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SEGREGATION, EDUCATION, AND BLURRING THE LINES OF DIVISION IN ST. LOUIS

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INTRODUCTION

St. Louis is a prototypical example of post-WWII urban decline. Between 1950 and 2010, the city's population fell 63%, from 856,796¹ to 319,294.² This population decline was engendered by New Deal-era housing policies that encouraged migration out of central cities to new housing developments on the outskirts of town.³ Overall, these policies fostered the development of the modern suburb and indeed the modern American middle-class.⁴ However, the discriminatory manner in which these policies were applied ensured that metropolitan St. Louis and many others areas around the country would be typified by racially isolated housing communities and, as a result, racially isolated schools.⁵

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1. Jordan Rappaport, Fed. Res. Bank of Kansas City, *U.S. Urban Decline and Growth, 1950 to 2000*, ECON. REV., Third Quarter 2003, at 15, 35, available at <http://kansascityfed.org/publicat/econrev/Pdf/3q03rapp.pdf>.

2. *State & County QuickFacts: St. Louis city, Missouri*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/29/29510.html> (last visited Apr. 22, 2014).

3. This encouragement took three principal forms: tax incentives for the purchase of single-family homes, the provision of transportation aid that made travel easier, and the advent of federally-backed, low down payment mortgage. See, e.g., MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 16 (1997).

4. See *id.* at 16–17.

5. See, e.g., IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* 127–29 (2005) (explaining how local administration led to black veterans being mostly prevented from taking advantage of housing benefits under the GI Bill).

RACIALLY ISOLATED NEIGHBORHOODS

A recent study concluded that metropolitan St. Louis is the ninth most segregated among the fifty regions with the largest black populations.⁶ And while the rate of segregation in the region has declined over the last thirty years, 71% of either black or white residents would have to move in order to live in a residential tract that is reflective of the region's racial composition.⁷ Any proportion above 60% is considered a high level of segregation.⁸

Racial housing patterns are not the result of happenstance or organic trends. They are the result of deliberate policies, legal and otherwise, that sought to preserve the racial character of neighborhoods principally by limiting the movement of blacks.⁹ For example, until the 1970s, suburban migration was mostly unavailable to blacks, leaving them stuck in core cities that were hemorrhaging human and financial resources.¹⁰ And even after blacks began moving to the suburbs in significant numbers, they were mostly steered to overwhelmingly black neighborhoods based on a belief by real estate agents and lenders that integrating all-white neighborhoods would lower real estate values.¹¹

RACIALLY ISOLATED SCHOOLS

Housing and schooling are inextricably linked. So, segregated housing patterns lead to segregated schools. The demographics of the twenty-three metropolitan St. Louis school districts starkly illustrate this relationship.¹² In

6. JOHN R. LOGAN & BRIAN STULTS, PROJECT US2010, THE PERSISTENCE OF SEGREGATION IN THE METROPOLIS: NEW FINDINGS FROM THE 2010 CENSUS 6 (2011), available at <http://www.s4.brown.edu/us2010/Data/Report/report2.pdf>. See also KATZNELSON, *supra* note 5, at 25 (explaining the Index of Dissimilarity used as a measure of segregation in the study).

7. LOGAN & STULTS, *supra* note 6, at 6 (listing rate as 82% in 1980).

8. *Id.* at 25.

9. Aaron N. Taylor, *Reimagining Merit as Achievement*, ST. LOUIS U. SCH. L. LEGAL STUD. RES. PAPER SERIES., No. 2013-9, 2013, at 36-37, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2231516 (describing how restrictive covenants and other methods of housing discrimination were used to "preserve the racial make-up of neighborhoods and to restrict movement of black families.").

10. OLIVER & SCHAPIRO, *supra* note 3, at 18.

11. *Id.* at 18-19.

