

**“Race was a motivating factor”:  
The Rise of Re-Segregated Schools in the American States**

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## Introduction.

In the two decades after the *Brown v Board of Education* (1954) decision, analysis of school desegregation focused on federal, judicial mechanisms. However, as the federal courts withdrew from school integration efforts, state-level mechanisms to advance school desegregation gained greater relevance. The salience of state actions grew during the eight years of the Obama presidency when Republicans gained over 1,000 state legislative seats from the Democrats. As Obama left office, Republicans dominated thirty-two state legislatures and thirty-three governorships, a record high since the New Deal. A major but largely unexamined consequence of this profound shift in state-level partisan control is the resurgence of efforts to re-segregate public education.

School integration across the United States has been uneven, but many states responded to the departure of the federal courts from school integration by maintaining integrationist mechanisms. As Republicans gained partisan control during the Obama presidency, state legislatures reversed their earlier initiatives and proposed measures to erect new barriers to integration. One strategy is reviving ‘neighbourhood schools’, a code phrase for schools which reflect narrow, racially homogenous communities rather than more racially heterogeneous school districts (Delmont 2016); the term unabashedly resurrects language from the 1960s when it was used to fight the *Brown* directive to desegregate (Hackett and King 2017).

We examine new *re-segregation* policies, especially school district secession and anti-busing laws, which have passed in states where Republicans assumed control during the Obama presidency. We argue that the marked reversal in desegregation patterns and upturn in re-segregated school education is part of the Republican Party’s anti-civil rights and anti-federal strategies, dressed up in the ideological language of color-blindness. This sub-federal pattern of school re-segregation stands as one of the most successful areas for contesting civil rights for the racial color-blind policy alliance (King and Smith 2011), of which the Republican Party is a key member, and is mirrored in other areas such as tougher voting ID laws and diluted set aside employment measures (King and Smith 2016).

We begin with a brief account of the legal and historical background against which current efforts to re-segregate schools occurs before turning to four case studies of the politics of district secession and

anti-busing laws. The cases have been chosen to be illustrative of the 19 states which shifted to unified Republican legislative control during the Obama presidency, concentrated in the South and Midwest. Finally, the paper analyses how Republican partisan control at the state level drives this historically regressive trend.

## School Integration in the United States: Legal and Historical Background.

Ten years after *Brown v Board of Education* (1954), schools were nearly just as racially segregated as they had been in 1954 (Clotfelter 2007). In 1964, the average black child attended a school which was only 1.5% white (Reber 2011). The Civil Rights Act of 1964, powerful in many respects, made exceptions for public education which limited the ability of campaigners to rely on the legislation to desegregate school districts. The Act, twinned with Title I of the Elementary and Secondary Education Act of 1965, demanded that schools desegregate in order to receive federal funding. However, Section 401 of the Civil Rights Act was tepid: “Desegregation” means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but “desegregation” shall not mean the assignment of students to public schools in order to overcome racial imbalance.’ Neither the Civil Rights Act nor the Elementary and Secondary Education Act placed a requirement for localities to seek racial balance across a school district or geographical area (see Delmont 2016).

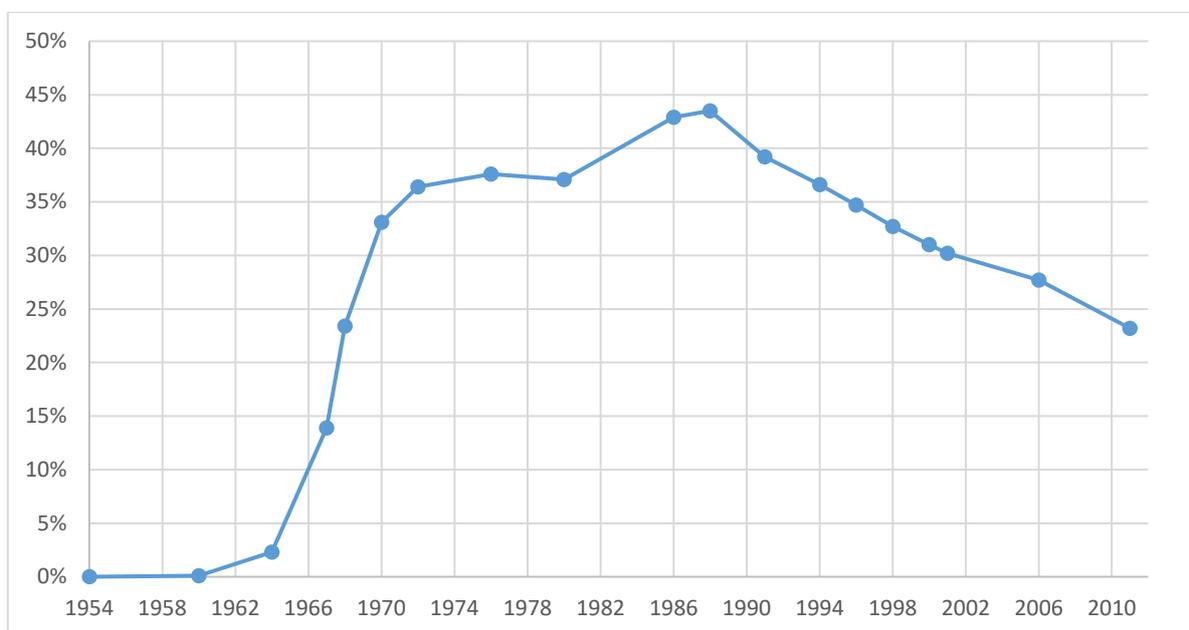
The most important action on school desegregation came not from the federal legislature but from the courts. In *Green v County School Board* (1968) and *Swann v Mecklenburg County* (1971), the Supreme Court placed burdens on school districts to move children proactively across the district in order to achieve a racial balance. Simple ‘neighbourhood’ schooling could never achieve such a racial mix, given the dense racial segregation of American housing (Charles 2003, 2006). Therefore, children would be ‘bused’ from different communities to form schools which reflected the overall racial distribution of a district.

These plans were deeply unpopular with many white Americans and were resisted, often violently. In spite of their unpopularity, the schemes which transferred children from racially homogenous

neighbourhoods to racially heterogeneous schools were largely a success. Racial segregation in US schools plummeted between the late 1960s and 1980s. By 1988, regarded by many as the high watermark of school integration in the US, nearly half of black children (43.5%) in the US attend a school which was predominantly white (see Figure 1). At this time, about 750 school districts across the United States were under court-imposed desegregation orders. These districts were continually monitored by federal judges and the Civil Rights Office of the Department of Education for measurable progress towards racial integration.

