

# Where They Draw the Line: School Secessions and the Resegregation of Public Schools in the United States

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## TABLE OF CONTENTS

I.	INTRODUCTION . . . . .	109
II.	WHAT ABOUT <i>BROWN</i> ? . . . . .	111
	<i>A. The Effectiveness of Brown I</i> . . . . .	112
	<i>B. Retreating from Brown I</i> . . . . .	114
III.	SECESSION IN PRACTICE . . . . .	115
	<i>A. Secession Defined</i> . . . . .	115
	<i>B. Successful Secessions</i> . . . . .	116
	1. Louisiana: East Baton Rouge & The New City of St. George	116
	2. Tennessee: Memphis & Shelby County . . . . .	119
IV.	THE LOCALISM JUSTIFICATION . . . . .	121
	<i>A. Localism</i> . . . . .	121
	<i>B. Destructive Localism</i> . . . . .	123
V.	SECTION FIVE OF THE VOTING RIGHTS ACT AS A GUIDE TO REDUCING SECESSION EFFORTS . . . . .	124
VI.	CONCLUSION . . . . .	126

## I. INTRODUCTION

Locals in Baton Rouge refer to Florida Boulevard as their “Mason-Dixon line.”<sup>1</sup> An overwhelming majority of the black residents in Baton Rouge are found North of Florida Boulevard, while most white residents are found South of Florida

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1. See Molly Hennessy-Fiske, *For Some Residents, Racial Tensions Invoke Reminders of a Segregation-Era Baton Rouge*, L.A. TIMES (July 19, 2016), <https://www.latimes.com/nation/la-na-baton-rouge-race-20160718-snap-story.html> [<https://perma.cc/AF4J-YBXM>].

Boulevard.<sup>2</sup> The racial make-up of the schools in Baton Rouge tells a similar story of stark segregation.<sup>3</sup> Top-rated majority-white schools in South Baton Rouge like the LSU Laboratory School receive an A or B rating under the Louisiana Department of Education's grading system, while majority-black schools in North Baton Rouge like Broadmoor High School receive a C or D rating.<sup>4</sup> The apparent differences in the racial makeup of Baton Rouge's schools is one of the many side effects resulting from state and federal courts' failure to adhere to the integration that *Brown v. Board of Education* mandated years ago.<sup>5</sup> From the moment the Supreme Court held that segregated schools deprived students of equal protection of the law guaranteed by the Fourteenth Amendment, white parents began adopting creative techniques for keeping their children in majority-white schools.<sup>6</sup> Immediately following the *Brown* decision, parents began enrolling their children in private schools where the students were almost exclusively white.<sup>7</sup> Others packed their belongings and fled from the more racially diverse districts to areas where black residents simply could not afford to live.<sup>8</sup> Courts aided this effort by alleging that discretion provided to local school officials in determining how to fix the segregation issue left them with their hands tied.<sup>9</sup> However, today some white parents have discovered an even easier approach to avoiding integrated schools. While in the past, white "flight" required parents to pack up their homes and head to new suburban neighborhoods,<sup>10</sup> secession provides an easier option.<sup>11</sup> With secession, white "flight" is now as simple as signing a petition.<sup>12</sup> Once enough petition signatures are gathered, an arbitrary fence-like boundary is erected around predominantly white neighborhoods and keeps white students and resources in and black students and low-income households out.<sup>13</sup>

Secession occurs when well off families that are disproportionately white break-away from school districts comprised of low-income families that are disproportionately Black or Hispanic.<sup>14</sup> While the process of seceding varies from state to state, the

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2. *See id.*

3. *See* Adam Harris, *The New Secession*, ATLANTIC (May 20, 2019), <https://www.theatlantic.com/education/archive/2019/05/resegregation-baton-rouge-public-schools/589381/> [https://perma.cc/9FKS-N9P2].

4. *See id.*; LOUISIANA BELIEVES, *Performance Scores*, <https://www.louisianabelieves.com/resources/library/performance-scores> (last visited Jan. 21, 2021) (click on the 2016 results for School and District Performance Scores) [https://perma.cc/44F7-3T6F].

5. *See* Neva Butkus, *Separate and Unequal: School Segregation in Louisiana 65 years After Brown v. Board*, LOUISIANA BUDGET PROJECT (May 17, 2019), <https://www.labudget.org/2019/05/separate-and-unequal-school-segregation-in-louisiana-65-years-after-brown-v-board/> [https://perma.cc/4TWM-JMMK].

6. *See id.*

7. *Id.*

8. *See* Davis v. East Baton Rouge Parish Sch. Bd., 721 F.2d 1425, 1438 (5th Cir. 1983).

9. *See* Bd. of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89, Oklahoma Cty., Okl. v. Dowell, 498 U.S. 237, 247-48 (1991).

10. Alana Semuels, *White Flight Never Ended*, ATLANTIC (July 30, 2015), <https://www.theatlantic.com/business/archive/2015/07/white-flight-alive-and-well/399980/> [https://perma.cc/4YVE-PU4S].

11. *See* Harris, *supra* note 3.

12. *Id.*

13. *Id.*

14. *See* Lauren Camera, *School District Secession Accelerate School Segregation*, WASH. CTR. EQUITABLE GROWTH (Sept. 4, 2019), <https://equitablegrowth.org/gerrymandered-school-districts-perpetuate-segregation-by-keeping-low-income-students-out-which-is-bad-for-economic-growth/> [https://perma.cc/X3R4-6H4G].

result of successful secession is largely the same: high-income students who are overwhelmingly white hoard their plentiful resources in a new school district, and low-income students who are usually Black or Hispanic are left to make do with what is left.<sup>15</sup> Since 2000, over one hundred communities have attempted to secede.<sup>16</sup> Seventy-three of those attempts have been successful while another seventeen are still ongoing.<sup>17</sup> These efforts have been initiated in states as liberal as California and states as conservative as Alabama.<sup>18</sup> This trend reveals that white parents across the country still oppose the integration demanded in *Brown* years ago and that courts are unwilling to resist their attempts to resegregate schools.

This paper argues that to accomplish the integration demanded in *Brown* and protect black students' right to an adequate education, courts must proactively limit secession attempts and acknowledge localism as a harmful vehicle for resegregation rather than a harmless policy decision. Part II provides a brief history of the Supreme Court's enforcement of *Brown* after the *Brown II* decision and its subsequent retrenchment away from the *Brown* decision in the decades that followed. Part III introduces secession and reviews nationwide trends in the movement while displaying the harms secessions have inflicted on students of color. This section uses instances of secession in Baton Rouge, Louisiana and Memphis, Tennessee to give readers a clear picture of how secessions impact students of color. Part IV argues that localism is an inadequate justification for secession and that courts analyzing the legality of secessions should use the theory of destructive localism to guide their analysis. Finally, Part V contends that in addition to courts' embracing destructive localism, Congress should also adopt a statute similar to Section Five of the Voting Rights Act as a tool for actively policing secessions.

