

The 2013 Chicago Public School Closures: An Illustration of Resegregation

By

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I. Introduction

Despite advancements toward equality throughout history, the United States remains racially segregated. The causes of this continued segregation are often debated, but the results are clear, particularly throughout the nation's larger cities, including Chicago. The racial divide results in a variety of consequences which negatively impact the lives of Americans every day. Without some countermeasure, the impact of this divide will continue to expand and influence society. One key area impacted by this segregation is, as described by Justice Breyer's dissent in *Parents Involved in Community Schools v. Seattle School District No. 1* (hereinafter *Parent Involved*), the resegregation of public schools.¹

The plurality's ruling from *Parents Involved* disallowed the use of certain measures to insure racial diversity within schools.² As a result, it is now more difficult to combat school segregation, and so a racial divide in education will persist and expand. A particularly striking example of school resegregation, and its affects, can be observed in the 2013 Chicago Public School (hereinafter CPS) closures. This paper will illustrate the concept and effects of resegregation, as set forth in Justice Breyer's dissent to the decision in *Parents Involved*, through the context of the 2013 CPS closures.

¹ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701,803 (2007) (Breyer, J., dissenting).

² *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 747 (2007).

II. Brief History and Relevant Law

Throughout American history African Americans have been classified as an inferior race, and, historically, it was considered the duty of white Americans to maintain this stratification.³ Throughout the era of slavery this division was easily maintained.⁴ However, as time passed, and more African Americans become free, social systems were implemented to preserve the racial divide.⁵

In the slaveholding South free African Americans were not considered citizens; as such they were denied the fundamental rights and privileges afforded to white Americans.⁶ Free Southern African Americans were denied equal protection by the courts, the right to assemble, the right to move about freely and the right to education.⁷ Upon the abolition of slavery, Southern whites simply widened the breadth of their policy of subordination to include those recently freed.⁸ Northern African Americans fared little better as they too were subjected to the divide, though in a different manner.⁹ The racial division in the North began through the erection of separate churches to keep whites and African Americans apart.¹⁰ Shortly thereafter white Northerners expanded this practice by building separate schools.¹¹ Thus, school segregation, as it is often thought of today, was born.

Efforts were put forth to combat the disenfranchisement of African Americans on various fronts, including direct challenges to school segregation.¹² These attempts were bitterly opposed

³ John Hope Franklin, *History of Racial Segregation in the United States*, ANNALS AM. ACAD. POL. & SOC. SCI., Mar. 1956, at 1, 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

by many and produced little effect.¹³ Then, in 1896, the Court in *Plessy v. Ferguson* ruled that the doctrine of “separate but equal” was constitutional.¹⁴ This doctrine was used to buttress the continued segregation and marginalization of African Americans through unequally maintained public amenities.¹⁵ Separate but equal was specifically applied to the realm of education through *Cumming v. Richmond County Board of Education*.¹⁶

In *Cumming*, the Supreme Court upheld the operation of a white public school while none was available for black students.¹⁷ With this application of separate but equal to education other court supported instances of school segregation followed.¹⁸ Yet, the fight for equal education continued. Gradually, through several successful desegregation cases, this effort gained momentum.¹⁹ The influx of cases fighting for fair treatment in education paved the way for the ultimate demise of separate but equal in schools, *Brown v. Board of Education*.²⁰

The argument in *Brown* was centered on the idea that, through school segregation, African American students were being deprived of their equal protection under the Fourteenth Amendment.²¹ Specifically, it was argued that public schools for African American students

¹³ John Hope Franklin, *History of Racial Segregation in the United States*, ANNALS AM. ACAD. POL. & SOC. SCI., Mar. 1956, at 1, 2-3.

¹⁴ *Plessy v. Ferguson*, 163 U.S. 537, 551-52 (1896).

¹⁵ ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 760 (4th ed. 2013).

¹⁶ *Cumming v. Richmond Cnty.*, 175 U.S. 528 (1899).

¹⁷ *Id.* at 543.

¹⁸ See generally *Berea Coll. v. Commonwealth of Ky.*, 211 U.S. 45, 57-58 (1908) (upholding segregation in private schools chartered as corporations); *Gong Lum v. Rice*, 275 U.S. 78, 87 (1927) (applying school segregation as between whites and all minorities, not just African Americans).

¹⁹ See generally *Pearson v. Murray*, 182 A. 590, 594 (Md. 1936) (disallowing omission of students, based solely on race, in only legal education accommodations within the state); *Mo. ex rel. Gaines v. Canada*, 305 U.S. 337, 351 (1938) (ruling that if a state provides facilities for the legal education of whites they must also provide substantially equal facilities for black students); *Sweatt v. Painter*, 339 U.S. 629, 635-36 (1950) (declaring that where legal education, equivalent to that offered by the state to students of other races, is unavailable an African American student must be allowed access to the white school); *McLaurin v. Okla. State Bd. of Regents*, 339 U.S. 637, 642 (1950) (precluding different treatment at hands of state for students admitted to state-supported graduate school).