**Figure 1.**

**Proportion of Black Children in Majority-White Schools, 1954-2011.**



*Adapted from (Orfield & Frankenberg 2014a, 10)*

However, in the early 1990s, the Supreme Court began to release schools from desegregation orders. In *Board of Education of Oklahoma City v Dowell* (1991), the Supreme Court ruled that the lower court judges should dissolve desegregation plans if they believed that the district attempted a ‘good faith’ effort to desegregate, even if only partially. A year later in *Freeman v Pitts* (1992) the Supreme Court released De Kalb County School System (Georgia) from a school desegregation plan, even though the court admitted that county had not met all of the conditions of integration specified in the historic *Green* decision of 1968.

Following the *Dowell* and *Freeman* rulings, in the 1990s and 2000s, hundreds of municipalities were released from court desegregation orders. When George W Bush became president in 2001, there were 595 school districts under federal desegregation order. By the end of his presidency, there were 380 remaining. Under Bush, the Justice Department sided wherever possible with (mostly white) parents in school districts who were petitioning to be removed from their court-monitored desegregation obligations. The trend slowed under Barack Obama's presidency, with about 340 districts left under school desegregation order by the end of his presidency. A hiring freeze in the Department of Justice's Educational Opportunities Section, prompted by the congressional budgetary sequester in 2011, meant that fewer than a dozen lawyers were assigned to monitoring integration plans. So cursory and hands off federal monitoring had become by 2016 that many school districts were unaware that they remained subject to court orders

The Obama administration typically sided *against* efforts to weaken school integration, opposing plans to carve out smaller racially homogenous school districts from larger racially mixed districts. Barack Obama's education secretary John King, the son of Brooklyn's first black principal, was described as a 'forceful advocate for integrating American schools'. As the Commissioner of Education in New York State, King declared, 'Diverse schools create important educational opportunities', and introduced state funding to support school integration efforts.<sup>1</sup> Under King's tenure as US Education Secretary, the Obama administration proposed a major \$120 million grant initiative to school districts which implemented strategies to improve the racial and socio-economic diversity of their schools.<sup>2</sup> This 'Stronger Together' initiative was blocked by the Republican-controlled federal Congress.

The Trump administration has not sided with civil rights campaigners to keep school districts under continued court supervision, nor has President Trump sustained Obama-era integration policies. The Trump administration has reversed the Obama administration's policy that districts be required to set

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<sup>1</sup> <http://www.nysed.gov/news/2015/nys-schools-receive-grants-promote-socioeconomic-integration>

<sup>2</sup> <https://www.ed.gov/news/press-releases/president-obamas-2017-budget-seeks-expand-educational-opportunity-all-students>

out a plan to address lingering racial disparities before being removed from a court order.

Additionally, Trump's education secretary Betsy DeVos ended a \$12 million Obama-era grant programme, 'Opening Doors, Expanding Opportunities', which would have offered federal funding to school districts which actively took steps to increase school diversity. Twenty-six school districts had indicated their intention to apply before the programme was brought to a premature end.<sup>3</sup>

### *The Re-segregation Tendency.*

Court-released districts re-segregate. Within ten years of being released, the school districts on average lose about 60% of the gains in integration which they had achieved while under court order. As a consequence, American schools have returned to levels of racial segregation which approach those of the 1950s and 1960s. In 1988, there were 2,762 schools which were less than 1% white in the United States; in 2011, the number of schools with virtually no white students had risen to 6,727 (Reardon et al 2014). Nearly 3 in 5 American schools are at least 90% mono-racial. Across the country, American children attend schools which look as if *Brown v Board of Education* never happened (Orfield & Frankenberg 2014b).

Equality initiatives suffered further in the *Parents Involved in Community Schools v Seattle* (2007) decision that school systems could not use the race of a pupil in determining school placement for the purposes of achieving racial balance, even when such measures were voluntary and supported by district parents. Chief Justice John Roberts likened school *integration* plans to a form of a racial *discrimination*, writing 'remedying past societal discrimination does not justify race-conscious government action.' He condemned the 'extreme measure of relying on race in [school] assignments'. Roberts notoriously opined, 'The way to stop discrimination on the basis of race is to stop discriminating on the basis of race' (*Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701 (2007)).

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<sup>3</sup> <https://www2.ed.gov/programs/odeo/odeolistofapp2017.pdf>

The courts' withdrawal from school desegregation makes the role of elected officials ever more important, especially at the state level. But, many states have elected legislators hostile to policies aimed at reversing racial segregation in schools. These new elected officials, who are largely Republicans, have revived practices which make racial mixing across school districts arduous. In particular, these officials have sought to eliminate busing where it continues to exist and to support school district secession. We view anti-busing and pro-secession strategies as two sides of the same coin. Because Supreme Court rulings have forbidden forced busing across school district lines, school integration efforts must operate within school district boundaries. The ability of localities to evade integration requirements simply by erecting new district boundaries incentivises areas resistant to busing to create their own districts. School district secession eliminates effective busing, and school district consolidation is ineffectual without robust busing measures. They are intimately connected. These strategies mark an alarming retrogression in school integration and diversity practices.

## School District Secession

School district secession refers to the practice of communities deciding (usually after a vote) to remove themselves from a wider school district in order to form a smaller independent school district. If school districts secede, they wall off bastions of wealth, leaving behind districts with poorer students and with poorer families to fund the education of those students. School spending rests on local taxation and property values which vary dramatically between districts. School secessions not only limit financial resources. They also restrict social capital by preventing working-class students from being educated alongside middle-class students, a division normally overlapping with racial variations. According to Orfield and Lee (2007), the average black and Latino students attend schools in which three-fifths of students are poor, whereas the average white child attends a school in which one-third of children are poor.

Smaller school districts are expensive. Ulrich Boser has estimated that the United States loses as much as \$1 billion per year operating needlessly small, non-remote school districts (Boser 2013, 11). Although school district secessions usually demand new taxes to fund the administrative costs of running a new district, voters happily pay. On occasion, the costs of higher taxes are offset by the

assets which the community gains (e.g., school infrastructure) or the burdens from which it relieves itself (e.g., costly pension plans). Furthermore, some supporters argue that residents are more willing to pay for higher taxes if they feel that their money is being spent on ‘their’ own children, rather than on unknown children in other parts of the school district. A study in Connecticut found that homeowners were willing to pay over \$7,000 more for a house if it was located near a less racially diverse school (Siegel-Hawley 2016, 42).