12. Reynolds Farley, *Residential Segregation and Its Implications for School Integration*, 39 L. & CONTEMP. PROBS., no.1, 1975, at 164, 164. I define metropolitan St. Louis as St. Louis City and St. Louis County, even though other Missouri counties and parts of Illinois could be technically be included as well. There is one school district in St. Louis City and 22 regular school districts in St. Louis County. Not included in my analysis is a special school district in St. Louis County that serves students with disabilities across district boundaries. In addition to St. Louis Public Schools, the following county districts are included in the analysis: Affton, Bayless, Brentwood, Clayton, Ferguson-Florissant, Hancock Place, Hazelwood, Jennings, Kirkwood,

2012, white children accounted for about 48% and black children accounted for about 43% of students attending one of the twenty-three metropolitan St. Louis school districts.¹³ In twenty-one of the districts, one of the races is overrepresented by 10% or more.¹⁴ Racial isolation is particularly acute for black students, who are overrepresented or underrepresented by 20% or more in twenty of the twenty-three metropolitan school districts.¹⁵ These trends reflect the discriminatory housing policies that have dictated the segregative character of metropolitan St. Louis, particularly the isolation of blacks.

The issue of race in public education has long been salient in Missouri. St. Louis, along with its cross-state counterpart, Kansas City, was an epicenter of the battle for desegregated schools.¹⁶ Through much of Missouri's history, great pains were taken to ensure that schools were racially isolated. The state constitution mandated the racial segregation of schoolchildren until 1976,¹⁷ more than twenty years after the provision was rendered void by the U.S. Supreme Court in *Brown v. Board of Education*.¹⁸

Post-*Brown* desegregation efforts were reluctant, resistant, and protracted.¹⁹ But, ultimately, they were deemed successful. In 1999, St. Louis Public Schools (SLPS) reached a settlement, which ended federal court supervision of its desegregation efforts.²⁰ But while schools in St. Louis are legally desegregated, they are not integrated in any practical sense. Almost sixty years after *Brown* ended segregation by law, students in St. Louis (and

Ladue, Lindbergh, Maplewood, Mehlville, Normandy, Parkway, Pattonville, Ritenour, Riverview Gardens, Rockwood, University City, Valley Park, and Webster Groves.

13. See MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., MISSOURI COMPREHENSIVE DATA SYSTEM, <http://mcds.dese.mo.gov/guidedinquiry/District%20and%20Building%20Student%20Indicators/Fall%20Enrollment.aspx> (calculations on file with author). There were a total of 159,645 students attending the 23 metropolitan St. Louis school districts, including 75,930 white students and 68,899 black students. *Id.*

14. *Id.*

15. *Id.* White students are overrepresented or underrepresented by 20% or more in 15 of the 23 districts. *Id.* (calculations by author).

16. See generally Joseph Colagiovanni, *School Desegregation in St. Louis: A Case History*, 34 ST. LOUIS B. J., no. 3, Winter 1987-88, at 28, 28-34 (describing history of school desegregation litigation in St. Louis and Kansas City).

17. U.S. COMM'N ON CIVIL RIGHTS, SCHOOL DESEGREGATION IN KIRKWOOD, MISSOURI: A STAFF REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS 2 (1977).

18. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) ("We conclude that in the field of public education the doctrine of 'separate but equal' has no place.").

19. Barri A. Orlow, *Fifty Years After Brown v. Board of Education: Resegregation of America's Public Schools*, 9 WIDENER L. SYMP. J. 183, 187-88 (2002).

20. Press Release, United States Dep't. of Justice, Settlement Reached In St. Louis Sch. Desegregation Case (Jan. 6, 1999), available at <http://www.justice.gov/opa/pr/1999/January/003cr.htm>.

Kansas City) attend schools that are segregated in fact.²¹ And with 89% of St. Louis public school students qualifying for free or reduced lunch,²² socioeconomic isolation pervades as well.

Racial and socioeconomic isolation lead to racially and socioeconomically disparate educational outcomes. As I explained in a previous writing:

[D]isparities among St. Louis area school districts have an undeniable racial character. Of the seven area districts with black student enrollments above 50%, all have free or reduced lunch rates of at least 60 percent, compared to only two of the 15 majority white districts. All of the majority black districts have graduation rates below the state average, compared to only one of the majority white districts. In five of the seven majority black districts, a lower proportion of graduates enter four-year colleges than the state average, compared to only four of the fifteen majority white districts. Moreover, in four of the majority black districts, the proportion of graduates immediately undertaking any post-secondary education is lower than the state average, compared to only one of the majority white districts.²³

