home*, AM. FAM. INS., <https://www.amfam.com/resources/articles/at-home/7-factors-to-consider-when-buying-your-first-home> (last visited Apr. 23, 2022).

215. *Id.*

216. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”); Tod Allen Farmer, *The Value of Education to American Society*, WEATHERFORD COLL. (Oct. 22, 2018), <https://www.wc.edu/about/president/files/2018.10-The-Value-of-Education-to-American-Society.doc.pdf> (“Thomas Jefferson wrote, ‘To penetrate and dissipate these clouds of darkness, the general mind must be strengthened by education.’”).

217. Thomas B. Edsall, *Integration vs. White Intransigence*, N.Y. TIMES (July 17, 2019), <https://www.nytimes.com/2019/07/17/opinion/integration-politics.html>. Poverty contributes to racial inequality in a myriad of ways. *Id.* Communities riddled with poverty and segregation are “toxic.” *Id.* The conditions drive minority children into “the kind of behavior that affects the perception of Black life more generally, which has in turn been shown to reinforce negative

more clearly, society recognizes the value of education, but is unwilling to recognize the value in equal education for all.²¹⁸

It is important to note the reason why residential segregation directly affects the public schools.²¹⁹ On Long Island, for example, students largely attend a school located in the district in which they reside.²²⁰ An exception to this would be those students who attend private educational institutions or a state trade school program like Boards of Cooperative Educational Services (“BOCES”), which is attended by students of varying districts.²²¹ However, for the most part, many students in the area attend public schools since it is free.²²² Thus, a student’s educational opportunities are generally limited by their residential locations.²²³

As previously discussed, Long Island history has promoted residential segregation by race.²²⁴ School boundary lines work to exacerbate this segregation in the public schools.²²⁵ Apart from, but including Long Island, there are instances across the country where school district boundaries carve out high poverty districts and wealthy

stereotypes.” *Id.* When legislators want to enact bills and programs intended to integrate housing and schools, they are met with White opposition. *Id.* Once a Black community becomes segregated, it becomes difficult to implement reintegration, since the conditions of these neighborhoods confirm the negative stereotypes. *Id.* In these situations, racism is systemic in that White neighborhoods fear the conditions and stereotypes of segregated communities that integration would fix. *Id.* However, these same stereotypes are what halt integration. *Id.*

218. Noah Berlatsky, *White Parents Are Enabling School Segregation—If It Doesn’t Hurt Their Own Kids*, NBC NEWS (Mar. 11, 2019), <https://www.nbcnews.com/think/opinion/white-parents-are-enabling-school-segregation-if-it-doesn-t-ncna978446> (“America has largely given up trying to desegregate its schools. Politicians have capitulated to reactionary white parents and activists who have successfully fought for decades against the government’s hesitant efforts to provide equal resources and opportunities for students of color. The result has been a disaster for non-white students, for public education and for the U.S. as a whole.”).

219. See Quick & Kahlenberg, *supra* note 211 (“As communities of color suffer under the deprivations that come with segregation—economic disinvestment, political disenfranchisement, educational inequity, and unfair, ineffective policing practices—those who build and install resilient and enduring racist systems that sustain segregation explain their decisions in terms of protecting and promoting safety, strong schools, and stable housing markets.”).

220. See N.Y. EDUC. LAW § 3202 (McKinney 2019).

221. See generally *School Governance, Policy, and Religious and Independent Schools*, NYSSED.GOV, <http://www.p12.nysed.gov/fmis> (last visited Apr. 23, 2022) (making distinctions between the available educational institutions in New York State).

222. EDUC. § 3202.

223. See *id.*; Potter, *supra* note 15; *8 Key Facts About Long Island School Districts*, *supra* note 3, at 4.

224. See *supra* Part II.

225. Potter, *supra* note 15.

districts.²²⁶ This is easy to do on Long Island since minority populations are both consolidated and isolated.²²⁷

This Part argues that this current system violates the New York State Human Rights Law.²²⁸ Subpart A presents a statistical analysis regarding racial differences throughout the area and how these racial imbalances correlate with differences in school funding.²²⁹ Subpart B notes the personal accounts and experiences of students on Long Island within the public education system.²³⁰ Reviewing both quantitative and qualitative accounts aids an analysis and understanding of the current state of the public school system.²³¹

A. *Statistical Analysis and Numerical Data*

Local research and compiled statistics have provided an invaluable lens through which to view Long Island public school districts.²³² By studying objective and statistical data, it is difficult to deny the intense inequality between school districts and how these differences are driven by race and a troubling local history of housing discrimination.²³³ The numbers are alarming and this Subpart aims to demonstrate not only that such inequality exists between school districts, but also the great impact these inequalities have on the students attending such schools.²³⁴ This Subpart will start by providing an overview of the racial compositions of public school districts across Long Island.²³⁵ Next, it will attempt to correlate drastic differences in race with drastic differences between school districts.²³⁶

1. A Racial Divide: Overview

Long Island is one of the most segregated places in the country.²³⁷ It is no surprise that the local public schools would be equally

226. *Id.*

227. *8 Key Facts About Long Island School Districts*, *supra* note 3, at 1.