## II. WHAT ABOUT *BROWN*?

The secession movement is just a single effort within a larger movement to resist the holding of *Brown v. Board of Education* and to resegregate public schools in the United States.<sup>19</sup> *Brown* was initially a powerful tool for attaining integration and equality in schools; however, since the case was decided, courts have continuously diminished *Brown*'s holding. The Supreme Court's landmark decision in *Brown* held that segregated schools violated students' equal protection under the Constitution.<sup>20</sup> Though the integration that followed this holding was gradual, it certainly made a

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15. See EDBUILD, FRACTURED: THE ACCELERATING BREAKDOWN OF AMERICA'S SCHOOL (updated 2019) [hereinafter FRACTURED], <https://edbuild.org/content/fractured/fractured-full-report.pdf> [https://perma.cc/T9R5-KACJ].

16. *Id.*

17. *Id.*

18. *Id.*

19. See 102 CONG. REC. 4515, 4515-16 (1956) (statement of Rep. Smith) (arguing against the "clear abuse of judicial power" in *Brown v. Board of Education*); see also Ronald Brownstein, *How Brown v. Board of Education Changed—and Didn't Change—American Education*, ATLANTIC (Apr. 25, 2014), <https://www.theatlantic.com/education/archive/2014/04/two-milestones-in-education/361222/> [https://perma.cc/ZD3J-5VA5].

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

difference.<sup>21</sup> Before *Brown*, zero percent of black students attended a majority- white school.<sup>22</sup> Thirty years after *Brown*, about forty percent of black students attended schools where the majority of students were white.<sup>23</sup> While the decision was successful in creating a more diverse public education system, the transformation was not absolute nor permanent.<sup>24</sup> In *Brown*, the court merely held the separate but equal doctrine could not stand; however, it did not provide a remedy for resolving the existing segregation across many public schools.<sup>25</sup> The lack of a concrete remedy in *Brown* opened the door for widespread resistance and disregard for the opinion.<sup>26</sup> Though the Court did eventually give affirmative orders for public schools to desegregate in *Brown II*, the Court's orders were vague. It merely ordered that efforts to desegregate be prompt and reasonable.<sup>27</sup> Then attorney Thurgood Marshall requested a set time frame for implementing the desegregation efforts<sup>28</sup>; however, the *Brown II* Court only required that schools desegregate with all "deliberate speed."<sup>29</sup> The vague guidance provided in *Brown II* ultimately set the stage for years of lax enforcement of the *Brown I* holding.<sup>30</sup>

#### A. *The Effectiveness of Brown I*

Between the 1970s and 1980s, the power of *Brown* was apparent.<sup>31</sup> In this era, the key vehicles to success were court orders and subsequent court oversight.<sup>32</sup> The Court's decision in cases like *Green v. County School Board of New Kent* and *Swann v. Charlotte-Mecklenburg Board of Education* added force to what seemed like a toothless order in *Brown II*.

In *Green*, the Court decided whether the "freedom of choice" plan, allowing students to choose the public school they would like to attend, was a sufficient method that fulfilled the school boards' responsibility to determine school admission on a non-racial basis.<sup>33</sup> New Kent County had maintained a system in which students in the formerly segregated school district could choose to attend George W. Watkins

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21. See Linda Darling-Hammond, *Education and the Path to One Nation, Indivisible*, LEARNING POL'Y INST. 3 (Feb. 2018), [https://learningpolicyinstitute.org/sites/rdefault/files/product-files/Education\\_Path\\_To\\_One\\_Nation\\_BRIEF.pdf](https://learningpolicyinstitute.org/sites/rdefault/files/product-files/Education_Path_To_One_Nation_BRIEF.pdf) [<https://perma.cc/Y2HD-ESKZ>].

22. See Jason M. Breslow, *The Return of School Segregation in Eight Charts*, PBS FRONTLINE (July 15, 2014), <https://www.pbs.org/wgbh/frontline/article/the-return-of-school-segregation-in-eight-charts/> [<https://perma.cc/FUB7-2HXN>].

23. *Id.*

24. *Id.* at charts 3 & 4.

25. *Brown*, 347 U.S. at 495.

26. See Jonathan Fischbach et al., *Race at the Pivot Point: The Future of Race-Based Policies to Remedy De Jure Segregation After Parents Involved in Community Schools*, 43 HARV. C.R.-C.L. L. REV. 491, 492 (2008).

27. See Kimberly J. Robinson, *Resurrecting the Promise of Brown: Understanding and Remediating How the Supreme Court Reconstitutionalized Segregated Schools*, 88 N.C. L. REV. 787, 797 (2010).

28. *Id.* at 797, 801.

29. *Brown*, 347 U.S. at 301.

30. *Id.* at 495.

31. See Darling-Hammond, *supra* note 21, at 4.

32. *Id.* at 3.

33. *Green v. Cty. Sch. Bd.*, 391 U.S. 430, 432 (1968).

schools or New Kent schools.<sup>34</sup> Though both schools technically served the entire county, and there were overlapping travel routes throughout, the court highlighted that no white children had ever sought admission into the Watkins school, the majority-black school.<sup>35</sup> *Green* ultimately struck down New Kent County's "freedom of choice" plan and deemed it an inadequate tool in attaining integration.<sup>36</sup> Ultimately the Court explained that though 'freedom of choice' plans were not facially unconstitutional, they were unacceptable to the extent that they failed to show promise in aiding the desegregation of state-imposed dual school systems.<sup>37</sup>

In *Swann*, the Court determined the extent to which federal courts could intervene when school authorities failed to eliminate racially separate schools prohibited under *Brown*.<sup>38</sup> In his majority opinion for a unanimous Court, Chief Justice Burger reiterated that *Brown I* prohibited segregation in schools "as contrary to the equal protection guarantees in the Constitution" and that *Brown II* had laid out remedial measures for achieving unitary schools.<sup>39</sup> Accordingly, he explained that district courts retained broad and flexible authority in formulating remedies to desegregate.<sup>40</sup> In light of the lack of concrete guidance from the Court in prior school segregation opinions, the Court clarified that district courts could use their discretion in imposing techniques like race-based ratio plans and busing to achieve a unitary school system.<sup>41</sup> Following cases like *Green* and *Swann*, the progress towards attaining integration was chiefly the product of legislation, like the Civil Rights Act of 1964 which allowed the federal government to withhold funding to schools that refused to comply with desegregation orders.<sup>42</sup> Schools could lose money and face lawsuits brought by the Department of Justice if they failed to desegregate.<sup>43</sup>

Because of activists, legislation, and decisions like *Green* and *Swann*, by the 1970s, ninety percent of black students in what had been extremely segregated regions, were attending desegregated schools.<sup>44</sup> Though this period revealed the effectiveness of *Brown*, the progress made was certainly met with opposition.<sup>45</sup> Some parents immediately enrolled their students in private schools as integration became an impending reality.<sup>46</sup> Others moved away from the areas that began ordering integration and into

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34. *Id.* at 434.