A METROPOLITAN PROBLEM

Unfortunately, the suburban migration, or white-flight, that has characterized the post-WWII era, has rendered integrated schools all but impossible in St. Louis and other cities.²⁴ Recognizing this reality, many people advocated for desegregation plans that encompassed entire metropolitan areas, rather than individual cities only.²⁵ The idea was that because of their broader scopes, metropolitan plans would minimize the effects of segregative housing patterns on school demographics and also make “flight” more

21. Students of color make-up 91% of Kansas City public schools. MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., DISTRICT DEMOGRAPHIC DATA, KANSAS CITY 33 (2013), available at <http://mcds.dese.mo.gov/guidedinquiry/District%20and%20Building%20Student%20Indicators/District%20Demographic%20Data.aspx> (select “Kansas City 33” for “District”; then select “2013” for “school year”; then select “Total Enrolled” for “Charts as of”; then follow “View Report”).

22. MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., DISTRICT DEMOGRAPHIC DATA, ST. LOUIS CITY (2013), available at <http://mcds.dese.mo.gov/guidedinquiry/District%20and%20Building%20Student%20Indicators/District%20Demographic%20Data.aspx> (select “St. Louis (115115)” for “District”; then select “2013” for “school year”; then select “Total Enrolled” for “Charts as of”; then follow “View Report”).

23. Taylor, *supra* note 9, at 4 & nn.10–13.

24. ALAN MALLACH, METRO. POLICY PROGRAM, FACING THE URBAN CHALLENGE: THE FEDERAL GOVERNMENT AND AMERICA'S OLDER DISTRESSED CITIES 7 (2010).

25. Bradley W. Joondeph, *Skepticism and School Desegregation*, 76 WASH. U. L. REV. 161, 168 (1998).

difficult.²⁶ However, in 1974, the U.S. Supreme Court made it difficult for federal courts to impose such plans.²⁷

In *Milliken v. Bradley*,²⁸ the Court held that for suburban districts to be brought into a desegregation plan, it must be shown that those districts operated segregated schools or were affected by school segregation in other districts.²⁹ This decision, while seemingly plausible, failed to account for the effects of housing policies and practices that fostered suburban migration, segregated neighborhoods and, as a result, segregated schools.³⁰ The actions of individual school boards are but a small factor in the calculus of racial isolation.³¹ But *Milliken* ensured that federal judges overseeing school desegregation would be severely hamstrung in their efforts to bring about actual integration.³² The demographics of SLPS and many other districts across the country are legacies of *Milliken* and the segregated systems that preceded it.³³

A METROPOLITAN SOLUTION?

But could Missouri's student transfer law³⁴ pave the way for a metropolitan solution to segregated schools in the St. Louis area? In *Turner v. School District of Clayton*³⁵ and its subsequent iteration, *Breitenfeld v. School District of Clayton*,³⁶ the Missouri Supreme Court interpreted the law as

26. *Id.* at 163.

27. *Id.* at 164.

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

29. *Id.* at 745.

30. Joondeph, *supra* note 25, at 164–65.

31. *Id.* at 163.

32. *Id.* at 167.

33. *Id.* at 164.

34. MO. REV. STAT. § 167.131 (2000) (mandating that the board of education of each district in this state that does not maintain an accredited school pursuant to the authority of the state board of education to classify schools. . . shall pay the tuition of and provide transportation . . . for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county . . . each pupil shall be free to attend the public school of his or her choice).

35. *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 664 (Mo. 2010) (en banc). *Turner* was filed by St. Louis parents who, because of concerns about the quality of SLPS, enrolled their children in the neighboring Clayton school district after entering into tuition agreements. *Id.* at 663. When SLPS lost its accreditation, the parents sought a declaratory judgment that SLPS was required to pay the children's tuition to attend the Clayton schools. *Id.* The parents also sought reimbursement of tuition already paid. *Id.* The Missouri Supreme Court held that the "straightforward and unambiguous" language of the statute required SLPS to pay the tuition. *Id.* at 664. The court, however, denied the parents' request for reimbursement. *Id.* at 669–70.