School secession and the logic of capital accumulation also go hand in hand. When school districts merge to create a more diverse, larger district, house prices in low-income census tracts have been shown to increase but house prices in high-income census tracts decrease (Duncombe et al. 2016). The trend with school district secessions is the reverse. Property values in the newly created, smaller, whiter district tends to increase because new residents are drawn to the improved school system (Kane et al 2006). Siegel-Hawley et al (2018) argue that ‘good’ public schools, for which racial composition serves as a cue, are seen as key community assets. Buendía and Humbert-Fisk (2015) show that local political leaders fight to gain a competitive advantage over neighbouring communities through their public school systems.

After seceding from the predominantly black Shelby County school district in south-western Tennessee, the town manager of the new Collierville school district (89.9% white) commented, “The housing market in Collierville is going nuts” (Bauman 2017). An Alabama school secession feasibility study predicted that property values would increase 10% after school secession based on the influx of new residents seeking an independent school system.<sup>4</sup> The beneficiaries of school district secession are those who already possess wealth.

#### *The Milliken effect.*

School district secessions have been incentivised in US law for over four decades. The Supreme Court’s 1974 decision in *Milliken v Bradley* impaired school integration more than any

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<sup>4</sup><http://images.pcmac.org/Uploads/GardendaleCS/GardendaleCS/Sites/DocumentsCategories/Documents/FAQs-Gardendale-revamped%282%29.pdf>

other. In 1970, the NAACP sued the state of Michigan over the racial imbalance in Detroit's schools, maintaining that the imbalance violated *Brown v Board of Education*. White flight to nearby suburbs ended Detroit's ability to integrate its schools using the city's student population alone. Therefore, the NAACP argued that the state of Michigan should bus students from a larger catchment area, notably the white school districts in the Detroit suburbs. A lower-court judge agreed. The order was met with a wave of violence, and the Ku Klux Klan bombed ten school buses in the suburb of Pontiac to prevent them from being used to achieve racial integration (Stevens 1973).

The lower court decision was reversed in a 5-4 decision by the Supreme Court in 1974 in *Milliken*; This decision killed Detroit's ability to desegregate its schools because there were too few white pupils living in the city. School district boundaries could be used to stop school integration in its tracks. Dissenting to *Milliken*, Justice Thurgood Marshall warned, "I cannot subscribe to this emasculation of our constitutional guarantee of equal protection of the laws... Under a Detroit-only decree, Detroit's schools will clearly remain racially identifiable in comparison with neighboring schools in the metropolitan community... This perception will only be increased when whites react to a Detroit-only decree by fleeing to the suburbs to avoid integration." Marshall's predictions were prescient and vindicated. When *Milliken* was decided, about one-third of students in the Detroit Public School system were white. The court's decision further incentivised whites to move to smaller suburban school districts. Today a mere 2% of students in Detroit public schools are white.

*The logic of district secession.*

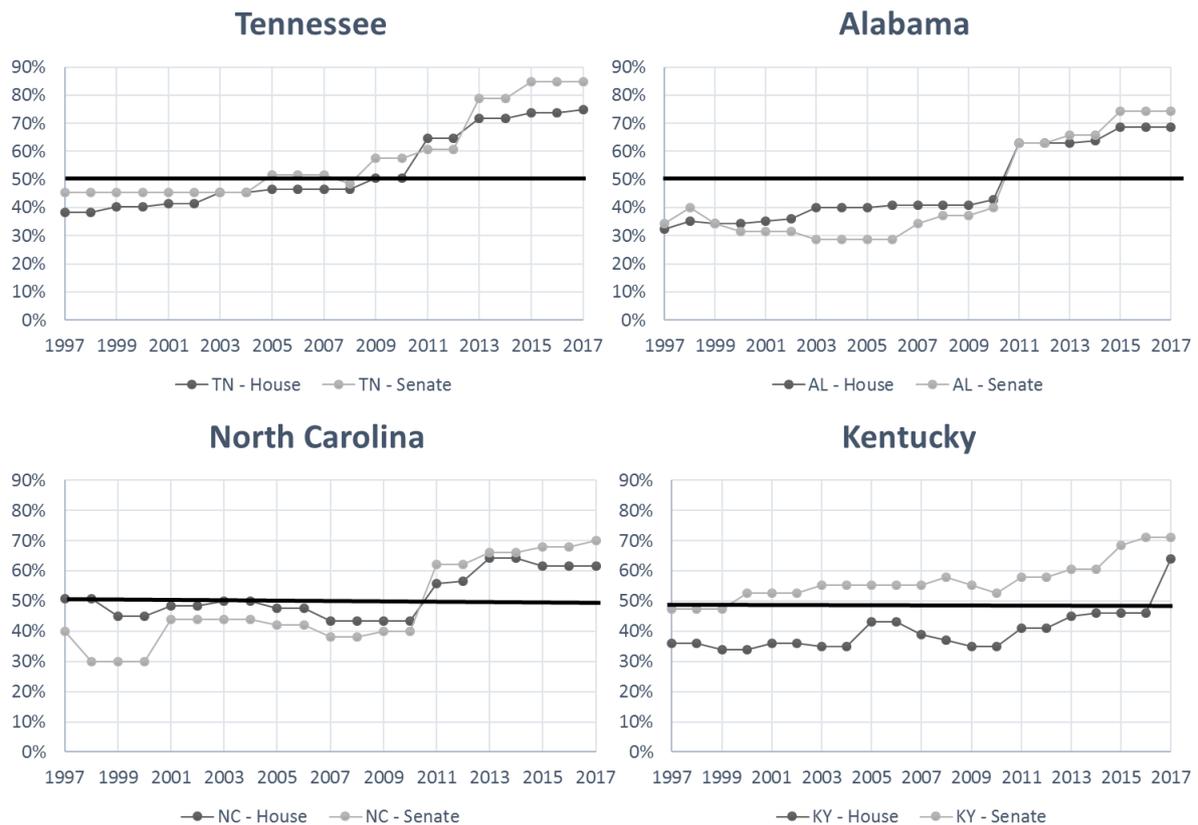
Importantly, *Milliken* provides opponents of school integration with a straightforward tool to avoid desegregation plans. If a community wishes to avoid participating in a desegregation plan, then it simply needs to remove itself from the existing school district and form a new district of its own. This is the logic which the school secession movement follows. After *Green* (1968) within-district segregation decreased, but between-district segregation increased (Coleman 1975). *Milliken* entrenched these divisions and incentivised the breaking up of school districts by throwing up impenetrable walls between school districts for the purposes of inter-district integration.

School district secessions are difficult to overturn through court action. To prove a violation of the Fourteenth Amendment's equal protection clause, plaintiffs must show racial intent in the act of seceding, a high threshold to satisfy.

