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## DE FACTO SEGREGATION: HOW IT IS AFFECTING AMERICA'S INNER-CITY SCHOOLS

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### INTRODUCTION

Many Americans believe our schools are no longer segregated, and legally they are correct. However, although statutory segregation was abolished with the U.S. Supreme Court's holding in the landmark case of *Brown v. Board of Education*,<sup>1</sup> a different type of non-government mandated segregation exists in our school systems today:

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<sup>1</sup> *Brown v. Board of Ed. Of Topeka, Shawnee Cnty, Kan.*, 347 U.S. 483 (1954) ("Brown I").

de facto segregation. De facto segregation may be the result of a combination of events outside the government's control, but that does not extinguish the fact black students and Hispanic students are suffering under the effects of living in a segregated society. Part I of this note will discuss the history of slavery in America and how de jure and de facto segregation were established. Part II will analyze de facto segregation specifically in Knoxville, Tennessee. Part III will focus on the causes of de facto segregation. Part IV will review the different types of remedies that have been attempted to rectify de facto segregation and the obstacles school districts face in trying to implement their remedial plans. Finally, Part V will conclude with a proposal of how school districts can become integrated without using race as a factor. Because America is a melting pot of nationalities and races, children who are educated in schools heavily populated by a single race are at a severe disadvantage once they graduate and enter into the real world, especially children in minority populations. America has come a long way from the days of slavery, but it has yet to reach the point where children are no longer classified by their race but rather by their character and what they can contribute to society.

#### PART I: A BRIEF HISTORY OF SLAVERY IN AMERICA, HOW DE JURE SEGREGATION WAS ESTABLISHED, AND THE SHIFT TO DE FACTO SEGREGATION

The history of segregation in American school systems began long before it was an independent nation. In order to understand de facto segregation, one must first understand how segregation started in America. In 1619, twenty slaves from Africa were brought to the colony of Jamestown, Virginia.<sup>2</sup> These twenty people were the first slaves to be brought to America. From 1619 until the Emancipation Proclamation of 1862 issued by President Abraham Lincoln, many white land owners owned slaves and used them to work in their fields and serve them in their homes.<sup>3</sup> Slavery was not officially abolished until the Thirteenth Amendment of the Constitution was adopted in 1865.<sup>4</sup> Furthermore, it was not until the Fourteenth Amendment was adopted in 1868 that former slaves received the

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<sup>2</sup> Slavery in America. <http://www.history.com/topics/slavery> (last visited Oct. 27, 2012).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

rights of citizenship and equal protection, and they were not granted the right to vote until the Fifteenth Amendment was adopted in 1870.<sup>5</sup> The significance of the history of slavery and when it was abolished is that it explains why, until 1954, there were schools for white children and schools for black children. Ideally, it would be nice to say that white slave owners treated their slaves with respect by paying the slaves for their work and educating the slaves and their children and seeing to all the physical and medical needs of all the slaves on their property. However, the exact opposite was the case.

There may be a few slave owners in history who treated their slaves like hired workers and provided care and benefits to them in return for their work; however, the sad truth is most white slave owners treated the African slaves as if they were property and less than human.<sup>6</sup> Frederick Douglass stated in *My Bondage and My Freedom* that at the time he was writing, killing a slave or any colored person was not a crime in Maryland.<sup>7</sup> Writing about how slaves were denied the right to be educated, Douglass stated that when his second owner, Master Hugh, learned that his wife was teaching Douglass how read the bible, Hugh forbade her to continue teaching Douglass because it was unlawful saying:

[i]f you teach [Douglass]...how to read the bible, there will be no keeping him...it would forever unfit him for the duties of a slave...and as to himself, learning would do him no good, but probably, a great deal of harm—making him disconsolate and unhappy...if you learn him how to read, he'll want to know how to write; and, this accomplished, he'll be running away with himself. <sup>8</sup>

White people became accustomed to the idea that a black person could not be educated. As evidence, for over one hundred and fifty years, it had been illegal to educate a slave due to the slave codes in many states. Therefore, it would be decades before former slaves saw the benefits of the abolition of slavery. An example

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<sup>5</sup> *Id.*

<sup>6</sup> FREDERICK DOUGLASS, *MY BONDAGE AND MY FREEDOM* 43 (1855).

<sup>7</sup> *Id.* at 98.

<sup>8</sup> *Id.* at 114

of a slave code which made it illegal to educate slaves or former slaves is Georgia's Slave Code Section 2(11) which stated: If any slave, Negro, or free person of color, or any white person, shall teach any other slave, Negro, or free person of color, to read or write either written or printed characters, the said free person of color or slave shall be punished by fine and whipping, or fine or whipping, and the discretion of the court.<sup>9</sup>

Once slaves were made free citizens, they were still governed by the slave codes, regardless of whether the Supreme Court actually made a declaration that it followed the now illegal slave code in its holdings in cases where one or more former-slaves were involved.<sup>10</sup> As a whole, African-Americans who were former slaves were treated as an inferior race to white Americans. Rather than trying to create an environment where everyone coexisted, white legislatures and city council members developed the habit of distinguishing the difference between white people and black people in all areas of life: separate train cars, separate boarding docks, separate schools, separate churches, even separate parts of the street one could walk. Thus, although former slaves were now free people in society, the influences of the slave codes still dictated the court systems and black people were judged far more severely than white people who were charged with similar crimes.<sup>11</sup> When the slaves were granted their freedom, it should have meant that they would be treated with equality and justice for all, instead the pre-emancipation influences were so strong that rather than blending the societies, *de jure* segregation was formed to legally keep the societies separated.

*De jure* segregation is segregation permitted by law.<sup>12</sup> In many former slave-holding states, laws and statutes were created to restrict, limit, or make it completely impossible for minority citizens to exercise their rights. Laws were made to prevent minorities from loading the train in a certain spot or walk on a certain side of the

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<sup>9</sup> Codification of the Statute Law of Georgia § 2(11) (Hotchkiss comp., Grenville 1848) (1861).

<sup>10</sup> A. Leon Higginbotham, Jr., *"Rather Than the Free": Free Blacks in Colonial and Antebellum Virginia*, 26 HARV. C.R.-C.L. L. REV. 17, 18 (1991).