36. *Breitenfeld v. Sch. Dist. of Clayton*, 339 S.W.3d 816, 816 (Mo. 2013). *Breitenfeld* was in essence a follow-up to *Turner* (which was re-captioned after the lead plaintiff dropped out of the case). At issue before the Missouri Supreme Court was a lower court's ruling that the school transfer law was unenforceable because it amounted to an unfunded mandate, in violation of the

allowing students in unaccredited school districts to transfer to area schools in accredited districts.³⁷ Moreover, according to the court, transfer students are free to choose their new schools, the new schools must accept them, and the unaccredited districts must pay the costs of educating the students at their new schools.³⁸ This interpretation means that Missouri has one of the most potent and empowering student transfer laws in the country.³⁹

The implications of the law and the court's interpretation of it could be vast. Currently, two virtually all-black St. Louis area school districts and the overwhelmingly black and Hispanic Kansas City school district are unaccredited.⁴⁰ And SLPS has had its own accreditation difficulty, only having regained provisional status in 2012.⁴¹ In fact, it was the unaccredited status of SLPS that spawned the *Turner* litigation and much of the doom and gloom rhetoric surrounding the transfer law.⁴²

The transfer process has already begun among St. Louis area schools,⁴³ and reactions have ranged from unfortunate to encouraging. Early in the process, the Frances Howell school district, which received 475 transfer students, the most of any district,⁴⁴ held a public meeting that was particularly inflammatory, with parents expressing concerns about how transfer students will lower test scores and introduce a subversive presence.⁴⁵ The data shows that the expressed concerns are exaggerated. Normandy reported forty-one violent incidents involving students in 2013, compared to only five in the much

state constitution, and because it was impossible to implement. *Id.* at 816–17. The Supreme Court reversed the lower court on both rulings, thus holding that the statute was enforceable. *Id.* at 817.

37. *Turner*, 318 S.W.3d at 664.

38. *Id.* at 664, 669. The Missouri Department of Elementary and Secondary Education has issued guidance that allows schools to take available classroom space into account when determining how many transfers to accept. *Id.* at 674. There may be good logic behind such guidance, but the language of the statute does not grant such allowance. *Id.* at 669.

39. Lindsay L. McClure-Hartman, *Not in My Backyard: Turner v. Clayton and the Battle over Mandatory Open Enrollment*, 32 ST. LOUIS U. PUB. L. REV. 199, 212 (2012) (providing a review of transfer laws in other states).

40. MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., ACCREDITATION CLASSIFICATION 14 (2012), available at <http://dese.mo.gov/divimprove/sia/msip/documents/qs-si-msip-accreditationclassification10162012.pdf>.

41. *Id.*

42. See, e.g., Dale Singer, *If Transfer Law is Upheld, 15,000 Student would Leave City, Study Finds*, ST. LOUIS BEACON, Dec. 1, 2011, https://www.stlbeacon.org/#!/content/14579/turner_could_mean_exodus_of_15000_students.

43. Kansas City transfers are currently on hold due to pending litigation. Joe Robertson, *Student Transfers on Hold in Kansas City*, KANSAS CITY STAR, Jun. 23, 2013, <http://www.kansas.com/2013/06/23/4308835/student-transfers-on-hold-in-kansas.html>.

44. Jessica Bock, *Student Transfers Become a Reality Today in Francis Howell*, ST. LOUIS POST-DISPATCH, Aug. 8, 2013, at A1.

45. Jessica Bock, *Fear and Distrust at Francis Howell*, ST. LOUIS POST-DISPATCH, Jul. 12, 2013, at A1.

larger Frances Howell district; however, Frances Howell reported ninety-six drug incidents compared to eleven at Normandy, and seventeen incidents involving weapons compared to six at Normandy.⁴⁶ But the meeting highlighted the issues of race and class bubbling just beneath the surface. Frances Howell, an overwhelmingly white and middle class exurb district,⁴⁷ received students from the virtually all-black and poor Normandy school district. And the fears expressed by many Frances Howell parents are reflective of the racial discord that we see in larger society.