District secession is a state power. Republican lawmakers in state legislatures have turned to school district secessions as a way of insulating white communities from larger school districts dominated by ethnic minorities. In the following four case studies, we examine significant efforts to reverse integration in Tennessee, Alabama, North Carolina, and Kentucky. These case studies have been selected because they experienced some of the most dramatic partisan change (from Democratic to Republican control) during the Obama presidency (Figure 2). At the time of Obama's election in 2008, all of the legislative chambers in these states, with the exception of the Kentucky state senate, were in Democratic hands. By the end of Obama's presidency, the Republicans controlled at least 60% of the seats in all of these chambers. In some cases, Republicans controlled as many as 70 or 80 percent of the seats in the legislature. This high level of Republican control has not been seen in these states since the Reconstruction period when the Republican Party was the champion of civil rights protections and supported by large African American majorities.

**Figure 2.**

**Proportion of Republican state legislators, 1997-2017**



Source: Tennessee, Alabama, North Carolina, and Kentucky Secretaries of State

The states were also chosen due to the configuration of the school districts. As Siegel-Hawley et al (2018) note, school districts in the South historically tended to share the same boundaries as county governments. In contrast, districts in the North have often been limited to much tighter town-level boundaries. This means that, ironically, the South was best placed to benefit from aggressive intra-district busing programmes. These programmes, while most effective in the South, are also most vulnerable to district secession plans.

### Case Study 1: Shelby County, Tennessee.

The school secession movement in Tennessee has centred on its largest city Memphis and surrounding suburbs. At the beginning of the 1970s, the Memphis City School System was the tenth largest in the United States (Branston 2011). In 1970, Memphis was ordered by federal courts to bus children to desegregate the city's schools (*Northcross v Board of Education* 397 U.S. 232 (1970)). Whites responded, consistent with Justice Thurgood Marshall's prognosis, by fleeing from the city to surrounding suburban municipalities. Both Memphis and these suburban communities are

geographically situated in Shelby County, but the county's schools were divided into two districts: the urban Memphis City School District and the suburban Shelby County School District.

From the 1970s, Memphis City School District lost its white population, a process made possible by decisions like *Milliken v Bradley*. By 2010, over 92% of the students in Memphis City School District were non-white. In contrast, Shelby County School District was majority white, with median family incomes triple that of Memphis.

In 1982, the Democratic-controlled Tennessee state legislature banned the formation of new school districts: 'No additional special school districts may be created after April 30, 1982, but existing operating districts may merge or consolidate.' Crucially, the law allowed school district consolidations, which refers to the merger of racially monolithic school districts into a single, larger, and more racially diverse district. District consolidation has been an important tool of desegregation (Dorosin et al 2011, 37).

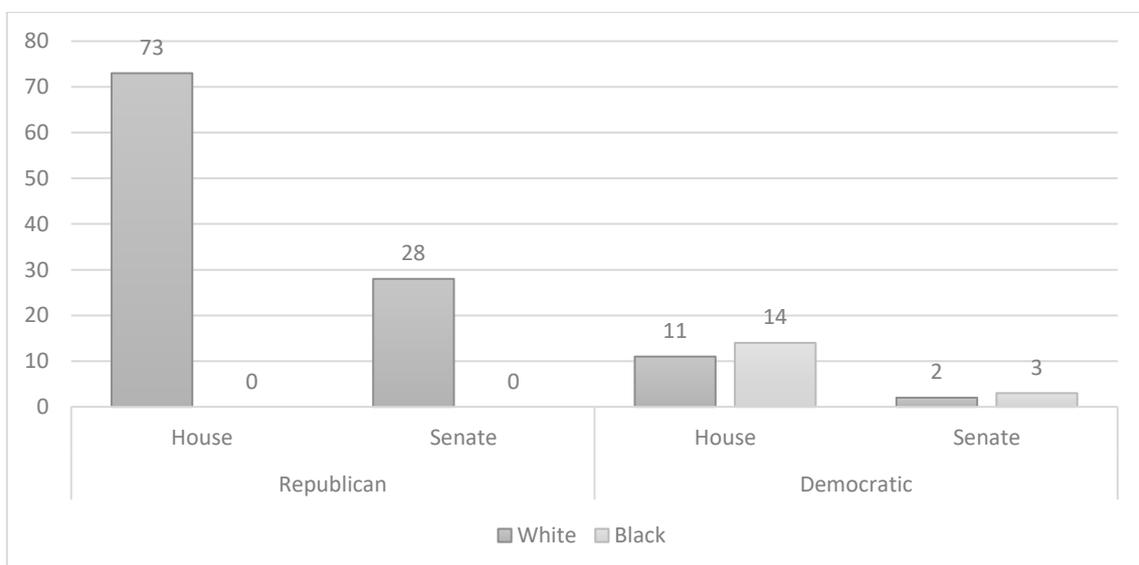
Faced with a fiscal and educational crisis, the Memphis City School Board voted in 2010 to dissolve its school district and unilaterally join with the rest of Shelby County, creating one school district for the entire county. The timing of this merger is important, as it highlights the intense importance of partisan control over state legislatures for school integration policies. In November 2010, the Republicans increased their one-seat majority in the state House of Representatives to a majority of 29. The Memphis City School Board's decision to merge with the rest of Shelby County was taken the following month, shortly before the new legislature was sworn in.

The merger of Memphis and Shelby County districts prompted a backlash from white, suburban residents. Many of the predominantly white suburbs around Memphis initiated efforts to remove themselves from the consolidated district; however, the 1982 ban on school district secessions stymied these efforts. Wanda Rushing (2017) shows that since the 1980s Shelby County had regularly pleaded with the Democratic legislature to grant them 'special status' protection from a potential merger with Memphis City, but they were continually rebuffed.

After Republicans secured dominant control of the state legislature for the first time since the nineteenth century, the 1982 ban was under threat. By the time Obama demitted office, 74% of members in the state House of Representatives and 85% of state senators were Republicans, a dramatic change from the 1990s and 2000s when the legislature was closely divided, with a consistent Democratic edge. Party and race align closely. While 100% of the Republicans in the Tennessee state legislature are white, 60% of Democratic state senators and 56% of Democratic state representatives are African American (Figure 3).

**Figure 3.**

**Partisan composition of Tennessee state legislature (party and race)**



Championed by Republican legislators from the white suburbs of Memphis, the legislature voted in 2013 to repeal the 1982 ban on school district secessions. The Norris-Todd Act permitted any municipality with at least 1,500 students to create its own school district. The proposed district only needs approval from those living in the proposed new district boundaries, with no consultation of those in the district left behind. Unlike some states, Tennessee does not require that municipalities provide a report on the racial impact of secession.