228. *See infra* Part III.A–B.

229. *See infra* Part III.A.

230. *See infra* Part III.B.

231. *See infra* Part III.A–B.

232. *See* Russell Chun, *Diversity and Segregation in Long Island Public Schools, Public School Student Race and Ethnicity: 2015-2016*, RUSSELL CHUN, <http://russellchun.github.io/hofstra/longisland/race> (last visited Apr. 23, 2022).

233. *Id.*

234. *See infra* Part III.A.1.

235. *See infra* Part III.A.1.

236. *See infra* Part III.A.2.

237. Bruce Lambert, *Study Calls L.I. Most Segregated Suburb*, N.Y. TIMES (June 5, 2002), <https://www.nytimes.com/2002/06/05/nyregion/study-calls-li-most-segregated-suburb.html>. The

segregated.²³⁸ The racial makeup of a town or village directly correlates with the racial composition of the area's public school since children will more likely than not attend their residential town's corresponding public school.²³⁹

On a larger, national scale, around nine million children attend racially segregated schools that receive less funding than a school a few miles down the road.²⁴⁰ One in five children in the United States attend public schools that are lesser in quality simply due to factors out of their control, such as where their family resides.²⁴¹ On Long Island, about half of all Black and Latino students attend schools that are at least ninety-five percent students of color.²⁴² One of the most dramatic and shocking examples of school segregation on Long Island occurs between the Hempstead Union Free School District and the Garden City Union Free School District.²⁴³ Garden City school enrollment is eighty-seven percent White, while Hempstead's enrollment is two percent White.²⁴⁴ Garden City's school district directly borders Hempstead's district to the

reason for this intense segregation is up for debate, according to David Rusk, who studied the segregation patterns on Long Island. *Id.* Rusk drew attention to Long Island's current tax, zoning, housing, and education policies. *Id.* Additionally, Rusk blamed Long Island's "little-box governments." *Id.* Long Island consists of 109 villages, towns, and cities, and 129 school districts. *Id.* Such a separation, Rusk theorizes, allows for small, individual governments to maintain the intense division and separation from the neighboring towns and villages. *See id.*

238. *See generally id.* (discussing segregation on Long Island and its presence in the school districts).

239. *See generally* N.Y. EDUC. LAW § 3202 (McKinney 2019) (providing a free public education to students living in the residential area). Statistically, enrollment in public schools has changed significantly in New York. ERASE RACISM, HEADING IN THE WRONG DIRECTION: GROWING SCHOOL SEGREGATION ON LONG ISLAND 6 (2015), http://www.eraseracismny.org/storage/documents/ERASE_Racism_2015_Education_Equity_Report_final_web.pdf. A 2014 study from the Civil Rights Project reported that Long Island public school enrollment by White students actually declined from eighty-one percent in 1989–1990 to sixty-three percent in 2010–2011. *Id.* On the contrary, Black student enrollment has remained stable throughout the studied time period. *Id.* Asian enrollment increased by 140 percent and Latino enrollment increased by 300 percent since 1989. *Id.* This increase in diversity has resulted in even more intense segregation. *Id.* The percentage of schools with less than ten percent White student enrollment increased from four percent in the 1898–1990 school year to eleven percent in the 2010–2011 school year. *Id.* Schools that are between fifty percent and 100 percent minority students doubled during that same period of time. *Id.*

240. Nadworny & Turner, *supra* note 205.

241. *Id.* Around ninety percent of American students are educated in public schools. *Zoned Out: How School and Residential Zoning Limit Educational Opportunity*, U.S. CONG. JOINT ECON. COMM. (Nov. 12, 2019), <https://www.jec.senate.gov/public/index.cfm/republicans/2019/11/zoned-out-how-school-and-residential-zoning-limit-educational-opportunity> (noting that school attendance zones are drawn so that students attend schools near their residential homes).

242. *See 8 Key Facts About Long Island School Districts*, *supra* note 3, at 4.