²⁰ *Brown v. Bd. of Educ.*, 394 U.S. 294, 298 (1955).

²¹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 487-88 (1954).

were not equal to those of their white counterparts; and could not be made so.²² In ruling, the Supreme Court considered the effects of segregation upon the schools themselves, as well as upon the nation as a whole.²³ Specifically, the court looked to the fact that racial segregation in schools negatively impacted the learning of children, particularly African American children in segregated schools.²⁴ The ruling from *Brown* provided an excellent framework upon which to combat segregation in schools. Unfortunately, other attempts to continue the fight against school segregation have been quelled by the Supreme Court, specifically those attempts at issue in *Parents Involved*.

III. *Parents Involved*

In *Parents Involved*, the Supreme Court ruled that using race as a partial basis for assigning students to public schools is unconstitutional.²⁵ This case was brought in opposition to school district policies which assigned students to certain schools in an effort to reflect the racial balance of the entire district within each individual school.²⁶ The Court ruled that neither policy in question passed the strict scrutiny requirement for race-based governmental policies to pass constitutional muster.²⁷ This decision was made because neither policy met the government interests deemed compelling enough to pass strict scrutiny: remedying the effects of past discrimination or providing for diversity in higher education.²⁸

In recognizing that the practices employed would not pass strict scrutiny, the school districts from *Parents Involved* put forth other attempts to justify their race-based assignments.²⁹

²² *Brown v. Bd. of Educ.*, 347 U.S. 483, 488 (1954).

²³ *Id.* at 492-93.

²⁴ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493-94 (1954).

²⁵ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1* 551 U.S. 701, 709-10 (2007).

²⁶ *Id.* at 710.

²⁷ *Id.* at 720-23.

²⁸ *Id.*

²⁹ *Id.* at 725.

Specifically, they relied on the argument that the race-based assignment plans were in place to combat a reduction in racial diversity within schools brought about by racially concentrated housing patterns.³⁰ The districts argued that racially diverse learning environments result in educational and social benefits which should justify the assignments.³¹ These benefits included increases in test scores as well as boosts to other academic benchmarks, not to mention general socialization benefits.³² Ultimately the Court did not consider these effects in deciding, instead ruling that the plans were directed only at racial balancing, an objective previously deemed illegitimate.³³

In his dissent, Justice Breyer zealously opposed the ruling of the plurality, instead arguing in favor of schools' attempts at expanding integration efforts to fight de facto resegregation.³⁴ In particular, he opposed the plurality's opinion that the race-based criteria in question constituted race balancing.³⁵ Instead, he said the policies were used to preserve greater racial integration of schools, which he defined as, "the school districts' interest in eliminating school-by-school racial isolation and increasing the degree to which racial mixture characterizes each of the district's schools and each individual student's public school experience."³⁶ Specifically, Justice Breyer argued for the use of integration within schools in order to: right the consequences of prior segregation, overcome the negative educational effects brought on by highly segregated schools, and produce an environment which reflects the "pluralistic society" in which today's children live.³⁷

³⁰ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1* 551 U.S. 701, 725 (2007).

³¹ *Id.* at 725-26.

³² *Id.* at 726.

³³ *Id.*

³⁴ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 806 (2007) (Breyer, J., dissenting).

³⁵ *Id.* at 838.

³⁶ *Id.*

³⁷ *Id.* at 838-40.

IV. Chicago's Urban Segregation

One of the main areas currently affected by segregation is housing, particularly in urban centers where individual racial and ethnic groups tend to form neighborhoods separated from one another.³⁸ These divided neighborhoods arose for various reasons depending upon the unique population and location of the cities in which they are found.³⁹ For example, one argument why segregation arose within American cities is “white flight,” or, the practice of white residents fleeing from the city to its surrounding suburbs due to intolerance.⁴⁰

Racially divided neighborhoods, and the effects of white flight, are evident throughout the City of Chicago. As of the 2010 census, Chicago ranks among the top ten metropolitan areas with the highest levels of black-white segregation.⁴¹ Within these highly segregated areas African Americans, generally, live in regions where they are the near majority, if not the absolute majority.⁴²

IV. 2013 CPS Closures

Throughout the 2012-2013 academic year CPS undertook the process of closing a large amount of schools in an effort to “right-size” the district.⁴³ Underutilization of facilities and a large budgetary deficit were the causes of these closings.⁴⁴ The process began with the

³⁸ Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, ANN. REV. SOC., Aug. 2003, at 167, 167.