35. *Id.* at 441.

36. *Id.*

37. *Id.*

38. *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 6 (1971).

39. *Id.* at 15.

40. *Id.*

41. *Id.* at 30.

42. Mark Dorosin, *One Step Forward, Two Steps Back: Everett et al v. Pitt County Schools* (Everett I and II) and the Ominous Future of Federal Court Desegregation Orders, 67 S.C. L. REV. 713, 719 (2016).

43. *Id.*

44. Nikole Hannah-Jones, *School Districts Still Face Fights—and Confusion—on Integration*, ATLANTIC (May 2, 2014), <https://www.theatlantic.com/education/archive/2014/05/lack-of-order-the-erosion-of-a-once-great-force-for-integration/361563/> [<https://perma.cc/WUS8-BTWC>].

45. See Erika K. Wilson, *The New White Flight*, 14 DUKE J. CONST. L. & PUB. POL'Y 233, 236 (2019).

46. See Joseph R. McKinney, *The Courts and White Flight: Is Segregation or Desegregation the Culprit?*, 110 EDUC. L. REP. 915, 922 (1996).

school districts that managed to avoid court ordered integration plans.<sup>47</sup> The most extreme opponents took to the streets and resorted to violence against students, federal court judges, and school officials who championed integration.<sup>48</sup>

### B. *Retreating from Brown I*

Both the political and legal history in the period that followed *Brown* reveal that its impact was profound; however, the racial make-up across the public school system today belies that segregation based on race was ever forbidden.<sup>49</sup> Beginning in the late 1990s, many schools that were forced to desegregate via court orders after *Brown II* were released from their desegregation orders.<sup>50</sup> With cases like *Milliken v. Bradley*, *Board of Education v. Dowell*, and *Parents Involved v. Seattle*, the Supreme Court retreated from the mandate in *Brown II*.<sup>51</sup> In *Milliken v. Bradley*, the Court reviewed a desegregation plan for Detroit public schools that required the inclusion of outlying suburban schools.<sup>52</sup> Though the schools in the outlying suburban school districts had not committed *de jure* segregation, they were included in the plans to bring in more white students that could be dispersed across the school district.<sup>53</sup> The Court ultimately held that intra-district desegregation plans, like the one Detroit public schools had attempted to use, were unconstitutional when they mandated inclusion of school districts where there was no evidence of *de jure* segregation.<sup>54</sup>

In *Board of Education v. Dowell*, black students opposed the Western District of Oklahoma's decision to dissolve a desegregation decree that had been imposed in 1972.<sup>55</sup> The students argued that despite the district court's earlier finding that the district had desegregated, the Oklahoma City School District had not achieved unitary status.<sup>56</sup> The school board argued that the prior order finding that the school district was unitary was binding on the parties.<sup>57</sup> The Tenth Circuit agreed, but noted that nothing in the order meant that the injunction which had previously ordered

47. See Genevieve M. Kelly, *A Short-Lived Benchmark: How the Supreme Court Debilitated Brown v. Board of Education Long Before Parents Involved*, GEO. MASON L. REV. 813, 830 (2012).

48. See Sarah Pruitt, *Brown v. Board of Education: The First Step in the Desegregation of America's Schools*, HISTORY (May 16, 2018), <https://www.history.com/news/brown-v-board-of-education-the-first-step-in-the-desegregation-of-americas-schools> [<https://perma.cc/8NP4-R2MC>]; see also Coshandra Dillard, *Two Little-Known Events in Texas That Threatened the Progression of the Civil Rights Movement*, TIMELINE (Dec. 30, 2017), <https://timeline.com/two-little-known-events-in-texas-that-threatened-the-progression-of-the-civil-rights-movement-2d030f3018b2> [<https://perma.cc/F74N-KQLD>].

49. See Breslow, *supra* note 22.

50. See Sean F. Reardon et al., *Brown Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools*, 31 STANFORD J. POL'Y ANALYSIS & MGMT. 876, 876 (2012).

51. See Ian Millhiser, *American Schools Are More Segregated Now Than They Were in 1968, and The Supreme Court Doesn't Care*, THINKPROGRESS.ORG (Aug. 13, 2015), <https://archive.thinkprogress.org/american-schools-are-more-segregated-now-than-they-were-in-1968-and-the-supreme-court-doesnt-care-cc7abbf6651c/> [<https://perma.cc/NZA4-VT34>].

52. *Milliken v. Bradley*, 433 U.S. 267, 270 (1977).

53. *Id.*

54. *Id.*

55. Bd. of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89, Oklahoma Cty., Okl. v. Dowell, 498 U.S. 237, 244 (1991).

56. *Id.* at 242.

57. *Id.* at 246.

the school to desegregate had been dissolved.<sup>58</sup> The Court in *Dowell* ultimately remanded the case to the district court so that it could decide whether vestiges of *de jure* segregation had been eliminated to the extent practicable.<sup>59</sup> In doing so, the Court emphasized that drastic measures to desegregate schools were intended to be temporary.<sup>60</sup> The Court concluded by holding that if the school district was released from its injunction imposing a desegregation plan, it was no longer subject to court authorization when establishing policies and rules.<sup>61</sup>

Finally, in *Parents Involved v. Seattle*, the Court reviewed a Seattle school district's use of racial classification as a "tiebreaker" to determine who would fill open slots at schools that were in high demand.<sup>62</sup> The "tiebreaker" looked to the current racial composition of the school and the race of the particular individual applying.<sup>63</sup> The Court struck down the race-based tiebreaker, holding that though there were compelling state interests for adopting them, they were not narrowly tailored to meet those interests.<sup>64</sup> In making its decision, the Court noted that Seattle had never operated segregated schools or been subject to court-ordered desegregation.<sup>65</sup> The Court concluded by explaining that "before *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin. The school districts in these cases have not carried the heavy burden of demonstrating that we should allow this once again—even for very different reasons."<sup>66</sup> The end result of this trend of retrenchment was that by the late 2000s, schools that had gradually attained integration, reverted to being majority white or majority black.<sup>67</sup> This ultimately set the stage for a new, powerful tool that would be used to further dissolve the commands of *Brown* and resegregate schools.