243. *See* Nadworny & Turner, *supra* note 205. Both school districts are located in Nassau County, Long Island. *Id.*

244. *Id.*

north, and Rockville Centre's school district borders Hempstead to the south.²⁴⁵ Rockville Centre's school enrollment is seventy-six percent White.²⁴⁶ Located between two majority-White districts, Hempstead's separation and segregation could not be more clear.²⁴⁷ To make matters more troubling, this is not an isolated incident on Long Island.²⁴⁸

Westbury Union Free School District borders the, much smaller in size, Carle Place Union Free School District.²⁴⁹ Carle Place consists of about thirty percent minority students, while Westbury consists of less than five percent of White students.²⁵⁰ Russell Chun, an Assistant Professor at the Hofstra University Herbert School of Communication, published 2015–2016 school demographics showing that Roosevelt School District, located in Nassau County, seems to be an entirely minority district.²⁵¹ On the contrary, the bordering school district of North Merrick is over seventy percent White.²⁵²

Long Island is relatively small in size compared to the rest of the United States.²⁵³ With an area of 1,400 square miles and a population of 7.647 million, Long Island is a compact area with a high population density.²⁵⁴ Such a small area with a large population has resulted in a visibly stark contrast in race between school districts only miles apart.²⁵⁵ For example, within these 1,400 square miles of land, Sachem School District is ninety percent minority, Kings Park schools are over ninety percent minority, and Valley Stream schools are over ninety-five percent minority.²⁵⁶ Within miles of these racially isolated districts are

245. *Id.*

246. *Id.*

247. *Id.*

248. *See generally* Chun, *supra* note 232 (presenting a chart that outlines the racial composition of each Long Island public school).

249. *Id.* Westbury School District has an enrollment of 4,934 students, while 1,370 students attend Carle Place public schools. *Id.*

250. *Id.* Pursuant to the chart, minority populations in public schools consist of those students who are American-Indian, Black, Hispanic, Asian, or mixed race. *Id.*

251. *Id.* According to the chart, Roosevelt public schools are about fifty-five percent Black, and slightly less than forty-five percent Hispanic. *Id.*

252. *Id.*

253. *Compare* New York Water Science Center, *Long Island - Location and Physical Setting*, USGS (June 8, 2017), https://www.usgs.gov/centers/ny-water/science/long-island-location-and-physical-setting?qt-science_center_objects=0#qt-science_center_objects (calculating Long Island's area of 1,400 miles), *with State Area Measurements and Internal Point Coordinates*, U.S. CENSUS, <https://www.census.gov/geographies/reference-files/2010/geo/state-area.html> (last visited Apr. 23, 2022) (estimating the United States' size as 3,796,742 square miles).

254. New York Water Science Center, *supra* note 253 (presenting information about Long Island's geographical size); *Population of Long Island*, GOOGLE, <https://www.google.com/?client=safari> (Search "Long Island population").

255. Chun, *supra* note 232.

256. *Id.*

Massapequa (over ninety percent White), Plainedge (about ninety percent White), Eastport-South Manor (over eighty percent White).²⁵⁷

Racial division among school districts is obvious and alarming when analyzed through maps and numerical data.²⁵⁸ Such a racial divide does not occur in a vacuum.²⁵⁹ Racial segregation in public schools has economic consequences for those students attending majority minority schools.²⁶⁰ Corollary to residential segregation, school segregation results in a lack of funds for poor minorities and an overabundance of aid to the White and wealthy.²⁶¹

2. Funding and Its Correlation to Race

In analyzing the economic condition of their school districts, New York State categorizes schools as “low-need,” “average-need,” and “high-need.”²⁶² Low-need districts are highly-funded schools, while high-need schools are those which lack necessary resources for a quality education.²⁶³ Most Long Island public school students attend average-need or low-need districts.²⁶⁴ Only fourteen percent of students actually attend school in high-need districts.²⁶⁵ Fourteen percent seems like a relatively small percentage until it is given some context.²⁶⁶ Out of

257. *Id.*

258. *See generally id.* (showing that, through the use of colored charts, the racial imbalances plaguing Long Island public schools). According to ERASE Racism, in order for Long Island to achieve a racial balance across the region, seventy-four percent of Black people would have to move. 8 *Key Facts About Long Island School Districts*, *supra* note 3 at 4.