In a remarkable transformation Tennessee has moved from having a total ban on school district secessions to being a state with one of the most permissive school secession legal frameworks in the country. In 2014, only four years after Memphis joined Shelby County School District, six

predominantly white suburban towns seceded from Shelby County School District, forming their own school districts (Table 1). Nearly 31,000 students were involved in the exodus.

**Table 1.**

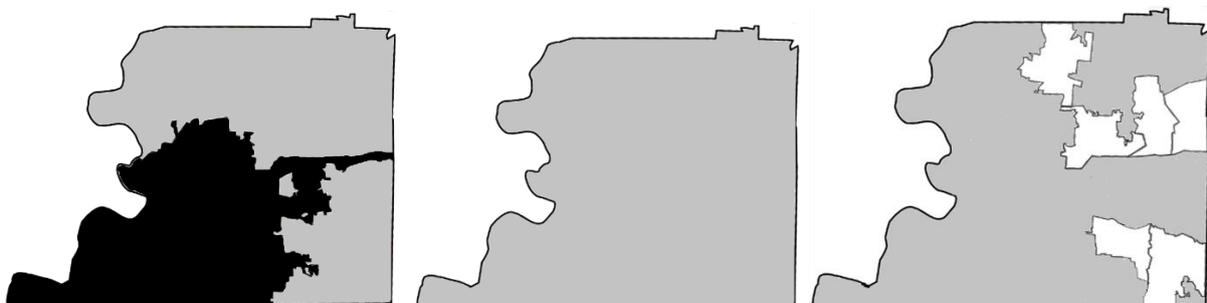
**Demographics of Shelby County School District and the six seceding districts.**

District	Student poverty rate	% white	Median property value
<b>Shelby County</b>	33.5%	8.2%	\$130,800
<b>Arlington</b>	9.2%	74.7%	\$214,700
<b>Bartlett</b>	10.9%	62.7%	\$171,300
<b>Collierville</b>	8.0%	67.1%	\$272,800
<b>Germantown</b>	6.6%	73.4%	\$288,500
<b>Lakeland</b>	10.8%	79.3%	\$236,800
<b>Millington</b>	19.7%	46.8%	\$111,900

Shelby County School District increasingly resembles the old Memphis City School District (Figure 4), returning Memphis to the same problems it faced before consolidation. Worse, the remaining Shelby County School District is additionally weighed down with the cost of medical and insurance benefits for retired teachers and other employees. When the six new school districts left Shelby County Schools, the old district retained a \$300 million liability on top of the \$1 billion which Memphis City School District had previously undertaken (Kebede 2017). As a result of the secession, per-pupil funding to Shelby County Schools decreased while its post-employment benefits liability increased. In 2014, Shelby County Schools slashed its budget, closed schools, and made hundreds of teachers and school employees redundant.

**Figure 4.**

**School districts in Shelby County, Tennessee.**



*Map 1: Shelby County School District (grey), Memphis City School District (black), until 2010*

*Map 2: Shelby County School District, 2010-2014*

*Map 3: Shelby County School District (grey), New independent school districts (white), since 2014*

Other towns in Tennessee have cited the Shelby County secession approvingly. In 2017 Signal Mountain and Red Bank, just outside Chattanooga in East Tennessee, announced that they would investigate creating their own districts. Signal Mountain has a 0% child poverty rating, compared to the 21% child poverty rating of the wider Hamilton County School District to which it currently belongs.

### Case Study 2: Jefferson County, Alabama.

School district secession has been at the heart of resistance to racial integration in Alabama public schools. Soon after *Brown*, the Alabama state legislature passed a law enabling jurisdictions to withdraw from school districts to form new ones as a strategy to avoid integration. In 1959, the all-white, prosperous suburb of Mountain Brook withdrew from the racially mixed Jefferson County School District. Mountain Brook serves a student population which is 98% white, 1% Asian, 1% Hispanic, and 0% African American, while being situated in a county which overall is 53% white, 42% black, 4% Hispanic, and 1% Asian. Mountain Brook's schools are consistently rated as the best in Alabama. Not a single student in the Mountain Brook school system is poor enough to qualify for reduced-cost school meals, compared to 47% of students qualifying in Jefferson County (Ray 2009). Mountain Brook High School is rated as one of the top 100 secondary schools in the United States. Its students have become National Merit Scholars and Rhodes Scholars, and 98% of students go to university.

By 1968, fourteen years after *Brown v Board*, only 3% of schools in Jefferson County had integrated. However, the *Green* (1968) decision compelled school districts to act more aggressively in integrating their systems. The Court argued that “the burden on a school board today is to come forward with a plan that promises realistically to work and promises realistically to work now.” Lower-level federal courts instructed school districts to produce desegregation plans which moved children from their racially homogenous communities to other parts of the school district. Supreme Court Justice William Brennan wrote in a private note to Chief Justice Earl Warren, “when this opinion is handed down, the traffic light [for integration] will have changed from *Brown* to *Green*. Amen!” (quoted in Tushnet 1997, 69).

In response and emulating the Mountain Brook secession, other majority-white communities in Alabama sought to separate and form their own school districts. But, in 1971, the US District Court in Northern Alabama blocked plans by the mostly-white town of Pleasant Grove to secede from the Jefferson County school system. The decision, *Stout v Jefferson County Board of Education*, placed the entire county school system under a court desegregation order, which remains in place today. The Supreme Court confirmed the following year that judges must deny the formation of new school districts if these districts would undermine efforts to desegregate, recognizing that school district secession initiatives were one of a variety of means used by municipalities to avoid integration. Yet, the racial roots of school secession are masked today by a race-neutral rebranding.

**Table 2**

**Jefferson County School District and pro-secession communities in the county.**

<b>District</b>	<b>Child poverty rate</b>	<b>% white</b>	<b>Median property value</b>
<b>Jefferson County School District</b>	22%	45%	\$112,000
<b>Gardendale*</b>	7%	88%	\$151,000
<b>Pleasant Grove<sup>o</sup></b>	4%	85%	\$151,000
<b>Mountain Brook<sup>†</sup></b>	2%	97%	\$609,000

\*seeking secession

<sup>o</sup>blocked from seceding in 1971

<sup>†</sup>seceded in 1959

In recent years, the residents of Gardendale in Jefferson County have revived efforts to secede from the county school district. Gardendale's four schools range from 74.7% to 94.3% white, compared to the county overall being 53% white. Students from predominantly African American communities outside of Gardendale are currently bused into Gardendale schools to achieve a greater racial balance. A report by the US Justice Department found that black children at Gardendale High School were more likely to be enrolled in Advance Placement courses than those in predominantly black high schools in the area. One quarter of black students at Gardendale High School (75% white) take at least one AP course, compared to just 8% of black students at Fultondale High School (48% white) or Center Point High School (2% white).