### III. SECESSION IN PRACTICE

#### A. Secession Defined

Secession occurs when residents in a particular vicinity use the state or local political processes to form a new school district that disproportionately excludes minority, low income students while hoarding resources for white, well-off students.<sup>68</sup> In the past two decades, over one hundred secession efforts have been initiated.<sup>69</sup> These secession efforts have occurred all over the United States, but have been especially popular in southern states with a history of racial segregation.<sup>70</sup> The end result of

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58. *Id.* at 243.

59. *Id.* at 249-50.

60. *Id.* at 247.

61. *Id.* at 250.

62. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 711 (2007).

63. *Id.* at 711-12.

64. *Id.* at 726-27.

65. *Id.* at 712.

66. *Id.* at 747.

67. See Millhisser, *supra* note 51.

68. Erika K. Wilson, *The New School Segregation*, 102 CORNELL L. REV. 139, 148 (2016).

69. See FRACTURED, *supra* note 15, at 1.

70. *Id.*



secession is the creation of segregated school districts which ensure that white students are advantaged in regards to both financial and social resources and that black and Hispanic students make little to no progress in the realm of education.<sup>71</sup> Though secession is typically justified as a harmless tool that merely seeks to create stronger schools by focusing on a specific locality, the racial make-up of schools following successful secession efforts is strikingly similar to the duality that prompted the decision in *Brown* years ago.

The policies and procedures characterizing secessions are not one size fits all.<sup>72</sup> The methods for seceding vary widely across different states and even across localities within states.<sup>73</sup> At one end of the spectrum, there are states that make it extremely difficult to secede or ban secession completely.<sup>74</sup> On the other end of the spectrum, there are states that merely require a simple majority of the voters within the proposed new district to vote in favor of secession.<sup>75</sup> In districts where a simple majority vote is sufficient to secede, the views of those who would be left in the under resourced school district have no bearing on the secession decision.<sup>76</sup> This means that the parents of minority students who will be left in the under resourced school districts are oftentimes left without any meaningful method of opposing the decision.<sup>77</sup> While some states' policies lie somewhere in the middle of the two extremes, a majority of the states' policies are closer to the latter than to the former.<sup>78</sup> For instance, thirty states have a policy that explicitly allows secession to create smaller school districts.<sup>79</sup> Within these states, the hurdles to achieving secession vary.<sup>80</sup> In some states, it is as simple as casting a vote and in others it is as difficult as amending the state's constitution.<sup>81</sup> Despite the challenges that may arise when attempting secession, the movement shows no signs of slowing down.<sup>82</sup>

### B. *Successful Secessions*

#### 1. Louisiana: East Baton Rouge & The New City of St. George

In 2003, East Baton Rouge School District was released from a desegregation order imposed after *Brown*.<sup>83</sup> The forty-three years old desegregation order was amongst the longest-running desegregation orders in the United States.<sup>84</sup> In the

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71. *Id.*

72. *See id.* at 3.

73. *Id.*

74. *Id.* at 11.

75. *Id.*

76. *Id.*

77. *Id.* at 17.

78. *Id.*

79. *Id.* at 3.

80. *Id.*

81. *Id.* at 13.

82. *See Wilson, supra* note 68, at 144.

83. *See id.* at 172.

84. *See* Sophie Kasakove, *The School Secession Movement is Growing. That's Bad News for Integration*, NEW REPUBLIC (Oct. 15, 2019), <https://newrepublic.com/article/155369/school-secession-movement-growing-thats-bad-news-integration> [<https://perma.cc/UP6S-XV23>].



same year, two cities seceded from the East Baton Rouge school system.<sup>85</sup> The secessions meant that about sixteen percent of the schools' non-black population would end up in new school districts.<sup>86</sup> The percentage of black students that were left in the East Baton Rouge school district rose from about seventy-two percent to seventy-six percent.<sup>87</sup> The creation of the cities of Zachary and Baker was just the beginning of the secession movement that continues to plague East Baton Rouge schools.<sup>88</sup> In 2007, yet another secession from the East Baton Rouge Parish School District succeeded, resulting in the creation of the Central Community School System.<sup>89</sup> East Baton Rouge Parish School District is now seventy-eight percent black and ninety percent minority.<sup>90</sup>

The City of St. George provides yet another blueprint for communities looking to secede in the future and may soon be the fourth city to create a new school district out of what was once the unified East Baton Rouge School District.<sup>91</sup> Efforts to create the City of St. George began in 2012.<sup>92</sup> Parents and other advocates leading the efforts initially sought to simply create a new school district.<sup>93</sup> In other words, there was initially no plans to create a new city.<sup>94</sup> However, when the proponents of the new school district realized that the legislature would not support a new school district, they shifted their focus towards a new proposal—one for a new city.<sup>95</sup> This strategy had worked for other secession proposals in the region.<sup>96</sup>

After an initial failure to create the new school district in the area that would become the new city of St. George, the proponents of the city worked fiercely to revamp their plan.<sup>97</sup> First, they reframed their argument for the need for the new city.<sup>98</sup> They intentionally shifted focus from schools, which had resulted in a lot of pushback, to localism and small government.<sup>99</sup> The proposed city's motto was "Better Government. Local Control."<sup>100</sup> One of the lead organizers in the efforts noted that St. George was not about demographics but rather about "independence,

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85. See PUB. AFFS. RSCH. COUNCIL, *East Baton Rouge Parish School: A New Beginning?*, 307 PAR ANALYSIS 1, 2 (June 2007) (available at <https://fliphtml5.com/ankz/nebe/basic>) [<https://perma.cc/CYC2-S9TX>].

86. *Id.* at 12.

87. *Id.*

88. *Id.*

89. *Id.*

90. See PROPUBLICA, *Miseducation*, <https://projects.propublica.org/miseducation/district/2200540> (last visited Jan. 21, 2021) [<https://perma.cc/8CTQ-RD5Y>].

91. See Harris, *supra* note 3.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. See Jess Clark, *In Diverse East Baton Rouge, An Affluent White Area Seeks Its Own City, School District*, WRKF (Oct. 11, 2019), <https://www.wrkf.org/post/diverse-east-baton-rouge-affluent-white-area-seeks-its-own-city-school-district> [<https://perma.cc/PX5F-T6CS>].