<sup>11</sup> *Id.*

<sup>12</sup> BLACK'S LAW DICTIONARY (9th ed. 2009).

street. The first landmark case to address this concept of legal segregation was *Plessy v. Ferguson*.<sup>13</sup> In that case, Plessy filed a law suit against a criminal district court judge John H. Ferguson in Louisiana after Plessy was ejected from the train after refusing to remove himself to the train car designated for black passengers.<sup>14</sup> Plessy challenged the constitutionality of a Louisiana law which provided for separate train cars for whites and minorities.<sup>15</sup> Plessy argued that the separation was a violation of the Thirteenth and Fourteenth Amendments of the Constitution.<sup>16</sup> However, the Supreme Court of the United States held that the state law providing for separate cars on a train to separate the races did not violate the Thirteenth Amendment because:

[a] statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—as no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude.<sup>17</sup>

As for the Fourteenth Amendment issue, the Court ultimately held that forcing citizens to separate on the basis of color was constitutional so long as the separate accommodations were equal in what they offered to that class of people.<sup>18</sup> In dicta, the Court indicated that segregation is necessary because when one race is inferior to another, it would violate the Fourteenth Amendment to put the two races on the same plane.<sup>19</sup> Essentially, the Court believed that segregation was created in favor of minorities because it would not be fair to combine them with a race that was far more superior.<sup>20</sup> As outrageous as the Court holding is in *Plessy*, the “separate but

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<sup>13</sup> 163 U.S. 537 (1896).

<sup>14</sup> *Id.* at 538.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 553.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 548.

<sup>19</sup> *Id.* at 552-53.

<sup>20</sup> *Id.* at 552

equal” doctrine was not overturned until 1954.<sup>21</sup> This doctrine became the driving force for making constitutional all laws that compartmentalized people based on their color and showed great favoritism to white citizens. Most importantly for this paper is how the “separate but equal” doctrine led to the establishment of de jure segregation in American schools.

It was not until 1954 that the Supreme Court of the United States finally overruled the “separate but equal” doctrine stating de jure segregation violated the Fourteenth Amendment.<sup>22</sup> In *Brown I*, several class action suits were filed by African-American children who wished to be able to attend school on a non-segregated basis in four different states.<sup>23</sup> Each class of plaintiffs argued that they were denied access to schools attended by white children under state laws which permitted segregation according to race and argued that those laws violated the plaintiffs’ rights to equal protection under the Fourteenth Amendment.<sup>24</sup> At the trial court level for three of the four class suits, the trial judge denied the plaintiffs relief on the “separate but equal” doctrine, stating that so long as the races were provided substantially equal facilities, it did not matter that people were being separated by race.<sup>25</sup> In Delaware, the judge still adhered to the “separate but equal doctrine” but stated that the black students needed to be admitted into the white-only schools because the schools the black students were attending were far inferior to the white children’s schools.<sup>26</sup> The specific issue before the Court was whether segregating children on the sole basis of race deprives children of the minority group of equal educational opportunities even if the facilities are considered “equal.”<sup>27</sup> Chief Justice Warren, writing for the majority, held “separate but equal” deprived minority children the right to equal education.<sup>28</sup> He further stated that segregating schools made children in the minority races feel inferior to their white counterparts, and that sense of inferiority hindered the black

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<sup>21</sup> *Brown I*, 347 U.S. 483.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 489

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 493.

<sup>28</sup> *Id.*

children's motivation to learn and slowed their mental development.<sup>29</sup> The Court overruled the "separate but equal" doctrine in the school systems and found that the segregated school systems deprived the plaintiffs their Fourteenth Amendment right to equal protection.<sup>30</sup>

One year later, in *Brown II*, the Court established that school districts had the constitutional duty to desegregate their schools.<sup>31</sup> Unfortunately, almost sixty years after the Court's holding in *Brown II*, many school districts who had desegregated were once again re-segregated and many never did desegregate.<sup>32</sup> The departure from de jure segregation was a slow one and one that was done with great reluctance by many states. It became obvious to state legislatures and court systems that one court holding was not going to be enough to erase centuries of animosity and discrimination.

The harsh reality of school systems today is that the dual system of segregation still exists, but now, it is de facto segregation rather than de jure segregation that separates students. De facto segregation is segregation that occurs without state authority on the basis of socioeconomic factors.<sup>33</sup> There are many theories as to what has caused the de facto segregation phenomenon, most of which will be discussed later in this article when discussing the different measures that have been taken by states and school systems to attempt to remedy de facto segregation. For now, the important thing to understand is that although state constitutions no longer have provisions requiring separate schools for separate races, children, especially African-American children, are still suffering from the harmful effects of segregation.<sup>34</sup> De facto segregation is a malady in this country and until we find a cure, children are going to continue to

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<sup>29</sup> *Id.* at 494.

<sup>30</sup> *Id.* at 495.

<sup>31</sup> *Brown v. Board of Educ.*, 349 U.S. 294, 301 (1955) ["Brown II"].

<sup>32</sup> John M. Jackson, *Remedy for Inner City Segregation in Public Schools: The Necessary Inclusion of Suburbia*, 55 OHIO ST. L.J. 415, 416 (1994).

<sup>33</sup> BLACK'S LAW DICTIONARY (9th ed. 2009).

<sup>34</sup> See Jonathan Kozol, *Savage Inequalities: Children in America's Schools* 211-249 (1991).

be victims to the psychological ramifications that come with being classified and separated because of the color of their skin.<sup>35</sup>

## PART II: DE FACTO SEGREGATION IN KNOX COUNTY, TENNESSEE

Although there are numerous psychological studies that prove that people are generally drawn to people they have the most in common with, the reality is having a school that is predominantly one race over another forces children in the minority race to withdraw, act out, and fail to reach their full potential.<sup>36</sup> This article concentrates on high schools in Knox County, Tennessee to demonstrate the harmful effects of children, especially African-American children, being educated in a school system divided by de facto segregation. There are fourteen high schools in Knox County. Below is a compilation of data retrieved from U.S. News and World Report on the performance levels of the fourteen high schools in Knox County in 2011:

School	% Economically Disadvantaged Students	Proficient in English	Proficient in Algebra
Austin East High/Magnet School	83%	31%	18%
Bearden High School	17%	87%	60%
Carter High School	46%	66%	38%
Central High School	47%	60%	25%
Farragut High School	9%	89%	71%
Fulton High School	69%	48%	23%
Gibbs High School	33%	59%	26%
Halls High School	23%	73%	58%
Hardin Valley High School	15%	81%	56%
Karns High School	33%	66%	32%
Powell High School	30%	69%	37%
Ridgedale Alternative School	80%	N/A	N/A
South Doyle High School	49%	59%	36%
West High School	42%	69%	31%

<sup>35</sup> *Id.*

<sup>36</sup> Mary N. Parker, et al., *Minority Status Stress: Effect on the Psychological and Academic Functioning of African-American Students*; *Journal of Gender, Culture, and Health* 61, 62 (1999).



