

Segregation and secession

By **JULIE UNDERWOOD**

An Alabama case exemplifies how resistance to desegregation has continued to the present day.

The U.S. Supreme Court's landmark antidiscrimination case, *Brown v. Board of Education* (1954), offered the hope of equity and access for all children. Unfortunately, what started as a strong judicial statement lost its steam and left schools to try to make good on these promises in a changing legal environment.

Brown was met with strong resistance in many areas of the United States, with some states quickly closing schools and offering vouchers to private schools (which did not accept non-White students) instead. The courts moved to enforce the mandate of *Brown* by enacting desegregation orders that placed many schools under federal court supervision. Images from this era — such as the integration of Little Rock, Ark., schools — are embedded in our common cultural memory.

Desegregation today

But by the mid-1970s, the momentum began to stall. The Supreme Court in *Milliken v. Bradley* (1974) held that remedies for segregation and racial isolation that crossed school district borders were not required unless it could be shown that

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“racially discriminatory acts of the state or local school districts . . . have been a substantial cause of the inter-district segregation.” Discrimination caused by White flight or racially isolated housing patterns could not be remediated through an inter-district order. An immediate result of that case was that the Detroit schools were not bound to improve the racial isolation of their district through intradistrict busing; however, this case also set the stage for continued racial isolation in many American schools. Such phenomena as White flight from many urban areas and gentrification of others has created sharp contrasts between urban neighborhoods, and those contrasts are reflected in schools.

To ameliorate the effects of racial isolation in housing, many districts have devised race-conscious enroll-

ment policies to improve the diversity of their buildings and programs. But this must be done within the current legal framework. In 2007, the Supreme Court in *Parents Involved in Community Schools v. Seattle* (2007) held that any use of race as a decision tool for schools must be necessary to a compelling state interest and must be as narrowly tailored as possible to achieve that state interest. This strict standard has made it difficult for school districts to justify taking race into account when managing enrollment between and among school buildings.

Another way to increase diversity would be to reconsider school district boundaries. In most states, it is possible to annex property into a school district, redraw district boundaries, and/or to create new districts. Although state legislatures have this authority inherently, in most states there are procedures for local districts to do this themselves. Districts could use this option to consolidate Whiter suburban districts with more racially diverse urban districts. But, some communities have taken the opposite approach by withdrawing into themselves to create more racial isolation.

The case of Gardendale

In many ways, the story of Jefferson County, Ala., is an exemplar of the torturous history of segregation and desegregation in America's public schools. In 1965, Linda Stout's father (and the NAACP Legal Defense Fund) sued the Jefferson County Board of Education on behalf of her and a class of Black schoolchildren for “operating

a compulsory biracial school system.” (Jefferson County includes Birmingham and surrounding towns and suburbs.) Following a lengthy period of delay and legal procedures, a desegregation order was entered and approved in *Stout v. Jefferson County School Board of Education* (1971). Litigation has continued for decades, but the district continues to remain under court supervision today.

Under Alabama law, however, any town of more than 5,000 can vote to form its own school district, and in the early 2000s a number of the local communities proceeded to do so (not only seceding from the district but also exempting themselves from the 1971 desegregation order) on the grounds that they should have “local control” of their schools. In 2000, before the wave of secessions, Jefferson County Schools was 76% White; by 2015, it was 43% White. Such a dramatic shift in enrollments is consistent with the pattern of resegregation seen in other parts of the country. For example, according to the nonprofit group EdBuild (2017), at least 71 communities have seceded from their districts nationwide since 2000, resulting in greatly increased racial isolation.

The story of Gardendale, a predominantly White suburb of Birmingham, illustrates just how complicated such struggles over district secession can be. In 2012, local residents created an organization called FOCUS (Future of Our Community Utilizing Schools) Gardendale, which set out to lobby community leaders to break off from the Jefferson County schools, following the other predominantly White communities that had already done so. By 2015, a separate Gardendale City Board of Education had been created, and it petitioned the federal court to allow it to establish its own school district.

Under the new district’s secession plan, students who did not live in

Gardendale City would be phased out over time and returned to the Jefferson City schools. However, the affected families opposed this petition and sued to remain. The resulting federal District Court decision (*Stout v. Jefferson County Board of Education*, N.D. Ala. 2017) included a lengthy history of the district and its desegregation orders. Noting the increased racial isolation caused by the secession of other communities, the court observed that FOCUS had acted with a “racially discriminatory purpose,” that its members “prefer a predominately white city,” and that their goal was to withdraw from the racial diversity of the Jefferson County Schools. Clearly, the Gardendale City Board of Education wanted to evade the standing desegregation order and remove non-resident Black students from the local schools. Thus, the court found, the secession violated the Equal Protection Clause of the U.S. Constitution.

In addition, the District Court found that the secession would impede the standing desegregation order for three reasons: The students removed from the Gardendale School District would be moved to more racially isolated schools. The highly sought-after high school that Gardendale would acquire from Jefferson County would no longer be accessible to Jefferson County students, and Jefferson County Schools would most likely not have the financial means to replicate this facility. Finally, the secession movement had communicated “messages of inferiority” to Black students.

But here’s the kicker: In spite of these findings, the District Court gave partial assent to the request to secede from the Jefferson County school district. The judge didn’t accept the secession plan Gardendale had proposed, but — having been persuaded that some of the local parents did have legitimate reasons for wanting to create their own school district — she

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decided that secession could proceed on a more limited basis.

The decision was appealed by both parties — the affected parents, who didn’t want their children to be excluded, and the Gardendale board members, who didn’t want any limits placed on their plan. In turn, the U.S. Circuit Court of Appeals, in *Stout v. Jefferson County Board of Education* (11th Cir. 2018), overruled the earlier decision, reasoning that once the District Court had found, correctly, “that a racially discriminatory purpose motivated the Gardendale Board,” it should have denied the motion entirely. “Official actions motivated by a discriminatory purpose,” the Circuit Court held, “have no legitimacy at all under our Constitution.” In short, Gardendale is not permitted to withdraw from the Jefferson County schools.

This is only the most recent chapter in a desegregation case that has played out over more than 50 years, and while the push for secession was unsuccessful this time, it’s hard to imagine that this marks the end of the story. At some point, we can only hope, local communities and the state will choose to focus on the best interest of all children, finding a way to avoid the long-standing racial animus that has persisted in Alabama, and elsewhere, for so long. ◀

Reference

EdBuild. (2017, June). *Fractured: The breakdown of America’s school districts*. Jersey City, NJ: Author.