259. *Zoned Out: How School and Residential Zoning Limit Educational Opportunity*, *supra* note 241. Housing discrimination is intertwined with school segregation, although legislatures often treat education policy as a separate issue. *Id.* Additionally, school segregation affects other aspects of education, such as funding, a student’s socialization, academic outcomes, and social mobility. *See id.*

260. Clare Lombardo, *Why White School Districts Have So Much More Money*, NPR (Feb. 26, 2019), <https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money>. More than half of students in the United States attend racially segregated or “racially concentrated” schools (schools in which the student population is either more than seventy-five percent White or non-White). *Id.* High-poverty districts consisting of mostly students of color receive an estimated \$1,600 less per student than the national average. *Id.* School districts that are predominately White and poor receive about \$130 less than the national average. *Id.*

261. *See generally id.* (“We have built a school funding system that is reliant on geography, and therefore the school funding system has inherited all of the historical ills of where we have forced and incentivized people to live.”).

262. 8 *Key Facts About Long Island School Districts*, *supra* note 3, at 3.

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

that fourteen percent, seventy-six percent are Black and Hispanic students.²⁶⁷

Further, high-income schools spend about \$26,000 per student per year, while low-income schools spend \$18,000 per student per year.²⁶⁸ It is important to note that poorer, minority districts incur certain expenses that wealthy, White districts may not.²⁶⁹ For instance, minority districts spend more on English as a second language programs because the need is higher.²⁷⁰

According to Edbuild, an organization that studies public schools and the way in which they are funded, more than fifty of Long Island's 124 school districts are classified as having intense divides in race and funding.²⁷¹ This particular study analyzed the 969 most divisive school district borders in the country.²⁷² Edbuild labeled ten Long Island school district borders as "deeply divisive" in that, between neighboring districts, there was a twenty percent or more difference in funding.²⁷³ A more concrete example includes a great divide in funding between Glen Cove City School District and North Shore Central School District.²⁷⁴ Glen Cove, which is seventy-two percent non-White, spends \$12,347 less per student than North Shore Central, which is twenty percent non-White.²⁷⁵ The Uniondale School District, with ninety-nine percent minority enrollment, spends more than \$5,000 less than Rockville Centre School District, which is seventy-seven percent White, per student.²⁷⁶

267. *Id.*

268. *Id.* at 5.

269. *See id.* at 6.

270. *Id.*

271. Andrew Garcia, *Long Island School Districts of Color Underfunded*, LIHERALD.COM (Dec. 12, 2019), <https://liherald.com/merrick/stories/long-island-school-districts-of-color-underfunded,120930>. Property taxes also play a large part in these differences in funding. *Id.* Property taxes usually fund about two-thirds of school budgets, so property taxes directly affect school funding and the resources available to students. *See id.* For example, in an area like Hempstead, where the average value of a home is \$375,000, property taxes bring in much less money than they do in an area like Garden City where the average home values \$900,000. *Id.* New York State Senator John Brooks recognized this unfair disparity and sponsored a bill that would create a taskforce to search for a new district system that is financed by state income taxes. *Id.*

272. *Id.*

273. *Id.* The level of need between neighboring districts, like Hempstead and Garden City, becomes obvious when viewed through the teacher's perspective. *Id.* On the website Donors Choose, teachers can start donation pages for school-related projects or equipment. *Id.* Hempstead teachers have posted on the website requesting funding for a single laptop, notebooks, folders, and crayons. *Id.* During the 2016–2017 school year, Hempstead teachers posted twenty similar fundraisers, while Garden City teachers posted none. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

B. Personal Accounts: Students' View of Public Education

Students themselves are not blind to the unequal opportunities they face.²⁷⁷ In a local Long Island Press article, two students from two different high schools were interviewed.²⁷⁸ Seemingly, all factors were constant: both were athletic, had high grades, were part of student government, held a part-time job, were raised by single mothers, and were Black.²⁷⁹ The only difference was that one student attended South Side High School in Rockville Centre, while the other attended Wyandanch Memorial High School.²⁸⁰ The student from Rockville Centre was encouraged to apply to prestigious institutions, like New York University, while the Wyandanch student was told to apply to community college.²⁸¹ Even further, Rockville Centre provided assistance for their students with financial aid forms, while the Wyandanch student was left to figure it out himself.²⁸² It is safe to say that Rockville Centre has more resources to guide their students through the college application process—which is an important process in terms of long-term success in most cases.²⁸³ It is important to note that Rockville Centre is eighty-eight percent White, nine percent Hispanic, and four percent Black.²⁸⁴ However, Wyandanch is sixty-five percent Black, twenty-eight percent Hispanic, and sixteen percent White.²⁸⁵

The students themselves are not naïve or unaware of their circumstances or the reputations of the schools they attend.²⁸⁶ The student from Wyandanch High School stated, “[in] other schools, they have more opportunity that we don’t have here. We don’t have the best textbooks here. We don’t really have any AP classes here. We don’t have as many teachers. I know that [there is] more out there.”²⁸⁷ Maya Brown, a graduate of Freeport High School, wrote an article recalling her time as a student:

277. See generally Franchi, *supra* note 3 (quoting students’ observations about the social barriers they face in their schools).