School	% College Readiness	% White Students	% Minority Students	Geographical Setting
Austin East High/Magnet School	5.80%	10%	90%	City
Bearden High School	26.30%	85%	15%	City
Carter High School	8.90%	90%	10%	Rural
Central High School	7.90%	72%	28%	City
Farragut High School	38.70%	84%	16%	Suburb
Fulton High School	3.90%	59%	41%	City
Gibbs High School	2.90%	92%	8%	Suburb
Halls High School	13.80%	96%	4%	Suburb
Hardin Valley High School	25.80%	85%	15%	City
Karns High School	18.30%	85%	15%	Rural
Powell High School	9.7%	88%	12%	Suburb
Ridgedale Alternative School	N/A	66%	34%	City
South Doyle High School	5.7%	85%	15%	Suburb
West High School	23.3%	66%	34%	City

*Table Continued*<sup>37</sup>

Of the fourteen schools listed, only Farragut High School is ranked fifth in the state and is 705th in the nation.<sup>38</sup> The only other ranked school on this list is Bearden, which is eleventh in the state and nationally ranked at 1,303rd.<sup>39</sup> This chart indicates two things: 1) the poverty rate with correlates high percentages of minorities in schools; and 2) the highest concentration of minority students are in the city limits of Knoxville. Without further looking into the information provided in the chart, it shows Knox County high schools are operating under de facto segregation. These data are not conclusive, and there are many factors that contribute to the success of students in any given school. Nevertheless, the data is clear that students in schools where the number of minority students is greater than the number of white students are at a significant disadvantage (for the most part) than students in the schools where the white student population was higher than the minority population. The

<sup>37</sup> U.S. News College Compass Best Colleges 2011.

[www.usnews.com/education/best-high-schools/tennessee/districts/knox-county/](http://www.usnews.com/education/best-high-schools/tennessee/districts/knox-county/) (last visited Oct. 27, 2012). \*The L&N Stem Academy was not included in the school report; therefore I did not include it in my study.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

only school with an almost-balanced student ratio was Fulton, with one of the lowest college readiness scores. After reading several articles about Fulton's strides to reform its school system to bring that readiness score up, it is clear that those changes will be reflected in years to come.<sup>40</sup>

Based on the information in the graph, the two schools on polar opposites of each other are Farragut and Austin East. Of the sixteen percent of minority students in Farragut, only six percent are black. Seven percent are Asian and three percent are Hispanic. The poverty level in Farragut is the lowest of all the fourteen high schools in Knox County.<sup>41</sup> Farragut has a history of being known as one the wealthiest parts of Knox County. On the other hand, Austin East has a long history of being a predominantly black school located in Knoxville's inner city. Austin East has a bad reputation of violence and drugs and is more noted for its need for police escorts at its home football games than for its academic achievements.<sup>42</sup> Looking at the scores and percentages in the chart, it can be determined that students at Austin East are receiving an inferior education than the students in Farragut: an example of de facto segregation at play.<sup>43</sup>

The numbers do not lie. The Knox County School District is one with a dual system. Although there are small percentages of minority students in other schools, the highest concentration of black students can be found in Fulton High School and Austin East High School, the district's city schools. These schools have the lowest test scores in the district. The scores are not the result of a high concentration of slow-minded students who struggle to mentally grasp educational concepts. Instead, these scores arguably are the result of students having to learn in an environment where they are told that because they are minorities and attend a nearly all-minority

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<sup>40</sup> See, e.g., Lydia X. McCoy, *Making the Grade: Knox Schools Innovate, Score Well on State Report Card*, KNOXVILLE NEWS SENTINEL, Dec. 2, 2011, available at <http://www.knoxnews.com/news/2011/dec/02/making-the-grade-knox-schools-innovate-score-on/>.

<sup>41</sup> U.S. News College Compass Best Colleges 2011, *supra* note 34.

<sup>42</sup> Megan Boehnke & Lydia X. McCoy, *Gun Violence, Close Calls at Knox-area Schools*, KNOXVILLE NEWS SENTINEL, Dec. 21, 2012, available at <http://www.knoxnews.com/news/2012/dec/21/east-tennessee-school-violence-and-close-calls/>.

<sup>43</sup> U.S. News College Compass Best Colleges 2011, *supra* note 34.

school, they will not be allowed the educational opportunities that students in majority-white schools have.<sup>44</sup> De facto segregation is detrimental to America's students. The question becomes: how is de facto segregation eliminated without violating the Constitution?

### PART III: CONTRIBUTIONS TO THE EXISTENCE OF DE FACTO SEGREGATION

So, what caused this de facto segregation or re-segregation to occur? There are many theories as to what caused this phenomenon of highly concentrated students of one race in schools, but they all lead back to what is commonly known as "white flight."<sup>45</sup> With white flight, white citizens left the cities they once populated and moved out to the suburbs in large concentrations while black citizens stayed in the cities.<sup>46</sup> When new schools were built, they were placed in heavily populated neighborhoods of one race or another, which helped to keep the suburban children and urban children separated.<sup>47</sup> Naturally, the poorer districts are found in urban communities because of the lack of public transportation between the suburbs and the city, the higher cost for housing and taxes in the suburbs, and the government's placement of federal housing projects in the cities rather than the surrounding suburban districts.<sup>48</sup> Thus, the inner-city schools have a much higher population of students below the poverty line than those in most suburban communities.<sup>49</sup> As seen in the chart in Part II of this article, often times where there is a high concentration of poverty, there is also a high concentration of minorities.<sup>50</sup> Because it is reportedly known that poverty affects overall student achievement, the high concentration of poverty juxtaposed with a high concentration of minorities creates an environment that restricts students' learning achievements and feeds into the thought process

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<sup>44</sup> See e.g., Lucis Miron, *Education, Inner-City Schools*, Encyclopedia of Social Problems, 284-285 (2008).

<sup>45</sup> See e.g., Jan Blakeslee, *"White Flight" to the Suburbs: A Demographic Approach*, Institute for Research on Poverty (1978).

<sup>46</sup> *Id.*

<sup>47</sup> ABIGAIL M. THERNSTROM & STEPHAN THERNSTROM, *BEYOND THE COLOR LINE: NEW PERSPECTIVES ON RACE AND ETHNICITY IN AMERICA* 252 (2002).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> U.S. News College Compass Best Colleges 2011, *supra* note 31.

that inner-city schools are far more inferior to those located in the suburbs.<sup>51</sup>

#### PART IV: REMEDIES FOR DE FACTO SEGREGATION

##### A. TYPES OF REMEDIES, THEIR EFFECTIVENESS, AND THE UNITED STATES SUPREME COURT'S RESPONSES

Americans may not have the constitutional right to an education, but they do have the constitutional right to an equal education.<sup>52</sup> *Brown I* and *Brown II* should have been the cases to dissolve all segregation problems in schools. They represent the pivotal point in America's history where the highest court in the country declared that to be racially divided in our school systems was unconstitutional. It gave hope to those who had once believed that there was no hope.<sup>53</sup> It sent a message to the world that America was a progressive and moving nation.<sup>54</sup> However, although the Supreme Court declared dual school systems unconstitutional and mandated that all segregated systems integrate, both cases had one major flaw: they failed to mention how the schools needed to desegregate and left it up to the District Courts to determine the appropriate remedies. As Chief Justice Burger explained it in *Swann v. Charlotte-Mecklenburg Board of Education*:

This Court, in *Brown I*, appropriately dealt with the large constitutional principles; other federal courts had to grapple with the flinty, intractable realities of day-to-day implementation of those constitutional commands. Their efforts, of necessity, embraced a process of 'trial and error,' and our effort to formulate guidelines must take into account their experience.<sup>55</sup>

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<sup>51</sup> Misty Lacour & Laura D. Tissington, *The Effects of Poverty on Academic Achievement*, Educational Research and Reviews, Academic Journals, 522 (2011).