100. See Kasakove, *supra* note 84.

freedom, and self-governance.”<sup>101</sup> Proponents argued that their effort was not about race but about “keeping tax dollars closer to home.”<sup>102</sup> Second, leaders of the efforts redrew the new city’s boundaries.<sup>103</sup> After failed attempts to incorporate the city, the organizers knew exactly where proponents and opponents could be found, so they simply drew new lines in a way that kept in supporters and excluded resisters.<sup>104</sup> Armed with the information about where they could garner the most support, they went from door to door explaining their plan and gathering more and more signatures along the way.<sup>105</sup> Finally, the proponents annexed large businesses from the new city.<sup>106</sup> Many of these businesses had concerns about the strength of the proposed city’s infrastructure, so rather than absorb those businesses as opponents they simply permitted that they be annexed into the city of Baton Rouge.<sup>107</sup> The strategy was ultimately successful. In February of 2019, the supporters of St. George learned that they had gathered enough petition signatures to vote on incorporating the city,<sup>108</sup> and in October of 2019, fifty-four percent of voters approved the amendment to create the city of St. George.<sup>109</sup> The end result was an odd shaped, corner of Baton Rouge which is now the latest community on the road to incorporation.<sup>110</sup>

Though St. George has not officially incorporated, the negative implications it will have for black students in Baton Rouge are already apparent.<sup>111</sup> If St. George is officially incorporated, the city will be seventy percent white and only twenty-three percent black.<sup>112</sup> The disparity in race is accompanied by a disparity in income.<sup>113</sup> The mean family income of a family in the new city of St. George would be \$94,824 per year as opposed to \$68,958 for those families left in East Baton Rouge.<sup>114</sup> However, it is important to note that the latter mean income includes the income of the many students who attend private schools in Baton Rouge.<sup>115</sup> Officials in the East Baton Rouge School System also predict that the creation of St. George would leave them with a loss of about \$85 million in revenue should their secession effort ultimately succeed.<sup>116</sup> Despite these consequences, proponents of the city still

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101. Clark, *supra* note 99.

102. See Rick Rojas, *Suburbanites in Louisiana Vote to Create a New City of Their Own*, N.Y. TIMES (Oct. 13, 2019), <https://www.nytimes.com/2019/10/13/us/baton-rouge-st-george.html> [https://perma.cc/8E48-SCL4].

103. See Harris, *supra* note 3.

104. See Kasakove, *supra* note 84.

105. See Harris, *supra* note 3.

106. See Blake Patterson, *First Round of St. George Businesses Approved for Annexation to Baton Rouge; See Next Steps*, ADVOCATE (Jan. 8, 2020), [https://www.theadvocate.com/baton\\_rouge/news/article\\_700304b4-3279-11ea-88e8-970106adc293.html](https://www.theadvocate.com/baton_rouge/news/article_700304b4-3279-11ea-88e8-970106adc293.html).

107. *Id.*

108. *Id.*

109. See Tracey Ross, *In Baton Rouge, Separate but Unequal is Law*, ESSENCE (Oct. 17, 2019), <https://www.essence.com/news/baton-rouge-segregation-st-george/> [https://perma.cc/84BY-43JW].

110. See Rojas, *supra* note 102.

111. See Wilson, *supra* note 68, at 172.

112. *Id.*

113. *Id.* at 173.

114. *Id.*

115. *Id.*

116. See Kasakove, *supra* note 84.

maintain that their decision is harmless and only seeks to provide a better life for their children.<sup>117</sup>

## 2. Tennessee: Memphis & Shelby County

Shelby County in Memphis, Tennessee is another case that reveals how secessions can quickly and drastically transform an education system.<sup>118</sup> Secessions were once banned absolutely in Tennessee; however, the moment the state changed their laws to allow secessions, a string of secession efforts immediately followed.<sup>119</sup> Like Baton Rouge, Memphis' road to creating a segregated school system began shortly after *Brown*. In the early 1970s, wealthy white families left the city to avoid the integrated schools that were forming in the city due to busing.<sup>120</sup> This "white flight" resulted in a city where most of the low income, minority students live in the city and most affluent whites live on the outskirts.<sup>121</sup> The school district lines that solidified in this area would match this highly divided racial landscape: the mostly black, low-income students would attend schools in the Memphis school district while the mostly white, high-income students would attend schools in the Shelby County school district.<sup>122</sup> The racial divide would ultimately fuel an intense battle between those who would fight for a unitary school district in Memphis and those who preferred to maintain the status quo of segregation.<sup>123</sup>

The secession movement in Memphis grew out of a number of unique education structures and unusual political circumstances.<sup>124</sup> The funding of the schools set the stage for a sharply divided county.<sup>125</sup> In Shelby County, the two leading school districts were the Memphis school district and the Shelby County school district.<sup>126</sup> Though the two were totally distinct, funds dedicated to the schools within each district came from residents' countywide property tax.<sup>127</sup> The total of the property taxes collected across the county was shared evenly amongst the schools across the county's different school districts.<sup>128</sup> This prompted the parents in the affluent suburbs of

117. See ST. GEORGE, LA, *FAQ's*, <http://www.stgeorgelouisiana.com/about/faqs> (last visited Jan. 21, 2021) [<https://perma.cc/KA8Q-FW6C>].

118. See Caroline Bauman, *Memphis-Shelby County Spotlighted in National Report on School District Secession*, CHALKBEAT (June 21, 2017), <https://chalkbeat.org/posts/tn/2017/06/21/memphis-shelby-county-spotlighted-in-national-report-on-school-district-secession/> [<https://perma.cc/WH6W-3AL4>].

119. See FRACTURED, *supra* note 15, at 9-10.

120. *Id.*

121. See Bauman, *supra* note 118.

122. *Id.*

123. See Sam Dillon, *Merger of Memphis and County School Districts Revives Race and Class Challenges*, N.Y. TIMES (Nov. 5, 2011), <https://www.nytimes.com/2011/11/06/education/merger-of-memphis-and-county-school-districts-revives-challenges.html> [<https://perma.cc/B5YK-MXEW>].

124. See Valerie Strauss, *Back to the Future: A New School District Secession Movement is Gaining Steam*, WASH. POST (May 2, 2018), <https://www.washingtonpost.com/news/answer-sheet/wp/2018/05/02/back-to-the-future-a-new-school-district-secession-movement-is-gaining-steam/> [<https://perma.cc/S9LQ-HJXS>].

125. See Neubia L. Harris, *Adequate Education: The Disregarded Fundamental Right and Resurgence of Segregation of Public Schools*, 45 MITCHELL HAMLINE L. REV. 237 (2019).

126. *Id.* at 252.