³⁹ Alex Anas, *Ethnic Segregation and Ghettos*, in A COMPANION TO URBAN ECONOMICS 536, 537 (Richard J. Arnott & Daniel P McMillen eds., Blackwell Publishing 2006).

⁴⁰ Michelle Ferranti, *Review Essay: Race and the Politics of Suburbanization*, 35 JOURNAL OF URBAN HISTORY 449, 449 (2009) (defining overall concept of white flight).

⁴¹ JOHN R. LOGAN & BRIAN STULTS, THE PERSISTENCE OF SEGREGATION IN THE METROPOLIS: NEW FINDINGS FROM THE 2010 CENSUS Brown 5 (Census Brief prepared for Project US2010, 2011).

⁴² *Id.* at 8.

⁴³ Press Release, Chicago Public Schools, Chicago Public Schools Announce Community Engagement to Address Utilization Crisis (Jan. 11, 2013) (available at http://www.cps.edu/News/Press_releases/Pages/01_11_2013_PR1.aspx).

⁴⁴ Press Release, Chicago Public Schools, Chicago Public Schools Announce Release of Commission on School Underutilization Report (Jan. 10, 2013) (available at http://www.cps.edu/News/Press_releases/Pages/01_10_2013_PR1.aspx).

compilation of a list of 330 underutilized schools for potential closure.⁴⁵ CPS continued the closure process by obtaining feedback from the Chicago community as well as members of the board of education and schools themselves.⁴⁶ This feedback was then utilized to determine further schools to remove from the list; resulting in the list's reduction to 129 schools.⁴⁷ Immunity from closure was granted to: high schools, schools which met a certain level of utilization or enrollment, and those which achieved certain levels of academic performance on standardized tests.⁴⁸ In the end, CPS named forty-nine schools for closure.⁴⁹

V. Intersection of Closures and Resegregation

In determining what school a student may attend, CPS predominately follows the neighborhood school model.⁵⁰ Through this model, preference for admission is given to students residing in the neighborhood in which a school is located.⁵¹ CPS allows for students to enroll in “open enrollment schools” or “magnate cluster schools” outside of their neighborhoods, but does not provide transportation for students to reach those schools.⁵² Given this burden of securing their own transportation it is likely that many families, particularly those in impoverished minority communities, will be forced to settle for the easily accessible schools located in their neighborhoods.

⁴⁵ Press Release, Chicago Public Schools, Chicago Public Schools Releases Criteria to Assess Utilization Crisis (Feb. 13, 2013) (available at http://www.cps.edu/News/Press_releases/Pages/2_13_2013_PR1.aspx).

⁴⁶ Press Release, Chicago Public Schools, Chicago Public Schools Releases Criteria to Assess Utilization Crisis (Feb. 13, 2013) (available at http://www.cps.edu/News/Press_releases/Pages/2_13_2013_PR1.aspx).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Steven Yaccino, *Protestors Fail to Deter Chicago From Shutting 49 Schools*, N.Y. TIMES, May 22, 2013, <http://www.nytimes.com/2013/05/23/education/despite-protests-chicago-closing-schools.html>.

⁵⁰ CHICAGO PUBLIC SCHOOLS OFFICE OF ACCESS AND ENROLLMENT, *Options for Knowledge Guide 2014-2015*, OFFICE OF ACCESS AND ENROLLMENT, 2, <http://www.cpsoae.org> (follow “options guide” under “school guides”; then follow hyperlink to guide) (last visited Apr. 18, 2013).

⁵¹ *Id.*

⁵² *Id.* at 12.

The bulk of the schools affected by the CPS closures were located on the South and West sides of the city.⁵³ Chicago's South and West sides provide a clear demonstration of urban segregation in that they house predominately African American communities.⁵⁴ Thus, the locations of the final CPS school closures, in relation to Chicago's urban segregation, explain why the vast majority of students affected were African American.⁵⁵ During the closure process, while the list remained at 129 schools, 117 of those schools had populations where African Americans students were the majority.⁵⁶ In fact, 103 of those 129 schools consisted of at least ninety percent African American students.⁵⁷

These CPS closure statistics are a clear example of what the school districts in *Parents Involved* were attempting to combat, according to Justice Breyer, "school-by-school racial isolation."⁵⁸ He specifically called for combatting this racial isolation due to the adverse effects produced by highly segregated schools.⁵⁹ These adverse educational effects may have had a particularly significant effect on the CPS closures.

The CPS mission statement claims, "We offer a high quality world class education for the 21st century. Our mission is to ensure that every child is on track to graduate prepared for success in college, work and life."⁶⁰ Yet, arguably, the 2013 closures show that CPS is failing to achieve

⁵³ Lauren Fitzpatrick & Art Golab, *Black students most likely to have their school on CPS closure list*, Chicago Sun-Times (Apr. 6, 2013, 6:43AM), <http://www.suntimes.com/news/education/18626817-418/black-students-far-more-likely-to-see-their-cps-school-closed-than-others-sun-times-analysis.html>.