<sup>52</sup> *Id.*

<sup>53</sup> Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy*, Princeton U. P. (2000).

<sup>54</sup> *Id.*

<sup>55</sup> 402 U.S. 1, 6 (1971).

Because the Court failed to provide a remedy in *Brown I* and *Brown II* for school systems and states to follow, states and school boards alike spent the next sixty years trying to find the perfect remedy to resolve the segregation issues that was not racially discriminatory or harmful to any students involved.<sup>56</sup> Most of the remedies have failed when they were challenged at the federal court level.<sup>57</sup> Many parents believed the school systems were not doing enough.<sup>58</sup> Others believed the school systems were becoming too intrusive in their children's lives.<sup>59</sup> It rapidly became clear that merely declaring something that had been practiced for centuries unconstitutional was not going to be enough.<sup>60</sup>

Today, school districts must show the correlation between the legitimate interest and the means for achieving said interest.<sup>61</sup> The test to determine the constitutionality of desegregation plans is one of strict scrutiny, which requires that the state or school district show that their system has been narrowly tailored to achieve a compelling government interest.<sup>62</sup> Thus, a heavy burden is placed on a school district to establish it does have a compelling government interest in desegregation plans and that the method in which it used is narrowly tailored to achieve that purpose. This is important to understanding how proposed desegregation methods have been accepted or denied by the Courts and how the strict standard has contributed to the racial imbalance in schools today.

### 1. BUSING AND RESTRUCTURING SCHOOL ZONES

Once *Brown I* and *Brown II* were decided, they did not change the fact most schools in states operating under dual systems were still racially divided.<sup>63</sup> The question became how to make the students

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<sup>56</sup> 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 (2008).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 702 (2007).

<sup>62</sup> *Id.*

<sup>63</sup> *Armor, supra* note 36.

integrate so that it was obvious the state and school board were taking steps to desegregate the system. The most popular method of desegregation was the busing method.<sup>64</sup>

Under the busing method, which involved the restructuring of school zones in an effort to achieve racial balance in that district's schools, public transportation was provided to bus students to the school they had been assigned to in an effort to achieve racial balance.<sup>65</sup> The school district to make history under this method was the Charlotte-Mecklenburg school district in North Carolina, a state that formerly had a statutory dual segregated school system.<sup>66</sup> Out of its 84,000 pupils, 21,000 of the 24,000 black children in its district attended schools within the city of Charlotte; 14,000 of those students attended 21 schools which were either all-black or more than 99% all-black.<sup>67</sup> The school board was ordered by the District Court to come up with a plan based on geographic zoning with a free-transfer provision to make the Charlotte-Mecklenburg school district racially balanced.<sup>68</sup>

Two plans were proposed: the Board Plan and the Finger Plan.<sup>69</sup> Both plans had a similar proposal for high school students but varied for the junior high and elementary school students.<sup>70</sup> The common denominator in both plans was to eliminate several all-black schools and relocate those students to other schools in the district in order to make the minority ratio in each school reflect the minority ratio in the school district as a whole.<sup>71</sup> The Finger Plan was adopted, but it had one major flaw: only white students in the fifth and sixth grades were bused to schools in the inner city.<sup>72</sup> From kindergarten to fourth grade and from seventh grade to twelfth grade, black students

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<sup>64</sup> David J. Armor, *The Evidence on Busing*, PUBLIC INTEREST 28 (1972).

<sup>65</sup> 402 U.S. at 8.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 8-9.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 10.

were bused to predominantly white schools in the suburbs of the Charlotte-Mecklenburg school district.<sup>73</sup>

Unfortunately, when the constitutionality of the busing and rezoning system was challenged before the United States Supreme Court, the majority of the Court upheld the busing and rezoning method as a necessary means to cure the problem of segregation in the school system.<sup>74</sup> It appears that the Burger Court chose to believe that busing white students in the fifth and sixth grade along with establishing a unitary athletic department was enough to prove that the school board's system was constitutionally sound.<sup>75</sup> The Court found that the nature of the violation determines the scope of the remedy; thus, because the school board system was taking strides to make itself racially balanced, striking down the system would not be an effective remedy when the school board was trying to uphold its constitutional duty.<sup>76</sup>

The rezoning and busing system was further challenged in *Milliken v. Bradley*.<sup>77</sup> In this case, parents of children in the Detroit city school system challenged the constitutionality of a Michigan statute known as Act 48 of the 1970 Legislature, which would interfere with a voluntary partial segregation plan for high schools in Detroit which was racially imbalanced.<sup>78</sup> The Supreme Court in this case read *Swann* to say that desegregation does not require racial balance in schools.<sup>79</sup> The problem at issue in this case was that the schools in the city of Detroit were 85%-100% predominantly black schools that operated under the dual school system, whereas the surrounding 53 school districts had made changes to operate under a unitary school system.<sup>80</sup>

The District Court sought to remedy the racial imbalance in Detroit by forcing a busing and rezoning plan on the surrounding

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 33.

<sup>75</sup> *See Id.*

<sup>76</sup> *Id.* at 16.

<sup>77</sup> 418 U.S. 717, 722 (1974).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 740-41.

<sup>80</sup> *Id.* at 722.

school districts in order to make Detroit's city school system balanced.<sup>81</sup> The Burger Court declared that when one district is in violation of the Constitution in operating under a dual system, the surrounding districts should not be punished as a result.<sup>82</sup> Essentially, the Court placed limitations on the rezoning and busing practice approved in *Swann*.<sup>83</sup> As Justice Marshall stated in his dissenting opinion, the Court held that if the state failed to prove the surrounding districts played a part in the segregation of a single district, said districts would not be forced to rezone to accommodate or fix the segregation problem of another district.<sup>84</sup> He believed that the majority opinion would stunt segregation challenges because it would not allow for addressing the discrepancies between one school district and the surrounding school districts.<sup>85</sup>

After *Milliken*, it appeared the rezoning and busing remedies within school districts were remedial methods approved by the Supreme Court, but over time, it would become evident those programs only further supported segregation and fueled the fire to rapid de facto segregation in our country.<sup>86</sup> In 1997, the decision in *Swann* was challenged when a district judge declared that the school system had achieved unitary status and the busing system was no longer necessary to achieve racial balance.<sup>87</sup> As a result, the school system implemented a racial-neutral choice plan where students were allowed to pick the school of their choice.<sup>88</sup> Today, the Charlotte-Mecklenburg school district is just as racially divided as it was before *Swann* was decided.<sup>89</sup>

As for the Detroit city schools, the holding in *Milliken* allowed for further white flight to take place and according to the most recent reported data, 90% of the students in Detroit Public Schools are black or Hispanic while the schools in the surrounding

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<sup>81</sup> *Id.* at 752.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 808 (Marshall, J., dissenting).