Fortunately, the vocal protests are not the only voices being heard. Administrators and teachers from Frances Howell and other receiving districts have expressed a willingness to embrace the transfer students and integrate them into their schools.⁴⁸ Parents and students have also welcomed the transfers.⁴⁹ They recognize the importance of following the law; but more importantly, they recognize that these are children who deserve to be treated with dignity and provided the best education possible.⁵⁰ As one of the rather insightful parents said in the Frances Howell meeting, not every kid who attends a failing school is a failing student.⁵¹

Transfer students will contribute both racial and socioeconomic diversity to their new schools. They will integrate these schools in ways that *Milliken* rendered unattainable.⁵² And while the arrival of the transfer students is viewed

46. Normandy had higher rates of general violence. Frances Howell had higher rates of drugs infractions. The two districts had equal rates of offenses involving weapons. MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., DISTRICT DISCIPLINE INCIDENTS, FRANCIS HOWELL R-III & NORMANDY (2013), available at <http://mcde.dese.mo.gov/guidedinquiry/District%20and%20Building%20Student%20Indicators/District%20Discipline%20Incidents.aspx> (select "Francis Howell R-III (092088)" and "Normandy (096109)" for "District"; then select "2013" for "school year"; then select "Total Incident Rate (per 100 students)" for "Charts as of"; then follow "View Report").

47. MO. DEP'T OF ELEMENTARY & SECONDARY EDUC., DISTRICT DEMOGRAPHIC DATA, FRANCIS HOWELL R-III (2013), available at <http://mcde.dese.mo.gov/guidedinquiry/District%20and%20Building%20Student%20Indicators/District%20Demographic%20Data.aspx> (select "Francis Howell R-III" for "District"; then select "2013" for "school year"; then select "Total Enrolled" for "Charts as of"; then follow "View Report").

48. Elisa Crouch, *Districts Take Steps to Accept Transfers*, ST. LOUIS POST-DISPATCH, June 18, 2013, at A1.

49. Mehlville Schools, *Riverview Gardens Student Welcome Video*, YOUTUBE (Aug. 7, 2013), <https://www.youtube.com/watch?v=BC0UUI-hq0k>.

50. Dale Singer, *After Last Week's Emotion, Francis Howell Meeting is Calmer*, ST. LOUIS BEACON, Jul. 18, 2013, https://www.stlbeacon.org#!/content/31953/howell_board_meeting_071813.

51. Art Holliday, *Francis Howell Parents Seek Answers About Normandy Transfer Students*, KSDK: ST. LOUIS, Jul. 11, 2013, <http://www.ksdk.com/news/article/387925/3/Francis-Howell-parents-seek-answers-about-Normandy-transfer-students>.

52. John Eligon, *In Missouri, Race Complicates a Transfer to Better Schools*, N.Y. TIMES, Aug. 1, 2013, at A10.

by some with dread, the benefits of racial and socioeconomic diversity are well supported by the research literature.⁵³ Diverse learning environments foster rich learning experiences and better prepare students for interactions in an increasingly diverse society.⁵⁴

But with all of this said, the transfer law is not a fix to the segregation and inequity seen in Missouri public schools. For starters, the economic costs on the unaccredited districts appear unsustainable.⁵⁵ Fixing these problems would require a holistic solution that addresses income inequity, housing policy, and school finance—a solution that sadly seems impossible in the current polarized political environment.

The transfer law, however, may incentivize all districts to have a stake in each other's health. If so, a political consensus could form around a legislative response that takes a less punitive, metropolitan approach to fixing schools. A more strategic expansion of student transfer allowances could be a relatively easy response. A better targeted school funding scheme would be a much more difficult, but highly useful response. Whatever the response, the ultimate goal should be to blur the lines of isolation and division by incentivizing, if not mandating, "equitable regionalism"⁵⁶ and inter-district cooperation.

53. Jeffrey F. Milem, *The Educational Benefits Of Diversity: Evidence From Multiple Sectors*, in *COMPELLING INTEREST: EXAMINING THE EVIDENCE ON RACIAL DYNAMICS IN COLLEGES AND UNIVERSITIES* 126, 127, 131–32 (Mitchell J. Chang et. al. eds., 2003).

54. *Id.* at 127.

55. Elisa Crouch, *Confusion, Fear Grow Over Future of Transfers*, ST. LOUIS POST-DISPATCH, Aug. 4, 2013, at A1.

56. Erika K. Wilson, *TOWARDS A THEORY OF EQUITABLE FEDERATED REGIONALISM IN PUBLIC EDUCATION: REVERSING THE ROLE OF SCHOOL DISTRICT BOUNDARY LINES IN DISMANTLING BROWN V. BOARD OF EDUCATION* 52 (2013) (defining equitable regionalism as "form of new regionalism that responds to the exclusionary aspects of localism and decentralized governance structures—namely concentrated poverty and racial segregation").