**Table 3.****Racial demographics of schools in Gardendale, Alabama.**

<b>School</b>	<b>% black</b>	<b>% white</b>
<b>Gardendale Elementary</b>	20.1%	74.7%
<b>Snow Rogers Elementary</b>	4.2%	94.3%
<b>Bragg Middle</b>	20.5%	76.8%
<b>Gardendale High</b>	22.6%	75.0%

Gardendale secession campaigners made it clear that they did not want their tax revenues spent on children who were not from Gardendale. Stan Hogan, the mayor of Gardendale, told the *Washington Post* that the secession drive was about ‘keeping our tax dollars here with our kids, rather than sharing them with kids all over Jefferson County’ (Brown 2016).

Gardendale secessionists faced barriers from the federal court and from the Obama administration. Attorney General Loretta Lynch’s Justice Department opposed Gardendale leaving Jefferson County, filing a brief calling for courts to block the separation. The Obama administration displaced the previous Bush administration’s non-engagement with secessionist bids.

Gardendale also had to seek permission from the federal courts because the 1971 *Stout* desegregation ruling was still in effect. The Gardendale case study offers rare insight into the motives of secession because Jefferson County school district is one of the few school districts in the United States which remains under a federal desegregation order.

The Northern District of Alabama federal judge overseeing the case was Madeline Haikala, an Obama appointee. During a hearing, she asked the Gardendale secession supporters if they were familiar with *Brown v Board of Education*. Receiving an equivocal reply, in a dramatic move, Haikala adjourned and returned to the bench to read directly from the 1954 decision.

During the trial, Haikala scrutinised the public statements of the secession organisers, including campaign literature and posts on social media. For example, one of the secessionists had written, “A look around at our community sporting events, our churches are great snapshots of our community...A look into our schools, and you’ll see something totally different... We are using buses

to transport non-residents into our schools from as far away as Center Point [62.9% African American]. There's your redistribution of wealth." Haikala concluded that the organisers were intent on keeping children from the poorer, predominantly black parts of Jefferson County out of the schools which educated students from the white, prosperous Gardendale. She added, "The messages of inferiority in the record in this case assail the dignity of black school children" (*Stout v Jefferson City Board of Education*, No. 2:1965cv00396 - Document 1141 (N.D. Ala. 2017)).

Haikala's decision unmasked the racial motives in the secession plan:

'the Court finds that **race was a motivating factor in Gardendale's decision to separate from the Jefferson County public school system**. More specifically, a desire to control the racial demographics of the four public schools in the City of Gardendale and the racial demographics of the city itself motivated the grassroots effort to separate and to eliminate from the Gardendale school zone black students whom Jefferson County transports to Gardendale schools under the terms of the desegregation order'.

Haikala's compromise solution permitted the creation of a new Gardendale school district but only for primary education in the first instance. She would monitor the progress at the primary school for three years before concluding whether Gardendale would be permitted full autonomy. The city was also required to appoint 'at least one African-American resident' to its school board, something which during the trial the town had been accused of deliberately avoiding.

### Case Study 3: Wake County and Mecklenburg County, North Carolina.

During the decade after the *Brown* decision, racial segregation in North Carolina remained unchanged, often abetted by school secessions. From the late 1960s, North Carolina schools were compelled to desegregate. Mecklenburg County, home to North Carolina's largest city Charlotte, was at the centre of a landmark busing dispute in *Swann v Charlotte-Mecklenburg Board of Education* (1971). The Supreme Court affirmed that busing was a constitutional measure to achieve integration, appropriate even when racial imbalance could not be traced to intentional racial discrimination. Rapidly, Charlotte became celebrated as 'the city that made desegregation work' (Street 2004, 29).

Along with Wake County, home to the state capital Raleigh, North Carolina is one of the most successful examples of using busing to achieve school integration across large and diverse school districts.

To avoid integration, some counties sought to break up into smaller units. One major site of contestation was Halifax County, where the school system was 77% African American and 22% white, but whose district operated seventeen racially monolithic schools (14 black-only and 3 white-only schools). In 1968, the US Department of Justice instructed the county to use busing to increase racial heterogeneity in the district's schools. The three-quarters white community of Scotland Neck objected and sought its own school district, independent from the Halifax County School District. Controlled by segregationist Democrats, the North Carolina legislature approved Scotland Neck's request in 1969. Scotland Neck's departure rendered Halifax County District's student population 82% African American (*The Evening Independent*, 1971).

African American residents in Halifax County sued in federal court. The District Court found that the secession had "the effect of creating a refuge for white students of the Halifax County School system." The Supreme Court agreed, ruling against the school district secession in June 1972. Justice Potter Stewart's opinion recognised, "the Scotland Neck school was to be the 'white school' of the area, while the other [Halifax County] District schools would remain 'Negro schools'." Chief Justice Warren Burger wrote in a concurring opinion, "I agree that the creation of a separate school system in Scotland Neck would tend to undermine desegregation efforts in Halifax County" (*US v Scotland Neck City Board of Education*, 407 US 484 (1972)).

A combination of federal judicial oversight and shifting attitudes in the Democratic-controlled state legislature obstructed attempts at school district secession in the ensuing decades. From the late-1960s until the mid-1990s, the majority of North Carolina's urban 'city districts' combined with rural 'county districts' to form single countywide school systems. A report for the University of North Carolina's Center for Civil Rights concludes that the merger of racially isolated districts into larger diverse districts 'resulted in improved quality and efficiency for the whole system' (Dorosin et al

2011, 37). The authors argue that the consolidation of the Wake County school district, which includes the state capital Raleigh, since 1976 has ‘led to the creation of high quality diverse schools, recruitment of world-class teachers and administrators, exponential growth...and economic development which has benefited the entire county’ (Ibid., 46). When campaigners have attempted to break up Wake County into smaller racially homogenous districts, as pro-secessionists attempted in 2010, they were blocked by the Democratic-controlled state legislature.

Legislative opposition crumbled after the November 2010 Republican Party victory in both chambers of the North Carolina state legislature, the first Republican majority since the nineteenth century, in 2012, the Republicans won over three-fifths of seats in both the state House and state Senate, which only two years earlier had been in Democratic control. Republicans have maintained and expanded this ‘veto proof’ supermajority since 2012.

Democrat Roy Cooper’s narrow victory in the November 2016 gubernatorial election (by a majority of 0.2%) has had little consequence because Republican legislators can use their supermajority to pass laws without the governor’s approval. Furthermore, shortly before Cooper was sworn into office in January 2017, the state legislature voted to strip the governor of substantial powers, including the governor’s power to appoint members to the North Carolina Board of Education, the North Carolina Charter Schools Advisory Board, and the University of North Carolina’s Board of Trustees.<sup>5</sup> Cooper’s defeated opponent, the lame-duck Republican governor Pat McCrory, signed the power-stripping bill into law days before leaving office.