<sup>85</sup> *Id.*

<sup>86</sup> Claire Apaliski & Laura Simmons, *Mapping de facto segregation in Charlotte-Mecklenburg Schools*, UNC Charlotte Urban Institute (2010).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*



suburb districts are predominantly white.<sup>90</sup> Thus, it would appear the busing system and school zoning were effective methods in integrating schools. However, as will be discussed below, the Supreme Court later held that using race for the basis of determining where a student attends school also violates the Equal Protection Clause of the Fourteenth Amendment.<sup>91</sup>

## 2. FREEDOM OF CHOICE

Originally after the decisions in *Brown I* and *Brown II*, school districts adopted a method known as freedom of choice.<sup>92</sup> Under the freedom of choice approach, students were allowed to choose which school they wanted to attend.<sup>93</sup> This was an attempt made by school boards to achieve racially balanced schools without using race as a factor.<sup>94</sup>

This system was challenged in the case of *Green v. County School Board of New Kent County, Virginia*. In this case, Virginia had once conducted its schools under statutory segregation, but after the Supreme Court's ruling in *Brown II*, Virginia enacted first what was known as the Pupil Placement Act in 1964.<sup>95</sup> Under Pupil Placement, students were automatically reassigned to the school previously attended unless they applied to attend another school.<sup>96</sup> The problem with Pupil Placement was that no minority applied for admission to the white school under the statute and no white child had applied to the minority school. Before any action could be taken to strike down the Pupil Placement Act, the New Kent school board adopted a "freedom of choice" plan to desegregate schools.<sup>97</sup> Under the freedom of choice plan, students not entering in first and eighth grade could choose between the previously all-white school or the previously all-black school and any student who did not choose a school would be

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<sup>90</sup> Gary Orfield, John Kucsera & Genevieve Siegel-Hawley, *E Pluribus...Separation: Deepening Double Segregation for More Students*, The Civil Rights Project at the UCLA 44 (2008).

<sup>91</sup> See 402 U.S. at 8.

<sup>92</sup> 391 U.S. 430, 432 (1968).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 433.

<sup>97</sup> *Id.*

placed in the school he or she previously attended.<sup>98</sup> This plan seemed great to the school board because it placed the responsibility of integration on the students. However, the problem with the freedom of choice method in this school district was that after three years of its implementation, no white child had chosen to attend the formerly all-black school and although 15% of the black children enrolled into the formerly white-only school, 85% of the black children still attended the all-black school.<sup>99</sup> Thus, the schools system remained segregated.<sup>100</sup>

The problem with the freedom of choice method is that when children have the freedom to choose, they will choose the most familiar option. Without further action from the school board, the negative stigma the all-black school originally carried will remain, regardless of whether students are suddenly able to pick the school they want to attend.<sup>101</sup> The school district must take an additional step to show that both schools provide an equal education regardless of whatever prior negative label that school once held. The Supreme Court found in *Green* that New Kent's freedom of choice plan was an insufficient step to an integrated school system.<sup>102</sup> However insufficient New Kent's freedom of choice plan was, the Court did not go as far as to declare "freedom of choice" programs unconstitutional.

The most well-known freedom of choice plan enacted by the federal government is found in the No Child Left Behind Act, enacted in 2001, which contains a provision allowing for minority students in predominantly black schools to transfer to predominantly white schools in an attempt to remedy de facto segregation.<sup>103</sup> Many school districts have decided to forgo this remedial procedure, and as a result de facto segregation is becoming more of a reality as students in predominantly white schools choose to stay in their schools while

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 441.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> 20 U.S.C. § 6316(b)(1)(E)(i).

students in predominantly black or Hispanic schools are forced to remain where they are in the inner city.<sup>104</sup>

### 3. RACIALLY-BASED SCHOOL ASSIGNMENT PLANS

Until 2007, the Supreme Court of the United States upheld any desegregation plans that used race as a basis of assigning students to schools so long as the school boards could establish that it was necessary in eliminating its former dual school system.<sup>105</sup> In addition, schools had to show there were other factors or actions taken by the school district, which made it so that race was not the only factor in the school desegregation plan.<sup>106</sup> Racially based school assignment plans involved a school district looking at the number of students in each school within the district and reassigning the children to different schools in order to achieve racial balance.<sup>107</sup> This practice was challenged by parents of students in Seattle School District No. 1. Under the program established in Seattle School District No. 1, a student reassignment plan was created in which certain slots in oversubscribed schools were allocated based on racial classification.<sup>108</sup> The parents argued the race-based assignment plan violated their children's Fourteenth Amendment right to equal protection.<sup>109</sup> Chief Justice Roberts, writing the majority opinion concerning the race classification, stated that:

[b]ecause 'racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification,' governmental distributions of burdens or benefits based on individual racial classifications are reviewed under strict scrutiny. Thus, the school districts must demonstrate that their use of such classifications is

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<sup>104</sup> See Debroah Meier et al., *Many Children Left Behind: How the No Child Left Behind Act is Damaging Our Children and Our Schools 6-15* (2004).

<sup>105</sup> See generally *Seattle Dist. No. 1*, 551 U.S. 701.

<sup>106</sup> See 402 U.S. at 8.

<sup>107</sup> *Id.*

<sup>108</sup> *Seattle Dist. No. 1*, 551 U.S. at 701.

<sup>109</sup> *Id.*

“narrowly tailored” to achieve a “compelling” government interest.<sup>110</sup>

Following the strict scrutiny test, Chief Justice Roberts found that Seattle School District No. 1 failed to meet the standard due to the fact Seattle schools were never segregated by law; thus the compelling interest to remedy past intentional segregation did not exist.<sup>111</sup> The Court also found the school district was not governed by *Grutter v. Bolinger* because the positions allocated in the oversubscribed schools were purely based on race.<sup>112</sup> In order for *Grutter* to apply, the spectrum needed to be broader so race and ethnicity were mere factors rather than the entire basis for the desegregation policy.<sup>113</sup> The Court further stated if a school’s desegregation decree has been dissolved, a racially based system of assigning students to schools after the dissolution of the decree is unconstitutionally discriminatory absent some showing by the school district or the state that there was a separate compelling interest for using race as a factor in assigning students to a school.<sup>114</sup>

The impact of the Court’s holding in *Seattle School District No. 1* was devastating for school districts across the country.<sup>115</sup> The strict scrutiny test now applied to public schools has debilitated many programs that were meant to help achieve racial balance in schools.<sup>116</sup> There are two types of schools in this country: the schools that were never segregated and the schools that once practiced segregation but have since been dissolved of their desegregation decrees.<sup>117</sup> As a result, *Seattle School District No. 1* has declared unconstitutional race-based assignments in school districts that had been in place to maintain racial balance, which means these schools must find another way to stop the rapidly growing trend of de facto segregation.<sup>118</sup> In

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<sup>110</sup> *Id.* at 702.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 703.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> See Craig R. Heeren, “Together at the Table of Brotherhood” *Voluntary Student Assignment Plants and the Supreme Court*, 24 HARV. BLACKLETTER L.J. 133 (2008).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Seattle Dist. No. 1*, 551 U.S. at 703.

going back to the chart in Section II, if the problem is that 90% of a school district's minority population attends one school while 90% of its white population attends another school, how does that school district blend the schools so that 50% of each group of people attends both schools without using race as a factor? My answer to that question will be discussed in the Part V of this article.