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

286. See Film: “A Tale of Two Schools: Race and Education on Long Island,” ERASE RACISM, <http://www.eraseracismny.org/film-qa-tale-of-two-schools-race-and-education-on-long-islandq>.

287. *Id.*

While I attended Freeport High School, I got used to always being stared at when my choir or my dance team would go to events and competitions with other schools from the Suffolk County area. I got used to being the only group with color on our skin. I hardly saw people who looked like me. Despite the constant stares, I knew my school district was one of the best ones out there even though it's advertised as otherwise.²⁸⁸

The Town of Freeport is about forty-two percent Hispanic or Latino, twenty-nine percent Black, and twenty-four percent White.²⁸⁹ Maya Brown, in her article, mentioned taking great pride in her high school, regardless of its local reputation.²⁹⁰

These students mentioned above should not have to advocate or reason to others about the quality of their public-school education, while other students in their area benefit from the reputation of their “good” school.²⁹¹ Long Island students need protection from institutional inequality.²⁹² Minority students need equal resources and opportunities that are available to their White counterparts.²⁹³

IV. SOLUTION: CONSOLIDATION AND FUNDING

In order for New York State to provide an education free from discrimination, as promised by law, changes must be made.²⁹⁴ One way to resolve this issue is through funding.²⁹⁵ However, funding alone is not enough.²⁹⁶ Funding and monetary incentives are a way to get schools to participate in a comprehensive plan, while also making sure students

288. Maya Brown, *Growing Up “Divided,” I Always Saw Segregation on Long Island*, STATESMAN (Dec. 1, 2019), <https://www.sbstatesman.com/2019/12/01/growing-up-divided-i-always-saw-segregation-on-long-island>.

289. *Id.*

290. *Id.* (“Freeport High School has won numerous awards and my graduating class was one of the most competitive I have seen. According to NYSED, the graduation rate was 75% in 2018. I take pride in Freeport High School because it made me who I am today.”)

291. See generally Choi et al., *supra* note 33 (revealing how real estate agents label schools as “good” or “bad” in order to steer buyers to and from certain districts based on race).

292. ERASE RACISM, *supra* note 239, at 6.

293. *Id.*

294. Compare Human Rights Law, N.Y. EXEC. LAW § 291 (McKinney 2019) (declaring equality of opportunity a civil right), with *supra* Part III (examining the intense disparities in race, funding, and quality of public school education among varying Long Island districts).

295. John Hildebrand & Michael R. Ebert, *Uneven Formula? Dollars for Education Often Scarce in High-Need Districts*, NEWSDAY (Jan. 13, 2020, 4:35 PM), <https://www.newsday.com/long-island/education/school-funding-aid-inequality-1.40477913>.

296. See generally Gillian B. White, *The Data Are Damning: How Race Influences School Funding*, ATLANTIC (Sept. 30, 2015), <https://www.theatlantic.com/business/archive/2015/09/public-school-funding-and-the-role-of-race/408085> (stating that even with a new funding plan in place in Pennsylvania “some level of bias” will continue to persist).

have the resources that they need and deserve.²⁹⁷ One step further is integrating new students into schools to create a more diverse environment, either by providing more reliable means of transportation or redrawing school district lines.²⁹⁸ Finally, new state programs and incentives should be created in order to incentivize homeowners and districts to participate in the consolidation of districts.²⁹⁹

The proposed solution of this Note attempts to reconcile promoting diversity, while also maintaining appropriate funding.³⁰⁰ First, in order to increase diversity among public schools and decrease the intense fragmentation of school districts, school districts and their attendance zones, meaning the defined area set by law that entitles a student to attend a corresponding public school, can be consolidated.³⁰¹ Thus, a single school attendance zone would cover more ground and encompass a wider variety of students than before.³⁰² Second, it is important to raise revenue for underfunded school districts and areas.³⁰³ With the proposed consolidation of districts, the current system of raising funds for schools through property taxes may be the best option.³⁰⁴ Under the current tax rate, residents pay property taxes based on a percentage of their property

297. See *METCO Program Frequently Asked Questions*, MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC. (May 1, 2019), <https://www.doe.mass.edu/metco/faq.html>. The state of Massachusetts implemented a state-funded program called the Metropolitan Counsel for Education Opportunity ("METCO") in the 1960s "to provide enhanced educational opportunities for participating students, to reduce the racial isolation of suburban school districts, and to reduce segregation in city schools." *Id.* Through the METCO program, participating school districts receive funding to accept the enrollment of students who live in other cities, towns, or school districts. *Id.* This program works to alleviate the racial isolation of students in suburban school districts by allowing them to attend schools other than those in their residential district. *Id.*

298. See Potter, *supra* note 15.

299. See generally *METCO Program Frequently Asked Questions*, *supra* note 297 (noting that the desegregation program helps create equal educational opportunity for more than 3,300 students in the Boston and Springfield area in addition to the thousands of students in the districts receiving METCO funding).