127. *Id.*

128. *Id.*

Shelby County to eventually argue that their tax dollars should be used exclusively to fund the schools in their neighborhoods rather than being used to subsidize the schools in Memphis.<sup>129</sup> These parents ultimately looked to secession as a way to ensure that the amount of taxes they paid was exactly proportional to the funds being channeled into the schools their kids attended.<sup>130</sup>

In 2010, power in the Tennessee legislature shifted. The governor and the majority in the Tennessee legislature both became Republican.<sup>131</sup> The new Republican control led education officials to believe that the special school district ban in the state would soon be lifted.<sup>132</sup> The ban on special school district status stopped school districts from freezing their lines indefinitely and limiting funds raised by taxes to being spent within the district's boundaries.<sup>133</sup> Therefore, if the special school district ban was lifted, affluent districts, like Shelby County school district, would be able to freeze its current lines, and insulate themselves from the surrounding black areas, like Memphis school district, and keep their funds in local schools.<sup>134</sup> To stop the impending ban, education officials voted to surrender the Memphis City School charter to the city and create a city-county school district consolidation.<sup>135</sup> In other words, rather than freeze the current lines and allow Shelby County to build a fence around its funding, they opted to dissolve the Memphis school district completely and allow it to be absorbed by Shelby County.<sup>136</sup> Had this strategy been successful it would have created a single school district that included the poorest residents of Memphis and the wealthiest residents on the outskirts of the city.<sup>137</sup> However, by the time the merger was authorized, residents in the more affluent areas, being upset that they had been forced into a merger, convinced the Tennessee legislature to lift the ban on creating new school districts.<sup>138</sup> The result of the dissolution of the ban was proposals for five new municipalities which would all go on to pass referendums to create new school systems.<sup>139</sup> What began as a fight over a broader community that was split in half somehow morphed into a fight over a district that is now split into six.<sup>140</sup>

The current makeup of schools in Memphis and the surrounding area is a textbook example of the worst-case scenario of what can happen when states adopt policies allowing for easy secessions.<sup>141</sup> The secession trend in Memphis also displays the inherent harms in leaving students' educational fate in the hands of volatile state and

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129. *Id.*

130. *Id.*

131. See Strauss, *supra* note 124.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. Meaghan E. Brennan, *Whiter and Wealthier: "Local Control" Hinders Desegregation by Permitting School District Secessions*, 52 COLUM. J.L. & SOC. PROBS. 39, 60 (2018).

137. See Strauss, *supra* note 124.

138. See Bauman, *supra* note 118.

139. See Strauss, *supra* note 124.

140. *Id.*

141. See FRACTURED, *supra* note 15, at 10.

local governments.<sup>142</sup> The largely divided school system that exists in Memphis stems from a single year in which the Republican party happened to have control of the state.<sup>143</sup> The current make-up of the school districts in Memphis ultimately highlights the harms that result when state or local governments possess exclusive, unchecked control over school district lines.

#### IV. THE LOCALISM JUSTIFICATION

##### A. Localism

Proponents of secession consistently raise localism as the key argument supporting the necessity of the break.<sup>144</sup> Localism is a theory of government which prioritizes local interests over the interests of those who are outside of the locality.<sup>145</sup> Proponents of localism argue that government works better when it serves communities that are more inclined to be like-minded people.<sup>146</sup> They perceive a government serving only a few citizens to be superior to one that serves many.<sup>147</sup> In the realm of education, this argument means parents want their kids to learn amongst kids they view as comparable to their own, because the commonalities between the kids will make for a better learning environment.<sup>148</sup> On the one hand, these parents posit that the next-door neighbor's children are more likely to have the same beliefs, values, and discipline of their own and are thus comfortable with sending their kids to school with the neighbor's kids.<sup>149</sup> On the other hand, they regard the kids that live in areas struggling with poverty or other hardships to be outsiders.<sup>150</sup> The differences between those kids and their own trigger fear and leave the parents wary to enroll their kids in schools where there are many students who are not a part of the immediate locality.<sup>151</sup>

Proponents of localism also argue that emphasis on local government promotes three key values: citizen participation, efficiency, and community.<sup>152</sup> First, proponents argue that small government provides an opportunity for all citizens to have a meaningful input in the locality's functioning.<sup>153</sup> For parents who advocate for local control of schools, this means a greater conception of their perceived power to

142. *Id.* at 9.

143. *Id.*

144. *Id.*

145. See Richard Briffault, *Our Localism: Part I – The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 24 (1990).

146. See Alvin Chang, *School Segregation Didn't Go Away. It Just Evolved*, VOX (July 17, 2017), <https://www.vox.com/policy-and-politics/2017/7/27/16004084/school-segregation-evolution>.

147. *Id.*

148. See ST. GEORGE, LA, *Schools*, <http://www.stgeorgelouisiana.com/about/faqs> (last visited Jan. 21, 2021) [<https://perma.cc/KS2Z-T822>].

149. See Wilson, *supra* note 68, at 191.

150. *Id.*

151. See Dillon, *supra* note 123.

152. See Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2042 (2000).

153. See Wilson, *supra* note 68, at 194.

intervene when issues arise within the schools.<sup>154</sup> In schools, citizen participation also means that parents are able to decide what sorts of courses or extracurricular activities are offered. Second, localism advocates argue that multiple local governments will create a more efficient allocation of public goods and services.<sup>155</sup> In the education context, this translates into an argument that the creation of several small school districts will be more efficient than a single, large district.<sup>156</sup> This is because the several small districts will force the districts to compete, and people will subsequently sort into the district that best fits their needs.<sup>157</sup> Finally, localists argue that smaller governmental entities build a stronger sense of community.<sup>158</sup> This is based on the idea that those in the smaller community will be more like-minded and will mesh together as a cohesive unit seamlessly.<sup>159</sup> In a school context, this means that the commonalities between the parents and children within the community will lead to spending more time building bonds amongst their community members.

Localism proponents also use a narrow conception of the word “community” in attempts to bolster their arguments justifying secession.<sup>160</sup> In most secession efforts, there is an underlying theme of a portion of the community feeling as if they are not getting enough bang for their buck.<sup>161</sup> In other words, they want to reap more direct benefits in return for what they invest in their community. However, this begs the question of how community is defined to secessionists and how it ought to be defined to entities reviewing secession efforts. Secessionists consider their community to be whatever narrow group of people they want it to be. Although this is certainly a type of community, it is not the only one. In prior opinions, the Supreme Court has acknowledged a national community. On the grounds of universities, students usually view themselves as members of the campus community. Additionally, many larger areas embrace a regional community. So, while localists are inclined to improve conditions in their local communities, courts and legislatures should be slow to accept these communities as the only relevant communities.