⁵⁴ John Dodge, *A Colorized View of the Racial Divide in Chicago*, CHICAGO.CBSLOCAL.COM (Apr. 28, 2014, 10:37AM), <http://chicago.cbslocal.com/2014/04/28/a-colorized-view-of-the-racial-divide-in-chicago>.

⁵⁵ Lauren Fitzpatrick & Art Golab, *Black students most likely to have their school on CPS closure list*, Chicago Sun-Times (Apr. 6, 2013, 6:43AM), <http://www.suntimes.com/news/education/18626817-418/black-students-far-more-likely-to-see-their-cps-school-closed-than-others-sun-times-analysis.html>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 838 (2007) (Breyer, J., dissenting).

⁵⁹ *Id.* at 839.

⁶⁰ Chicago Public Schools, *About CPS*, CHICAGO PUBLIC SCHOOLS, http://www.cps.edu/About_CPS/Pages/AboutCPS.aspx (last visited Apr. 18, 2013).

the goals set forth in its own mission statement. This failure is caused by those highly segregated schools and their adverse educational effects on students.

One of the essential attributes of a “good school” is a diverse student population.⁶¹ This argument is exactly what Justice Breyer was discussing when referring to the negative educational effects of school segregation.⁶² He adamantly supported this argument through references to resources showing the positive effects a diverse academic environment has on education.⁶³ For example, it has been shown that African American students placed in less racially segregated environments increase their academic achievement.⁶⁴ Evidence has also shown that resegregating schools actually has a negative effect upon all students involved, no matter the race.⁶⁵

Unfortunately, given the racial makeup of their schools, students affected by the closure likely had not experienced the academic enhancement provided by a diverse educational environment. Instead, the lack of diversity, and its negative effects, may have been what caused schools in African American communities to be targeted for closure in the first place. If schools with less diversity have lower achievement scores than more racially integrated schools, then, when using academic achievement as a factor for closures, those less diverse schools are bound to be at least considered for closure. Thus, by having schools with such little diversity, CPS effectively set up predominately African American schools for failure.

⁶¹ MICHAEL J. KAUFMAN & SHERELYN R. KAUFMAN, EDUCATION LAW, POLICY, AND PRACTICE: CASES AND MATERIALS 3-4 (3d Ed. 2013).

⁶² Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 839 (2007) (Breyer, J., dissenting).

⁶³ *Id.*

⁶⁴ IN PURSUIT OF A DREAM DEFERRED: LINKING HOUSING AND EDUCATION POLICY 35 (John A. Powell, Gavin Kearney & Vina Kay eds., 2001).

⁶⁵ *Id.*

V. Conclusion

In his opinion from *Parent Involved*, Justice Breyer put forth the idea of resegregation in an effort to show the necessity of improving diversity in schools. America has had a turbulent past with regards to racial segregation. Beginning with *Brown*, and the dramatic advancements toward equality which followed, it appeared as though this country may have been on course toward total desegregation. But, as evidenced by the striking epidemic of modern day urban segregation, this phenomenon is either encountering a backslide, or was merely a hiatus from the racially divided framework upon which the United States of America was built.

School segregation provides an excellent lens through which to view the resegregation of American society. Students are likely to attend schools in their own neighborhoods and, as a result, given racially segregated housing practices, public schools often consist of primarily one racial group. Statistically, students who attend schools lacking racial diversity tend to perform worse academically than those in diverse environments. Then, when school districts, like CPS, are restructuring, the lower performing schools are the first on the chopping block. Thus, schools primarily consisting of one racial group are often closed or substantially altered. These closures, in turn, uproot and disrupt the education of minority students. These disruptions only serve to further the negative effects of school segregation and thus restart the process, creating a cycle.

The race-based assignment policies at issue in *Parents Involved* were established to combat de facto school segregation.⁶⁶ However, having struck down such policies, the Court has effectively bolstered the resegregation of our nation. As the cycle of educational segregation continues it appears inevitable that more school districts will follow in the footsteps of CPS. In doing so more African American and minority students in general will have their education hindered. Having such a hindrance, a great number of minority students will be at a substantial

⁶⁶ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 806 (2007) (Breyer, J., dissenting).

disadvantage throughout their lives when compared with those who have the benefit of diverse educational opportunities. Had the Court upheld the policies from *Parents Involved*, then schools districts, like CPS, may have had a means by which to combat the growing racial divide. Yet, as the situation currently stands, only time will tell whether this nation will continue its return to the segregationist ways of the past, or, if it will be able to rebound from the blow dealt to educational diversity by *Parents Involved*.