300. See generally *8 Key Facts About Long Island School Districts*, *supra* note 3 (noting the correlation between racial segregation and underfunding of minority districts).

301. ERASE RACISM, *supra* note 239, at 6 ("With 125 school districts on Long Island (56 in Nassau and 69 in Suffolk), the intense fragmentation helps to perpetuate racial segregation, as well as disparities in resources.").

302. Alvin Chang, *We Can Draw School Zones to Make Classrooms Less Segregated. This is How Well Your District Does.*, VOX (Aug. 27, 2018, 8:46 AM), <https://www.vox.com/2018/1/8/16822374/school-segregation-gerrymander-map> ("But this exact strategy – gerrymandering school districts to include certain kinds of students and exclude others – can also be used to *integrate* a school, rather than segregate [it].").

303. See Garcia, *supra* note 271.

304. See generally Wesley Tharpe, *Plan to Ditch Flat Tax Is Right for Illinois*, CTR. ON BUDGET AND POL'Y PRIORITIES (Mar. 11, 2019, 12:00 PM), <https://www.cbpp.org/blog/plan-to-ditch-flat-tax-is-right-for-illinois> (noting that Illinois' switch from a flat tax to a graduated rate structure will raise more money for essential state services like education).

value, and a percentage of those property taxes goes towards funding the public school district in the area.³⁰⁵

A. Consolidation of School Districts

Consolidating school districts is the first, and most crucial, part of this solution.³⁰⁶ Creating both social and academic communities where students can thrive both in and out of the classroom will prove to be an important part of the puzzle.³⁰⁷ As previously mentioned, oftentimes on Long Island, neighboring communities have completely inverse racial compositions.³⁰⁸ By redrawing school attendance zones, and bringing students together into one academic community, public school districts will be able to achieve a racial balance that benefits students of all races.³⁰⁹ Further, allowing for larger school districts and academic communities would create a less fragmented and more cohesive Long Island community.³¹⁰

Although residential housing and public school education are enmeshed, it would be difficult to say that the answer to achieving racial balance within the school districts lies in housing alone.³¹¹ In order for Long Island to achieve a complete racial balance across the region, seventy-four percent of Black people would have to relocate.³¹² Displacing families, both minority and White, from their homes and residential communities is not the answer.³¹³ However, bringing

305. See Garcia, *supra* note 271.

306. See Chang, *supra* note 302.

307. See generally *Zoned Out: How School and Residential Zoning Limit Educational Opportunity*, *supra* note 241 (“Under the best circumstances the school community positively contributes to a child’s socialization, academic outcomes, skill development, and social mobility. Schools can provide a platform for students and their families to build bonding and bridging social capital, and they act as stabilizing institutions that provide supportive social networks for families.”).

308. See Chun, *supra* note 232.

309. See Chang, *supra* note 302. It has been documented that a student’s exposure to those different from them leads to improved cognitive skills like critical thinking and problem solving. 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> (“[T]here is extensive and solid evidence that intergroup contact and cross-racial interaction improves interracial attitudes toward an entire group and reduces prejudice.”).

310. ERASE RACISM, *supra* note 239, at 6. Long Island currently has over 120 school districts. *Id.* By restructuring school districts and amending district lines, smaller districts can come together to create more diverse communities. See *id.*

311. See Chang, *supra* note 302. (“[I]f students just go to the nearest school, it creates classrooms that are just as segregated as the underlying, socially engineered neighborhoods.”).

312. 8 *Key Facts About Long Island School Districts*, *supra* note 3.