Though the goals localists seek to achieve through smaller government appear to be positive, using localism as the vehicle to those goals is questionable. When one takes a closer look at the localism justification in the education context, labeling localism as a beneficial or neutral tool becomes an oversimplification. In fact, when one situates the localism argument in the education context, localism looks more like a cloak for racism rather than a neutral policy tool. Below I will expound on this

154. *Id.*

155. See Cashin, *supra* note 152, at 2000.

156. See Ulrich Boser, *Size Matters: A Look at School-District Consolidation*, CTR. AM. PROGRESS (Aug. 2013), <https://www.americanprogress.org/wp-content/uploads/2013/08/SchoolDistrictSize.pdf> [<https://perma.cc/ZS8V-E323>].

157. See Paul T. Hill, *Charter Schools: Good or Bad for Students in District Schools?*, BROOKINGS (June 7, 2019), <https://www.brookings.edu/blog/brown-center-chalkboard/2019/06/07/charter-schools-good-or-bad-for-students-in-district-schools/> [<https://perma.cc/A6TF-RHRD>].

158. See Cashin, *supra* note 152, at 2001.

159. See Wilson, *supra* note 68, at 194.

160. See Clark, *supra* note 99.

161. *Id.*

understanding of localism and explain how it may be harmful to low-income communities of color.

### *B. Destructive Localism*

The theory of localism can be quite disruptive in the education context.<sup>162</sup> Evaluating the utility of secession solely within the framework of the localism justification distorts reality in a way that over-emphasizes the limited benefits that come to a small number of people and undercuts the far-reaching harms that impact most people. Rather than building community and promoting efficiency, localism divides communities<sup>163</sup> and allocates resources in a way that is inefficient.<sup>164</sup>

In the first law review article raising an argument for a “destructive localism” framework, Erika K. Wilson defines destructive localism as a group enjoying benefits that come with local autonomy by: “(i) forming communities that are racially and economically homogenous; (ii) taking advantage of the benefits of being connected to a larger network of municipalities while at the same time distancing themselves from the social and financial costs associated with group membership; and (iii) inflicting tangible and/or intangible harm on neighboring localities.” Wilson’s conception of “destructive localism” should replace traditional localism in the context of evaluating school secession plans, because unlike the traditional localism arguments, it acknowledges the harms that arise at the intersection of race and localism, implicates a broader understanding of the relevant communities in secession cases, and demands consideration of the harms of surrounding school districts.<sup>165</sup> Traditional arguments of localism have failed to acknowledge how different racial groups are impacted when localism is accepted as a beneficial or neutral tool.<sup>166</sup> By explicitly considering race and broadening the concept of community in localism analyses, Wilson’s conception of destructive localism puts black students and other minority students at the center of the conversation regarding whether secession is appropriate. By thrusting race into the conversation, Wilson forces us to grapple with the disparate impact of secessions on black and minority students. These are students that the traditional localism justifications completely ignore.<sup>167</sup> Courts and legislators should consider each of the relevant factors laid out by Wilson’s definition. When their analysis suggests that secession is motivated by destructive localism, they should reject the proposals to secede.

An analysis guided by destructive localism provides a practical framework for completing a comprehensive evaluation of the implications of secession. First, by

162. See Richard V. Reeves & Nathan Joo, *Do School Secessions Worsen Racial Segregation? It’s Complicated*, BROOKINGS (July 11, 2018), <https://www.brookings.edu/research/do-school-secessions-worsen-racial-segregation-its-complicated/> [https://perma.cc/WRR5-25VD].

163. See Lauren Camera, *The Quiet Wave of School District Secessions*, US NEWS (May 5, 2017), <https://www.usnews.com/news/education-news/articles/2017-05-05/the-quiet-wave-of-school-district-secessions>.

164. See Wilson, *supra* note 68.

165. *Id.* at 202.

166. See Brennan, *supra* note 136, at 61-62.

167. *Id.* at 73 (explaining that proponents of local control often rationalize this view based on a belief in colorblindness).



questioning if the formation of districts will closely track racial identity and economic status, destructive localism may bring instances of *de facto* segregation to light. This factor would also help expand students and parents' rights under *Brown* and align the case with modern concerns, since any plan that results in segregation would fail without a need for a formal showing of intent to segregate.

Second, under a theory of destructive localism, courts and legislators must look at what resources seceding districts plan to continue using after they secede. While advocates of secession usually highlight the problems of the larger communities they wish to leave, they rarely acknowledge the ways in which they benefit from them. When residents create their own cities for the purpose of secession, they downplay the fact that they will still require protection from entities, like the left-behind city's police and fire departments or access to their water systems to function.<sup>168</sup> This is just one example of how when residents secede, the cities they leave behind are often stuck with the costs of their decision to do so. Forcing legislators and courts to consider these costs could potentially sway their view of whether secession should be allowed.

Finally, acknowledging the larger communities which the seceding school would leave behind and the extent to which the left behind district would be deprived of resources is key to any complete analysis of a school's secession plan. As mentioned above, advocates of secession manipulate legislators and courts by using an extremely narrow conception of community. Courts focus on the persuasive localism arguments put forth by secessionist, but give little to no attention to the residents who will be negatively impacted when they are forced into a new, poorly-resourced community. By making the white, well-off residents who have allegedly been let down by the left-behind district the focal point of the analysis, secessionists ignore the complexities that arise when resources are suddenly stripped from those in the communities that are left behind. When the court is forced to acknowledge that these complexities exist and analyze them completely, they may find that the bigger picture reveals serious harms that could accompany secession. Ultimately, use of the factors Wilson presents to define destructive localism, could serve as a useful framework for analyzing secession in courts and the legislature.

#### V. SECTION FIVE OF THE VOTING RIGHTS ACT AS A GUIDE TO REDUCING SECESSION EFFORTS

In addition to abandoning the localism justification and adopting the theory of destructive localism as a tool for preventing secessions, Congress should also aid the effort to combat secessions by adopting a statute similar to the former Section Five of the Voting Rights Act. The statute would restrict the ability to redraw school district lines and thus limit the wide discretion that localities currently have when

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168. See Terry L. Jones, *St. George Faces Up to 7.5 Million Annually for Retirement System Costs After Amendment to Law*, ADVOCATE (Oct. 9, 2019), [https://www.theadvocate.com/baton\\_rouge/news/article\\_09a324c4-eac1-11e9-9427-cbd611fc5a45.html](https://www.theadvocate.com/baton_rouge/news/article_09a324c4-eac1-11e9-9427-cbd611fc5a45.html).

establishing school district lines. The statute would also require that judges scrutinize the specifics of the new lines and the consequences that they might bring.