#### 4. "COLORBLINDNESS"

"Colorblindness" is a theory introduced by "integrationalists" who believe that in order to overcome racism, America must first be a racially-neutral society.<sup>119</sup> At this time, colorblindness is only a school of thought that many people would like to see implemented in an effort to achieve a culturally balanced society.<sup>120</sup> Although the methods of integration discussed below have not been implemented in schools at this time, and thus have not been addressed by the Courts, I found it important to include in this section of the article to show the potential remedies and the potential problems the methods of colorblind integration face. Integrationalists' cure for discrimination is "equal treatment according to neutral norms."<sup>121</sup> There are three forms of integration under the "colorblind" theory: amalgamation, accommodationalism, and assimilationism.<sup>122</sup>

Amalgamation, or cultural pluralism, permits diverse cultures the right to keep their individual characteristics while allowing them to have equal access to resources in society.<sup>123</sup> This system relies on each member in American society acting racially neutral in identifying other members in society as is described below:

Amalgamation thus embraces the belief that each member of American society can determine the extent that another member's race will factor into their

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<sup>119</sup> Alicia L. Mioli, *Sheff v. O'Neill: The Consequence of Educational Table-Scraps for Poor Urban Minority Schools*, 27 FORDHAM URB. L.J. 1903, 1916-17 (2000).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

relationships and identifications so long as the second member's "race would not be used . . . to limit [his] opportunities or define [his] identit[y]." Through meshing different cultures together, including African American culture, American society thus reaps the benefits of multiculturalism and those of integration at the same time. Consequently, the amalgamationist could, in theory, preserve African American heritage.<sup>124</sup>

Thus, in my opinion, the problem with amalgamation is it could further preserve the cultural divide between white society and black society, thus keeping us right where we are: never moving forward; always staying the same.

Accommodationism calls for "accepting the value of dominant society and working toward eliminating racial inequalities gradually."<sup>125</sup> This form of integration trades the more aggressive approach for one that requires conforming to the expectations of the white majority.<sup>126</sup> Accommodationists in support of this form of integration believe if black people conform to white culture, it will gradually make white people more open to integration.<sup>127</sup> The problem with this is it conforms to the stereotype that black people are inferior to white people and calls for African Americans to disregard their distinct culture to conform to the culture of the *majority*.<sup>128</sup>

Under assimilationism, no racial culture is different from any other American, thus all races should adopt the cultural norms and values of the "American majority."<sup>129</sup> Essentially, what assimilationism calls for is not recognizing any culture as distinct or different and recognizing that everyone can compete equally before and after integration.<sup>130</sup> Although this is great in theory, the problem with assimilationism, in my opinion, is defining just what is

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<sup>124</sup> *Id.* at 1917-18.

<sup>125</sup> *Id.* at 1918.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 1919.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

considered the culture of “American majority” in a nation where the *minorities* in the country are seeing a major increase in population number while the number of white people is shrinking. Which culture is the one we must conform to or is there something in between the two?

It is my theory that the major flaw of these schools of thought regarding integration is they all rely on society to step up and fix the de facto segregation problem by itself. The problem with this is so far, we are not doing a good job on our own. Taking a step back and looking at the layout of schools today, it is hard not to ask the question, “Is this really the government’s fault or is the segregation in our communities caused by something more?”

#### B. THE MAIN OBSTACLES SCHOOLS FACE TODAY IN RESOLVING THE ISSUE OF DE FACTO SEGREGATION

What are the schools doing differently, if anything at all, that is affecting the learning outcomes of students in inner-city schools where 90% of the student population is black or Hispanic versus the learning outcomes of students in predominantly white suburban schools?

That racial division by itself is no longer the issue. The two main obstacles schools face today in attempting to achieve a successful and balanced learning environment are poverty and lack of parental involvement. The problem with inner-city schools today is where there is a high concentration of minorities; there is also a high concentration of poverty.<sup>131</sup> Studies have shown that racial segregation combined with poverty results in a negative impact on the quality of education.<sup>132</sup> As a result, low-income minority students in inner-city schools are more often receiving inferior educations than students coming from upper and middle classes attending schools in

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<sup>131</sup> NAT’L CENTER FOR ED. STATISTICS, Percentage of high school dropouts among persons 16 through 24 years old (status dropout rate), by income level, and percentage distribution of status dropouts, by labor force status and educational attainment: 1970 through 2010, [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_117.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_117.asp), (last visited Oct. 27, 2011).

<sup>132</sup> Mioli, *supra* note 104.

the suburbs.<sup>133</sup> Inferior education includes less-qualified teachers, insufficient supply of books and access to technology for students, poorly maintained schools, and lack of valuable learning tools such as writing labs and science labs, AP courses, and extracurricular programs such as photography or newspaper staff.<sup>134</sup> The inevitable result of an inferior education is below-average student achievement, as was seen in the student proficiency scores in Knox County high schools in 2011.<sup>135</sup>

Austin East, an inner-city school, with 90% minority enrollment and 83% of its students being economically disadvantaged is only 31% proficient in English and 18% proficient in Algebra.<sup>136</sup> On the other hand, Farragut, with 10% minority enrollment and 9% of its students being economically disadvantaged, is 89% proficient in English and 71% proficient in Algebra.<sup>137</sup> The average proficiency percentages in Knox County high schools is 66% in English and 39% in Algebra, which means Austin East's student achievement is well below the county average in both subjects.<sup>138</sup>

After a visit at both Farragut High School and Austin East High School, I can conclude students at Austin East are receiving a far inferior education to those at Farragut High School.<sup>139</sup> In Austin East, many of the ceiling tiles in the hallway showed signs of water stains, the lighting was poor, the lockers were older and scratched, and only the basic extracurricular activities are available although student involvement in those programs is significantly less than the number of students enrolled in the school.<sup>140</sup> In Farragut, the lighting was much brighter in the hallways, the lockers had been repainted over summer break, each student had textbooks for every subject, AP and college courses were available to advanced students, and students

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> U.S. News College Compass Best Colleges 2011, *supra* note 31.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> At both schools, I spoke with the administration about government assistance and the turn-over rate of teachers in each school. We also discussed parental involvement and the socioeconomic status of the students. I was given a tour of the facilities and sat in on a few classes.