In July 2017, the Republican legislature used its supermajority to pass a law promoting school district secession, in spite of Governor Cooper’s veto. The HB704 law is ‘an effort to lay the groundwork for breaking up the Wake County and Charlotte-Mecklenburg school systems’ (Hui 2017). HB704 created the innocuously named Joint Legislative Study Committee on the Division of Local School Administrative Units. The committee’s members are appointed by the Republican leadership of the state House and Senate, at whose ‘pleasure’ members serve. The committee has been tasked to make

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<sup>5</sup> House Bill 17 / S.L. 2016-126 (2016 Fourth Extra Session), Signed 19 December 2016.

recommendations on ‘enacting legislation to permit local school administrative units that were merged from separate units to be divided into separate local units once again’ and ‘ways in which the division of a local school administrative district could be achieved’.

**Table 3.**

**North Carolina’s Joint Legislative Study Committee on the Division of Local School Administrative Units (8 Republicans, 2 Democrats)**

<b>Member</b>	<b>Chamber</b>	<b>Party</b>	<b>Race</b>
<b>William Brawley (co-chair)</b>	House	Republican	White
<b>David Curtis (co-chair)</b>	Senate	Republican	White
<b>Rosa Gill</b>	House	Democrat	African American
<b>Jonathan Jordan</b>	House	Republican	White
<b>Chris Malone</b>	House	Republican	White
<b>Sarah Stevens</b>	House	Republican	White
<b>Deanna Ballard</b>	Senate	Republican	White
<b>Chad Barefoot</b>	Senate	Republican	White
<b>Louis Pate</b>	Senate	Republican	White
<b>Joyce Waddell</b>	Senate	Democrat	African American

*Source: North Carolina General Assembly (HB704)*

The committee consists of eight Republicans, including both co-chairs, and only two Democrats. Party and race overlap, with all white Republican members and two Democratic members who are African American (Table 3). The committee’s report, delivered in April 2018, concluded that smaller school size would improve school performance. While the report was more ambiguous about school secession that some commentators expected, some political actors saw the report as laying the groundwork for North Carolina to emulate states like Tennessee in the liberalisation of school secession requirements. Indeed, committee chairman William Brawley declared upon the report’s release, ‘Conventional wisdom is you can’t break a school system apart. Well, we actually have the data in our report that you can’. Kimberly Reynolds, the executive director of the North Carolina Democratic Party, condemned the report as ‘a racist plan to resegregate our schools, plain and simple’.<sup>6</sup>

<sup>6</sup> <http://wunc.org/post/report-doesnt-judge-whether-splitting-districts-makes-sense#stream/0>

North Carolina's school system could soon have new districts which mimic the form and purpose of the anti-black school district in the attempted secessions of the 1960s and 1970s. It is a graphic example of the political significance of Republican control of state legislatures in the revival of racially segregated schools in America.

#### Case Study 4: Jefferson County, Kentucky.

African American children in Kentucky attend some of the most integrated schools in the United States. Nearly half of the state's black population live in Jefferson County whose school district was formed under a school consolidation order in the 1970s. In the early 1970s, many whites moved from urban Louisville School District (90% black in 1974) to the suburban Jefferson County School District (94.7% white) to avoid desegregation (Botkins 2001).

Responding to civil rights groups (the Kentucky Commission on Human Rights, the Kentucky Civil Liberties Union, the NAACP, and the Louisville Legal Aid Society) which had sued the districts in federal court, the Kentucky State Board of Education ordered the merger of Louisville and Jefferson County school districts in 1975. Federal judge James Gordon then imposed a busing program across the new county-wide district for 23,000 children, with African American pupils riding to the suburbs and white children journeying to the inner city. Gordon insisted that no school in the district could be more than 50% African American, nor could a school be more than 85% white.

White resistance to the desegregation plan caused Judge Gordon to order armed guards to ride on the school buses with children; he made interference with the buses a federal offence. Gordon even barred the use of radio stations to organise anti-busing protests (Navarez 1990). Governor Harvey Sloane, a Democrat who would later challenge Mitch McConnell for the US Senate, called in 800 National Guard troops to enforce the orders. In the ensuing riots, one national guardsman was permanently blinded (K'Meyer 2013).

But the experience of busing worked. In 1972, 87% of suburban residents opposed the busing order, but by 2011 89% of Jefferson County residents agreed with the school district guidelines that 'students learn with students from different races and economic backgrounds'. The school district

received an 87% approval rating (Orfield & Frankenberg 2011, 8). Today, the Jefferson County School district is, by far, the largest in Kentucky with over 101,000 students in 155 institutions. Nearly half (49%) of students are white; 37% are African American; and 9% are Latino. Fewer than 15% of students in the district attend a school which is more than 75% mono-racial.

*Resisting re-segregation?*

In 2000, the court ended its supervision of Jefferson County, yet it remains one of the most integrated systems in the United States. One reason is that the school district boundaries were drawn actively to include greater diversity, whereas many other districts are drawn to achieve the obverse (Richards 2014).

Consolidation, rather than secession, ensured that this county maintained high numbers of students, racial and economic diversity, and a sufficient tax base. Unlike Detroit, which lost much of its population to the suburbs as a result of the *Milliken* decision, the incorporation of the suburban communities around Louisville in the same school district has dis-incentivised white flight, keeping home values and property taxes stable. Jefferson County's busing programme has also *incentivised* housing integration. A neighbourhood can gain exemption from the busing programme if its housing stock becomes sufficiently racially integrated.

Republicans in the Kentucky state legislature, however, have sought to end cross-county busing. Unlike the other states in this study, Democrats retained control of the lower house of the Kentucky state legislature through the 2010, 2012, and 2014 elections. In 2016 presidential candidate Hillary Clinton won the lowest share of the vote in Kentucky (32.7%) in the history of the Democratic Party, and Republicans defeated enough Democratic legislators to end 95 years of Democratic control in the Kentucky House of Representatives.

Within a month of his party taking control, Republican state representative Kevin Bratcher proposed a bill to terminate Jefferson County's successful busing programme. Bratcher represents Fern Creek, an 87.9% white community in Louisville. His 'Neighborhood Schools Bill', would give parents the right to send their children to the school nearest their home, regardless of the racial composition of the

community which surrounds the school or considerations of district-wide racial balance.<sup>7</sup> Bratcher's bill passed in the state House of Representatives (59-37) but it has stalled in the state Senate's education committee. Republicans control 27 out of the 38 seats in the state Senate. A Republican state Senate anti-busing bill in 2011 was blocked by the Democratic state House. These proposals return children in schools to the mono-racial makeups of their narrow communities

### Partisan control and school secession.

School district secession has occurred in other states which have not experienced partisan change.