After the enactment of Section Five of the Voting Rights Act, nine states and parts of seven states were required to get federal approval, known as “preclearance,” for any proposed changes to their voting laws.<sup>169</sup> The proposed changes were reviewed by a three-judge court in Washington D.C. which determined if the change “would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise” or if it was “adopted with a discriminatory purpose.”<sup>170</sup> States seeking to change their laws bore the burden of proving that the proposed change was not discriminatory.<sup>171</sup> The result of the enactment of Section Five was the elimination of discriminatory tests and an increase in black registered voters.<sup>172</sup> Many of the proposals for changes to states’ voting laws were ultimately struck down based on the statute.<sup>173</sup> The statute was effective not only in formally striking down proposals, but also in deterring some governments from proposing any changes altogether due to the fear that the proposals would be rejected under Section Five. An equally aggressive scheme to limit school secessions could bring similar positive results in the realm of education.

The proactive nature of Section Five of the Voting Rights Act was key to protecting the voting rights of minorities for decades. Using the Voting Rights Act as a blueprint to draft a similar statute would be a significant step towards limiting the resegregation that has been widespread since *Brown I*.

Structuring the statute in a way similar to Section 5 of the Voting Rights Act is especially appropriate in light of the similarities between the two issues. First, like the right to vote, the right to attend an integrated school where adequate resources are available to all students is a core right. When a city in Virginia sought to bar residents who failed to pay a \$1.50 tax from voting, the Supreme Court held that the right to vote was a fundamental right.<sup>174</sup> The Court reasoned that because the right to vote was preservative of all other rights, it must be fiercely protected for all.<sup>175</sup> Similarly, the right to attain an adequate education is also preservative of all other rights. Citizens who do not receive an adequate education are hindered in fully and *effectively* exercising other rights guaranteed by the U.S. Constitution. Therefore, like the

169. See Sandhya Bathija, *5 Reasons Why Section 5 of the Voting Rights Act Enhances Our Democracy*, CTR. AM. PROGRESS (Feb. 19, 2013), <https://www.americanprogress.org/issues/courts/reports/2013/02/19/53721/5-reasons-why-section-5-of-the-voting-rights-act-enhances-our-democracy/> [<https://perma.cc/98WA-22MF>].

170. See Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After Shelby County*, 115 COLUM. L. REV. 2143, 2153 (2015) (internal quotations omitted).

171. Ellen D. Katz, *Section 2 After Section 5: Voting Rights and the Race to the Bottom*, 59 WM. & MARY L. REV. 1961, 1971 (2018).

172. See Danielle Lang, *Five Decades of Section 5: How This Key Provision of the Voting Rights Act Protected Our Democracy*, CAMPAIGN LEGAL CTR. (June 22, 2016), <https://campaignlegal.org/update/five-decades-section-5-how-key-provision-voting-rights-act-protected-our-democracy> [<https://perma.cc/8JKG-M7AQ>].

173. See BRENNAN CTR. JUSTICE, *The Voting Rights Act: Protecting Voters for Nearly Five Decades* (Feb. 26, 2013), <https://www.brennancenter.org/our-work/research-reports/voting-rights-act-protecting-voters-nearly-five-decades> [<https://perma.cc/Y5YB-GTXV>].

174. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666-67 (1966).

175. *Id.*

right to vote, the right to an adequate education should be deemed a core right and protected accordingly.

Additionally, states that have been known to hold segregated school systems trigger skepticism in the same way that states that were known to maintain suspect voting practices once did. That skepticism ultimately led to the enactment of Section Five of the Voting Rights Act.<sup>176</sup> In adopting Section Five of the Voting Rights Act, Congress reasoned that the states' disappointing records with regard to hindering its citizens' right to vote were sufficient to justify the imposition of a preclearance system.<sup>177</sup> A similar system for monitoring schools that have been previously subject to desegregation orders would be appropriate since the areas that were once under these orders are suspicious in the school segregation context, in the same way that states governed by the preclearance provision were suspicious in the voting rights context.

Finally, resisting communities' and parents' consistent efforts to segregate schools is a persistent problem just as maintaining voting rights was for minorities leading up to the 1960s. Though states would make some progress in avoiding discriminatory laws through litigation, this amounted to a sort of whack a mole strategy for protecting voting rights. Where one discriminatory law was struck down, another one would almost instantaneously appear.<sup>178</sup> Similar issues arise in the context of school segregation. While *Brown* and other key cases have limited some practices and policies that maintain or promote dual school systems, impact litigation has been unable to keep up with the speed at which new strategies for avoiding integration have been born. Overall, the framework used to prohibit discrimination in voting in Section Five of the Voting Rights Act provides a useful guide to how the federal government could curtail harmful school secessions that have the effect of segregating students based on their race.

## VI. CONCLUSION

The progress segregated cities and school districts made after *Brown* was remarkable. In fact, this progress was so remarkable that many still view the decision in *Brown* as one of the most important decisions to date.<sup>179</sup> Unfortunately, courts today do not see the value in the case and or see the significance of the subsequent desegregation of schools. The wave of secessions in the past two decades suggests that the United States as a larger community has forgotten about *Brown*, why it was so significant, and most importantly what it demanded. Therefore, an updated localism analysis and a statute that closely monitors the areas that showcase the type of school

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176. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2000)). Section 5 is codified at 42 U.S.C. § 1973c.

177. Oluoma Kas-Osoka, *A New Preclearance Coverage Formula: Renewing the Promise of the Voting Rights Act*, 47 WASH. U. J.L. & POL'Y 151, 153 (2015).

178. See Deborah J. Vagins & Laughlin McDonald, *Supreme Court Put a Dagger in the Heart of the Voting Rights Act*, ACLU (July 2, 2013), <https://www.aclu.org/blog/voting-rights/promoting-access-ballot/supreme-court-put-dagger-heart-voting-rights-act> [<https://perma.cc/ARZ7-88WQ>].

179. See U.S. COURTS, *Supreme Court Landmarks*, <https://www.uscourts.gov/about-federal-courts/educational-resources/supreme-court-landmarks> (last visited Jan. 21, 2021) [<https://perma.cc/Q9NQ-685T>].

segregation that gave rise to the *Brown* holding is not only appropriate, but absolutely necessary.

Dismantling trends like the secession movement requires, at the very least, a close look at all proposals to secede. However, demanding courts or a judicial panel to do so would likely trigger significant resistance in the current political climate. This is especially true considering the courts recent rejection of Section Five of the Voting Rights Act in *Shelby County v. Holder* and the recent appointment of another conservative Supreme Court Justice.<sup>180</sup> Despite the challenges presented by the United States current political climate, to live up to the promise of *Brown*, courts and legislators must acknowledge and dismantle all segregation in schools whether it be *de jure* or *de facto*. And in doing so they will have to be firm in explaining that they are not merely creating policy or moving away from the law, but rather returning to what the law has always demanded.

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180. See *Shelby Cnty. v. Holder*, 133 U.S. 529, 557 (2013).