<sup>140</sup> *Id.*



had access to extracurricular activities beyond the standard band/chorus/sports activities, which included Navy JROTC, German Club, Technology Student Association, Walking Team, Robotics Team, Admiral's Performing Arts Company, DECA, FHS Book Club, FHS ClubKnit, Humanities Academy, and Health Occupation Students of America.<sup>141</sup>

Normally, schools rely heavily on fundraiser money to pay for updating equipment or expanding on a certain department in the school.<sup>142</sup> Students generally limit selling their fundraiser items to people in their communities, which means students in poverty-stricken inner-city schools will underperform in sales because of the lack of money in the community.<sup>143</sup> Whereas the schools in the suburbs will typically meet or surpass their fundraiser goal because even if money is tight, members in their community still have enough to give to their school children.<sup>144</sup> As the person I spoke to at Austin East explained, although the school receives Title 1 funds from the government to go towards updating technology, in a community with limited funds, it is almost impossible to have anything beyond what the Title 1 money covers.<sup>145</sup> As a result, students attending schools with high poverty rates are receiving an inferior education because the school cannot afford to provide the additional money needed to fund new programs and update the facilities.<sup>146</sup> Poverty is an obstacle for remedying de facto segregation because students from low-income families will be more dependent on the school system to provide their food and transportation to and from school.<sup>147</sup> This in turn causes a higher financial burden on the school district and subsequently makes schools more reluctant to change the program in any way that would cause them to have to spend more money transporting these children even further to other schools in an effort to achieve racial balance.

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Mioli, *supra* note 104.

The second, and probably the most important, obstacle hindering the reversal of de facto segregation is a lack of parental involvement. It is unfair to place the burden of student achievement solely on teachers and the school administration since a good education begins at home.<sup>148</sup> Statistics have shown that students who have at least one parent actively involved in encouraging and promoting their education have a higher success rate in school than those who have little or no parental involvement.<sup>149</sup> Unfortunately, in urban schools, parental involvement is extremely low.<sup>150</sup> The contributing factors to low parental involvement are culture, income, language, and the parents' perceptions of what a student's responsibilities are to school and their families.<sup>151</sup> As mentioned above, schools with higher percentages of economically disadvantaged students generally provide an inferior education.<sup>152</sup>

Poverty also affects parental involvement.<sup>153</sup> Middle class parents generally take proactive roles in their children's education and try to work with the teachers in order to make sure their children perform at their best.<sup>154</sup> Low-income parents often see themselves as separate and outside the school system and leave the responsibility of teaching their children to the educators.<sup>155</sup> Another problem with schools with high poverty rates and minority rates is that parents often do not feel valued by the schools, which means inner-city schools must take greater strides in making parents in that school feel welcome and important because often parents in these schools have experienced exclusion in the community based on their income, ethnicity, or culture.<sup>156</sup>

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<sup>148</sup> Peter McDermott & Julia Rothenberg, *Why Urban Parents Resist Involvement in their Children's Elementary Education*, The Qualitative Report (2000).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*; Mioli *supra* note 104.

<sup>152</sup> McDermott & Rothenberg, *supra* note 133.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

The greatest hurdle for teachers in inner-city schools in trying to improve parental involvement is communication.<sup>157</sup> Studies show that teachers who can match their communication styles to that of the community in which they teach will be more successful in making parents more eager to participate in their student's education.<sup>158</sup> Also, teachers who educate themselves on their students' cultures and ethnicities will be able to further encourage more parental involvement.<sup>159</sup> Unfortunately, most teachers in inner-city schools do not communicate effectively because they have failed to educate themselves about the cultures and beliefs of their students, which results in the parents feeling as if the school system was created to cater to middle-class white Americans.<sup>160</sup>

In an interview with a teacher from a predominantly Hispanic populated middle school in East Tennessee, I was able to learn that often the hardest thing to overcome in getting students motivated to learn was getting parents to believe that education was important for their children.<sup>161</sup> The teacher, who has been certified English as a Second Language (ESL) instructor in the state of Tennessee for three years now, stated,

It's really hard to get students motivated to take school seriously when they go home to a culture that says education isn't necessary for success. When I try to schedule meetings with the parents to discuss how their child is failing, I may get lucky and have one parent show up but most of the time they don't show.

Overall, because of the lack of parental support at home, teachers like the one I interviewed are limited in what they can do to encourage student achievement in schools that are predominantly black or Hispanic. This ultimately results in higher levels of teacher turnovers because the teachers feel like it is impossible to mend a broken system

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<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> The teacher I interviewed wished to remain anonymous in order to be able adequately answer my questions and still protect her students' identities.

that does not want to be fixed and their job security relies on students' performances on the Tennessee Comprehensive Assessment Program Test (TCAP Test).<sup>162</sup> "It's simple," the ESL teacher said,

without the pressure of losing our jobs over our students' performance on the TCAP, I think you'd see more teachers willing to work in inner-city schools. As it stands, we can't afford to stay in schools where there is little parental involvement and little to no resources available for us to provide that *next level* of education.<sup>163</sup>

Contrarily, in Hartford, Connecticut, parents in racially divided city schools have decided to take an active role in their children's education.<sup>164</sup> Rather than asking for integration, they are asking that their children receive the same education as children in the surrounding suburban schools.<sup>165</sup> Most states have websites to promote and encourage parental involvement in their urban school districts and it is clear that more parents are starting to take active roles in their children's education.<sup>166</sup> According to the American Council on Education, "students with involved parents, no matter what their income or background, are more likely to earn higher grades and test scores, attend school regularly, have better social skills, show improved behavior, and adapt well to school and graduate and go on to post-secondary education."<sup>167</sup> If parents do not make education a priority in their children's lives, no remedy in the world will be enough to provide equal education for all.<sup>168</sup>

De facto segregation was not merely the result of poor governmental attempts at eliminating formerly segregated school

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Mioli, *supra* note 104.

<sup>165</sup> *Id.*

<sup>166</sup> See e.g., Cypress Fairbanks Independent School District, [www.cfishd.net](http://www.cfishd.net) (last visited Sept. 3, 2014); see also [www.marylandpublicschools.org](http://www.marylandpublicschools.org) (last visited Dec. 12, 2012).

<sup>167</sup> American Council on Education (2007).