313. Quick & Kahlenberg, *supra* note 211 (“New tools are also needed to dismantle the ills caused by gentrification and displacement. As formerly segregated neighborhoods become more

communities together through public education by adjusting school attendance zones would be a way to open doors for students that were previously closed.³¹⁴

B. Restructure School Funding

The second portion of this restructuring plan would maintain the current public school funding methods.³¹⁵ If a public school district is redrawn to encompass two or more current districts, attendance zones are likely to consist of houses of varying property values.³¹⁶ Attendance zones will also likely encompass residential homes of varying size, both in terms of the actual home and the surrounding land and location—both of which factor into property taxes.³¹⁷ This variety of property values could, in some cases, shift the burden of the cost of education (in the form of property taxes) away from smaller, lower value homes.³¹⁸ The redrawn districts allow for the property taxes from both higher-value homes and lower-value homes to contribute to funding the local schools, which, in turn, allow for children residing in both higher value homes and lower value homes to receive an equal education.³¹⁹

A consolidation of districts may present issues of pushback from the public.³²⁰ To combat such a possibility, the state government should

diverse, they do not automatically become more equitable, as rising costs often displace long-term residents and threaten cultural institutions and practices.”).

314. *See generally* Chang, *supra* note 302 (presenting graphics depicting how redrawing school district lines can help correct some of the underlying residential segregation). Underfunded schools and districts can suffer from shortages in Advanced Placement classes or high-tech courses that require expensive electronic equipment. Hildebrand & Ebert, *supra* note 295. Poorer communities in need of resources are often unable to afford them. *Id.*

315. *See* Hildebrand & Ebert, *supra* note 295.

316. *Id.* (“Since the bulk of funding regionwide comes from property taxes, districts with expensive homes or commercial real estate can generate greater amounts of tax revenue than poorer districts, even though tax rates in the wealthier communities generally are lower.”). By redrawing district lines, attendance zones will contain a mix of high value homes, lower value homes, and commercial real estate. *See id.* All will contribute taxes to fund a single public school district. *See id.* Thus, the variety of tax revenue from a variety of valued properties will allow students from higher value and lower value homes to receive an equal education. *See id.*

317. *How Property Taxes Are Calculated*, N.Y. STATE DEP’T OF TAX’N & FIN., <https://www.tax.ny.gov/pit/property/learn/proptaxcalc.htm> (last visited Apr. 23, 2022).

318. *See id.*

319. *See generally* Garcia, *supra* note 271 (summarizing the current property taxing structure on Long Island).

320. Regina Garcia Cano & Sarah Rankin, *Parent Resistance Thwarts Local School Desegregation Efforts*, ABC NEWS (Jan. 29, 2020), <https://abcnews.go.com/US/wireStory/parent-resistance-thwarts-local-school-desegregation-efforts-68616191> (“As they try to address stubborn school segregation, many of the nation’s school districts confront a familiar obstacle: resistance from affluent, well-organized and mostly White parents to changes affecting their children’s classrooms.”).

provide incentives for both the districts and the property owners to participate in this reform.³²¹ Such incentives could include tax breaks for homeowners in rezoned, consolidated districts, or additional state funding and grants to schools who work to promote diversity through consolidation.³²² Overall, in order for this plan to succeed and for students of all races to thrive in an educational setting, homeowners, local government, and school districts must work in unison to enact reform.³²³

However, any change in the status quo will inevitably be met with resistance.³²⁴ An argument can be made in favor of the current state of the public school system on Long Island.³²⁵ Students belonging to minority groups are not explicitly barred from attending predominately White schools, and vice-versa.³²⁶ Instead, factors like housing discrimination and income inequality force majority and minority groups into separate areas of the region.³²⁷ This directly affects the quality of the public schools.³²⁸ One could argue that if minority families want access to better schooling, they should relocate.³²⁹ Further, one could argue that if a family has the means to live in a school district with heavily-funded and high-quality schools, they should not be forced into participating in these integration programs.³³⁰ With these arguments in mind, this Note continues to argue for the racial integration of Long Island public schools since the New York Human Rights Law promises an education free from discrimination.³³¹

321. Richard D. Kahlenberg et al., *A Bold Agenda for School Integration*, CENTURY FOUND. (Apr. 8, 2019), <https://tcf.org/content/report/bold-agenda-school-integration>.

322. *See id.*

323. *See generally* Cano & Rankin, *supra* note 320 (demonstrating the different values and interest involved in restructuring current school districts by documenting the response to an integration plan in Virginia).

324. Cano & Rankin, *supra* note 320. Referring to an open forum held about school integration in Virginia, the superintendent of schools stated, “I heard a lot of things said during these meetings which sounded almost verbatim like the things that were said in the ‘50s and ‘60s and ‘70s to prevent the integration of schools.” *Id.*

325. *See* Peter Cunningham, *Is School Integration Necessary?*, U.S. NEWS (Aug. 15, 2016, 6:00 AM), <https://www.usnews.com/opinion/articles/2016-08-15/segregated-schools-may-not-be-that-bad>.