There may be a variety of reasons why one Democratic state, such as Vermont, has pursued consolidation (fiscal probity) while a different Democratic state, such as California, allows new secessions (a state constitution which empowers devolved, popular referenda and limits the state legislature's ability to curb such local rights). We do not propose that *all* secession efforts are driven by the capture of state governments by a Republican-led colour-blind alliance; however, we do propose that in states where this alliance has seized control for the first time in decades, policy change against school integration tends to follow.

While it is not the sole cause of recent school secession efforts, partisan change at the state level has been central to their resurgence and success. It builds directly on the national division between a race-conscious policy approach (held by the Democrats) and a color-blind policy stance (sitting with Republicans) as King and Smith (2011) argue. Michael Tesler (2016) has documented the deepening of this overlapping racial and partisan division since 2008. This resurgence of historical racial divisions was galvanized by candidate Donald Trump. Before the 1980s, each of the main parties contained members with pro-civil rights or anti-reform positions, enabling cross-party coalition building. This era is gone.

Under the Obama presidency, state legislatures across the South and Midwest fell into unified Republican control for the first time since the nineteenth century and, in some cases, ever. From our

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<sup>7</sup> <http://www.lrc.ky.gov/recorddocuments/bill/17RS/HB151/bill.pdf>

detailed empirical analysis, it is clear to us that this partisan change helps to explain the most strongly pro-school secession policies implemented by state governments over the same period of time.

The two policy alliances' different priorities are salient in school desegregation politics. While Republican state officials support school district secession, Democratic state officials have called for further school integration. In 2009, Pennsylvania's Democratic governor Ed Rendell called to consolidate the state's 501 school districts to 100 districts. In 2011, Illinois's Democratic governor Pat Quinn announced a plan to consolidate the state's 869 school districts into 300 districts (Rado & Malone, 2011).

Democratic defeats in state legislative elections since 2010 are portentous. In the South, Republicans defeated decades-old Democratic majorities and then turned their majorities into supermajorities. For example, Louisiana's state legislature was under Democratic control at the start of Obama's presidency, but by the end of his administration, the Democratic majority had withered into Republicans possessing 64% of the seats in the state senate and 60% of those in the state house.<sup>8</sup> Therefore, even though school secession plans need a constitutional amendment approved by supermajorities in the Louisiana state legislature, this is now a relatively undemanding hurdle for campaigners to cross.

Republican legislative gains were not limited to the South. Foreboding Donald Trump's presidential election victory, Democrats sustained serious losses in Midwestern state legislatures. Wisconsin fell to Republican control in the 2010 elections. Unsurprisingly, the state subsequently explored loosening the requirements for communities to create their own, independent school districts.<sup>9</sup>

Overall, Republicans' control grew from 13 legislatures in 2009 to 32 in 2017. Democrats lost more state legislative seats under Barack Obama than under any other recent American president. White racial antipathy toward the first African American president fuelled this shift (Tesler 2012, 2013,

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<sup>8</sup> Three independents in the Louisiana House of Representatives caucus with the Republicans.

<sup>9</sup> <http://legis.wisconsin.gov/democrats/media/1774/dept-of-public-instruction-omnibus-motion-motion-409.pdf#page=12>

2016). Without Republicans' capture of legislative control in nearly three-fifths of states, these pro-secession efforts would not be successful.

## Conclusion.

School district secession is only one of many strategies used by white Americans to avoid the imperatives of integration. But strategies such as white flight across existing school district lines or private school enrolment are difficult for civil rights reformers to displace through state or federal legislation because of limits imposed by the US Constitution and the Supreme Court (Reardon & Owens 2014).

When court-ordered school integration plans peaked in the early 1990s, many white families in America's largest cities had removed their children from the state education system altogether. In Washington, DC, two-thirds of white children were privately educated; half of white children in New York, Boston, Philadelphia, and San Francisco attended private schools (Reardon & Yun 2002: 13, 27). Unlike private school enrolment or inter-district residential flight, school district secession matters because it is one of the few segregation strategies which state governments can block decisively.

**Table 4.**

**Percent of children (by race) sent to private school in large metropolitan school districts (1990)**

<b>School District</b>	<b>% of children in city sent to private schools (1990)</b>	
	<b>White children</b>	<b>Black children</b>
<b>New Orleans</b>	65	23
<b>Philadelphia</b>	55	31
<b>San Francisco</b>	49	27
<b>Boston</b>	48	25
<b>Cleveland</b>	47	23
<b>New York</b>	45	23
<b>Milwaukee</b>	41	21
<b>Baltimore</b>	40	16

*Source: School District Data Book, 1990 (adapted from Reardon & Yun 2002)*

School integration matters for several reasons. The *Brown* ruling underscored that citizens who are educated separately from each other have different experiences of citizenship. Chief Justice Earl Warren wrote that “public education is perhaps the most important function of state and local governments” because of its “importance in a democratic society” as “the very foundation of good citizenship.” An equal citizenry is impossible so long as people spend their entire existences in separate, racially and economically defined communities. As Thurgood Marshall argued in his dissent to *Milliken* (1974), ‘Unless our children begin to learn together, there is little hope that our people will ever learn to live together’. Inter-group contact is the philosophy of *Brown*.

Integration improves life chances. Using a longitudinal sample of over 8,000 American adults born between 1945 and 1968, Rucker Johnson (2015 [2011]) found that African Americans who attended schools which were integrated under a federal court order were more likely to graduate, attend university, and earn a degree than those who were educated at segregated schools. African Americans who went to integrated schools earned more money, an average wage premium of 15%. They had better health outcomes and were less likely to be incarcerated. Importantly, Johnson also found that whites who were educated in integrated schools did not fare worse than those who attended all-white schools. As schools have become more racially homogenous, those with predominantly black and Latino students have seen the quality of their teachers decline while white schools attract better-quality teachers (Jackson 2009).

Parental choice is the mantra of conservative American education reformers. While there are a handful of prominent Democrats who support school choice initiatives (e.g., New Jersey’s Cory Booker, see Johnson 2015), the evidence is clear that school district secession is a Republican-led initiative. Yet, individual choice cannot solve the severe racial segregation plaguing American public schools. Political and judicial actors together must recommit to countywide and state-wide systems of education. Regrettably, America’s enduring racial divisions preclude such federal activism to the detriment of the country’s poorest children’s prospects.

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