<sup>168</sup> Anne Henderson, *A New Generation of Evidence*, Center for Law & Education (1994).

systems.<sup>169</sup> A state can find the most nondiscriminatory method in balancing its schools, but the obstacles of poverty and lack of parental involvement will ultimately reverse any attempts on the state's part to increase student academic achievement if not properly addressed.<sup>170</sup>

#### PART V: HOW TO REMEDY THE ISSUE OF DE FACTO SEGREGATION

By this point, the foundation has been laid as to why de facto segregation is a problem in our school districts today. Although de facto segregation was not statutorily created by the states, it was encouraged by Court holdings and governmental action.<sup>171</sup> We drifted away from constitutional segregation to integration but the trend continued re-segregation where the original boundary lines returned and schools are just as racially divided now as they were before *Brown I and II* were ever decided. The problem does not rest on the fact that there are schools with predominantly one race over the other. The problem is, where there is a high concentration of nonwhite students in inner city schools, there is also a high concentration of poverty in those schools.<sup>172</sup> Poverty combined with racial division and lack of parental involvement creates the perfect storm of student failure.<sup>173</sup> Parents have attempted to challenge the constitutionality of de facto segregation and demand that states take proactive measures in balancing schools racially as was seen in *Seattle Dist. No. 1*, but because the racial divide resulted from demographic shifts allegedly beyond the government's control, systems remain as they are for the time being.<sup>174</sup> So then, what is the solution?

One single act alone will not be enough to create a multiethnic learning environment. Instead, several events must take place in order to encourage re-integration. First, the government should provide a teaching program that will not only forgive a teacher's student loans if he or she will teach in an inner-city school for five years, but also protect any teacher under this program from termination on the sole basis of students' performances on the TCAP

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<sup>169</sup> Armor, *supra* note 36.

<sup>170</sup> Henderson, *supra* note 151.

<sup>171</sup> See, e.g., 402 U.S. 1 (1971); 391 U.S. 430 (1968).

<sup>172</sup> U.S. News College Compass Best Colleges 2011, *supra* note 31.

<sup>173</sup> Henderson, *supra* note 163.

<sup>174</sup> Armor, *supra* note 36.

Test (or whatever government standard aptitude test may be in place at that time) during those five years so that all involved can focus more on addressing the special needs of their students rather than teaching to a test.

Second, school boards need to devise a program which assigns students to schools based on income so there is an equal number of each income class in each school within the district. The Supreme Court has held poverty is not a class protected by the strict scrutiny test.<sup>175</sup> Thus, spreading out students in order to achieve economic balance would not be in violation of the Fourteenth Amendment.<sup>176</sup> However, the state's actions cannot interfere with a fundamental right, and it must be able to show the system bears some rational relationship to legitimate state purposes,<sup>177</sup> and rezoning the school districts is a direct relationship to the state's interest in providing equal education to all its students. The rezoning will result in creating a more racially balanced school system because inevitably, when more upper and middle class students are placed in inner-city schools and more low-income students are placed in the suburban schools, the high concentration of low-income minority students in the inner-city schools will be evened out in the process.

To avoid singling out a student based on his or her family's income, the districts in the county will be rezoned so that each school has an equal ratio of suburban and urban students. This will prevent students from being bused from opposite ends of the county in order to achieve economic balance. The government can show it has a compelling state interest in rezoning school districts in order to resolve economic imbalances that drain the state's educational budget. If money is not being significantly concentrated in one school over another because of the heightened need for governmental assistance, more money can be spent on updating the school's resources and creating new teaching positions to meet the needs of the students.

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<sup>175</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 40 (1973).

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

Third, to persuade parents in suburban schools to be in favor of the new zoning plan, the former negative stigma from which inner city schools suffer needs to be eliminated. This will most likely be the most difficult task to achieve, but it can be done. If parents are assured their children will have the same access to all the resources they had in their suburban school when they move to the inner city school, they will be much more supportive of the transition. To achieve that goal, all schools need updated facilities and technology, writing labs, science labs, extracurricular activities that challenge students and provide them with outlets to harvest and channel their gifts and talents, and options to take AP and college-level courses. If students are guaranteed to receive a well-rounded liberal arts education, that will prepare them for college in every school, and parents will likely support the rezoning program. Schools will have a fresh start with teachers ready to take on the challenge of teaching a wide array of students, and students will be exposed to the invaluable experience of learning in a multicultural environment.

Fourth, a new program will need to be implemented in each school that will create a forum for parents so they can express concerns within the school without the structured organization that generally comes with the PTO or PTA. In this program, parents meet with their child's teacher in a small-group setting at least once a month, and the teacher will provide the parents with a syllabus of what the students will be learning in the next month and how the parents can help them in those subjects. Meetings will be arranged so ESL teachers can attend all meetings where there are parents who do not speak English or English is their second language so there is always someone at the meetings who can communicate and translate for them.

Next, schools will need to be structured in a way to encourage cultural differences. Teachers and school administrators will be educated in the cultures and beliefs of their students in order to be equipped with knowing the best way to reach the children. This will require a school system where students are taught how to respect themselves as well as others. There will be rules the students must follow to will teach them structure and discipline which they will need in order to succeed in life, but there will also be avenues for the children to express themselves and learn how to use their different cultures to give back to the community in a positive way. One day a

week will be culture day where students will experience a new culture represented by members of their own student body as well as those not represented. The cafeteria will serve food from the culture, and students from that cultural environment will be able to share with their classmates something unique to their culture such as a type of dance or a holiday tradition. This program will give students a sense of pride in their culture while educating other students who may not have been exposed to other cultures before attending that school. Along with culture day, there would be an amended school curriculum that would reflect the multicultural student body. This involves incorporating art, history, and literature from the different cultures into the curriculum.

Finally, each school will need to have a career program where members of the community will come to the schools and educate students about their careers and provide students with hands-on experience in that field. Interested students can sign up for internships in high school where they can shadow someone in the career of their choice in order to gain the experience of being in a working environment and learning what it takes to be able to do what their mentor does. This will provide students with connections to the community they might not have had before and will help them begin deciding on a career path before graduating high school. Along with the internship program there would be technical courses offered at the high school level that will provide students who do not want to go to college with the necessary tools they will need for the trade of their choice. The school will work with the local trade schools to ensure the classes have dual credit, and the students can graduate with the necessary license in whatever field they studied. Establishing this program in schools with the help of members in the community will create an educational environment that is conducive to all learning types so each student, regardless of race or income level, receives a well-rounded education.

Of course, there are many flaws to my proposal, one being the lack of funding. The proposal relies on members of the community reaching out to help schools. It also does not take into account the parents who do not wish to get involved or cannot get involved in their child's education for whatever reason. It also does not take into consideration the increase in cost it will take to bus the children to and from school. However, it is a plan that calls for action and focuses



on wealth distribution rather than race in order to achieve diversity in the classroom.

Success should not be based on the color of a person's skin or the size of his or her parent's bank account. We all should have the ability to achieve whatever goals we set for ourselves. With deep racial divides in our school systems, we are stunting America's ability to move beyond the days after slavery was abolished and before the Supreme Court made segregation unconstitutional. We now have the resources available to heal racial division in our schools. It is time to take action, and ensure a better and stronger future for the next generation of students.