326. *See* *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

327. Cunningham, *supra* note 325 (“Housing patterns that drive school attendance boundaries in cities all across America are also segregated by both race and income.”).

328. *See supra* Part III.

329. *See generally* Cunningham, *supra* note 325 (noting the close tie between housing discrimination and segregation in public schools).

330. *See generally id.* (“[E]ven parents on the Upper West Side of Manhattan, a bastion of progressivism, will resist integration when it comes to their children’s education.”).

331. N.Y. EDUC. LAW § 3202 (McKinney 2019).

In the United States, and the law in general, there is often a conflict and tension between liberty and equality.³³² In some instances, a push for equality for one group results in a lack of liberty for another.³³³ The highly individualistic counterarguments to this Note cannot withstand criticism in the name of liberty.³³⁴ The importance of equality and equal opportunity must take precedence here.³³⁵ Studies show that all students benefit from a diverse classroom.³³⁶ Thus, interestingly enough, in prioritizing student equality, all students experience a more positive and effective education.³³⁷ Even those who would have access to quality education regardless of the implementation of an integration program will benefit from such a system.³³⁸

V. CONCLUSION

History and society view the Supreme Court decision in *Brown* to be a shift and a sign that times were changing.³³⁹ While this is very much true, as it gave students legal power to enforce their right to equal education, the decision also marked the beginning of a long road to change.³⁴⁰ A glaring obstacle to education reform has been the United States' and, more specifically, Long Island's history of housing discrimination and residential segregation.³⁴¹ Such an obstacle has worked to keep minority students in schools lacking resources and opportunity.³⁴² In order to promote integration and diversity throughout the public school system, steps must be taken to correct the ills of

332. See generally *Liberty vs. Equality*, INST. OF WORLD POL. (Feb. 25, 2019), <https://www.iwp.edu/articles/2019/02/25/liberty-vs-equality> (discussing the persistent tension between liberty and equality).

333. *Id.*

334. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“Today [education] is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available all on equal terms.”).

335. *Id.* at 495 (holding that segregated schools violated the Equal Protection Clause of the Fourteenth Amendment).

336. Kahlenberg et al., *supra* note 321 (showing that “[i]ntegrated classrooms encourage critical thinking, problem solving, and creativity” and “help to reduce racial achievement gaps”).

337. *Id.*

338. See *id.*

339. See Franchi, *supra* note 3 (describing *Brown* as a landmark civil rights case).

340. *Id.*

341. See *supra* Part II.

342. See *supra* Part III.

housing discrimination so that students, regardless of their race, can benefit from and thrive in an educational setting and beyond.³⁴³

The current push for racial equality in the United States came in the form of protests and demonstrations within the past few years.³⁴⁴ The COVID-19 pandemic and instances of police brutality provided the country with concrete examples of the racial inequality plaguing the United States.³⁴⁵ Even more closely related to this Note, the topic of school integration found its way onto the 2020 Democratic Party Presidential Debate stage when then-Senator Kamala Harris challenged then-former Vice President Joe Biden's past opposition to school integration.³⁴⁶ The heated exchange represented the much-needed conversation and open dialogue concerning current racial inequities within the public school system.³⁴⁷ Acknowledgment and awareness of the issue are the first steps to an effective solution.³⁴⁸

*Leyna Brostowski**

343. See generally Kahlenberg et al., *supra* note 321 (listing the ways in which all students benefit from racial integration). Some of the benefits of school integration include: higher average test scores, students are more likely to go to college, students are less likely to drop out, improvement of students' self-confidence, enhancement of leadership skills, and a more equitable access to resources. *Id.*

344. Bill Chappell, *Protesting Racism Versus Risking COVID-19: 'I Wouldn't Weigh These Crises Separately,'* NPR (June 1, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/06/01/867200259/protests-over-racism-versus-risk-of-covid-i-wouldn-t-weigh-these-crises-separate>.

345. *Id.* ("Racism is a social determinant of health. It affects the physical and mental health of blacks in the U.S. So I wouldn't weigh these crises separately.").

346. Potter, *supra* note 15. Then-Senator Kamala Harris spoke about her experiences as part of a desegregation program in Berkeley, California, when she was a student. *Id.* Harris criticized then-former Vice President Joe Biden's past opposition of school integration initiatives. *Id.* She asked him, "Do you agree today that you were wrong to oppose busing in America then?" *Id.*

347. Potter, *supra* note 15 (praising the exchange for bringing the issue of school integration to "center stage," but criticizing "the oversimplified discussion of 'busing'").

348. See *id.*

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