Hostile Takeover: The State of Missouri, the St. Louis School District, and the Struggle for Quality Education in the Inner-City

Board of Education of the City of St. Louis v. Missouri State Board of Education[1]

I. INTRODUCTION

Missouri has been home to many of the landmark moments in the struggle for racial equality.[2] The Missouri Compromise saved the Union; almost four decades later, the determination that Missouri slave Dred Scott was mere property split the Union.[3] During the Civil War that followed, more battles and skirmishes took place in Missouri than in any other state outside of Virginia and Tennessee.[4] After the Civil War Amendments abolished slavery and guaranteed every person equal protection of the law,[5] the United States Supreme Court allowed a Jefferson City, Missouri, inn to refuse service to blacks.[6] The Court later relied upon this decision when creating the "separate but equal" doctrine in *Plessy v. Ferguson*.[7] This *Plessy* doctrine began to unravel when aspiring law student Lloyd Gaines won his desegregation lawsuit against the University of Missouri School of Law in 1938.[8] Subsequent decisions in cases originating in St. Louis struck down the enforceability of racial covenants and upheld the congressional ban on housing discrimina-

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1. 271 S.W.3d 1 (Mo. 2008) (en banc).

2. The following list of events is modeled after the list found in William H. Freivogel, *St. Louis: Desegregation and School Choice in the Land of Dred Scott*, *in* DIVIDED WE FAIL: COMING TOGETHER THROUGH PUBLIC SCHOOL CHOICE 209, 210 (Century Found. Task Force on the Common Sch. ed., 2002).

3. Dred Scott v. Sandford, 60 U.S. (10 How.) 393, 312-13 (1857).

4. AMY STUART WELLS & ROBERT L. CRAIN, STEPPING OVER THE COLOR LINE: AFRICAN-AMERICAN STUDENTS IN WHITE SUBURBAN SCHOOLS 26 (1997). Pro-slavery Missourians also crossed the border into Kansas, killed Kansas Jayhawkers in guerrilla wars in what became known as "Bleeding Kansas," and burned the city of Lawrence, Kansas, to the ground. *See* DUANE SCHULTZ, QUANTRILL'S WAR: THE LIFE AND TIMES OF WILLIAM CLARKE QUANTRILL (1997).

5. U.S. CONST. amends. XIII, XIV, XV.

6. The Civil Rights Cases, 109 U.S. 3, 25 (1883).

7. 163 U.S. 537, 542-43 (1896).

8. Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337, 352 (1938); *see also* Daniel T. Kelleher, *The Case of Lloyd Lionel Gaines: The Demise of the Separate But Equal Doctrine*, 56 J. NEGRO HIST. 262, 271 (1971) (arguing that the Gaines case "was the first major break in the wall of segregated education" and "[f]rom that point, it was a relatively small step for the Supreme Court in 1954 to conclude that all segregated education was 'inherently unequal'").

tion.[9] Because the era of court-ordered desegregation arguably began in Missouri with Lloyd Gaines, it is somewhat fitting that the era also concluded in Missouri when the Supreme Court stopped the Kansas City school desegregation program.[10]

Against this backdrop came desegregation litigation in St. Louis,[11] which resulted in the first voluntary desegregation settlement in the country. This 1983 agreement desegregated the public schools in St. Louis and the surrounding suburbs during the following sixteen years.[12] Desegregation ended in 1999,[13] at last concluding the saga in St. Louis education that had continued for almost three decades.

Or at least most thought the saga had concluded. Because student test scores in St. Louis consistently failed to meet state standards, in 2007 the state of Missouri unaccredited the St. Louis school district and transferred control from the St. Louis school board to a "Transitional School District."[14] In *Board of Education of the City of St. Louis v. Missouri State Board of Education*, the Supreme Court of Missouri upheld the constitutionality of the state's actions.[15] This Note will examine the decision, as well as the history of education in St. Louis and the results of takeovers by Missouri and other states.

II. FACTS AND HOLDING

Beginning in the early 1980s, the St. Louis school district operated under a court-supervised desegregation plan.[16] Local control finally was restored in 1999.[17] During the subsequent eight years that the St. Louis school board governed, academic performance of the district remained at or below minimally accepted levels, as it had since 1994.[18] The performance was so bad, in fact, that the president of the Missouri Board of Education compared

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9. Shelley v. Kraemer, 334 U.S. 1 (1948); Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).

10. Missouri v. Jenkins, 491 U.S. 274 (1989).

11. Liddell v. Bd. of Educ. of St. Louis, 469 F. Supp. 1304, 1309 (E.D. Mo. 1979).

12. Liddell v. Bd. of Educ. of St. Louis, 567 F. Supp. 1037, 1040 (E.D. Mo. 1983).

13. Liddell v. Bd. of Educ. of St. Louis, No. 4:72CV100 SNL, 1999 WL 33314210, at *9 (E.D. Mo. Mar. 12, 1999).

14. Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 6 (Mo. 2008) (en banc).

15. *Id.* at 17-18.

16. *Liddell*, 567 F. Supp. at 1040.

17. *Liddell*, 1999 WL 33314210, at *9.

18. Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., No. 07AC-CC00488, 2008 WL 5251151, at *10 (Mo. Cir. Ct. Jan. 23, 2008) (final order and judgment).

it to receiving a report card with three D's and six F's.[19] In the 2006-2007 evaluation of the St. Louis school district by the Missouri Department of Elementary and Secondary Education (DESE), the district failed to meet the minimum standards in four of the six categories on the state standardized test, as well as the minimum standards for attendance, graduation rates, and performance on the ACT.[20] Adding to the academic difficulties were financial problems. Under the direction of the school board, St. Louis schools spent $93 million more than they took in over a five-year period, turning a $63 million surplus into a $30 million deficit.[21]

In July 2006, the fifth superintendent of the St. Louis school district in three years resigned.[22] Following this resignation and the overall poor performance of the St. Louis schools, the Missouri commissioner of education appointed an advisory committee to study the district.[23] Six months later the committee issued its final report, finding that the St. Louis school district needed state help and recommending that the "Transitional School District" (TSD) be re-established should the state unaccredit the district.[24] Unaccrediting the district was the recommendation of DESE, which relied upon its published manual of Missouri education statistics, the Understanding Your Annual Performance Report (UYAPR).[25] The Missouri Board of Education reviewed the advisory committee's report in January 2007, along with data, evaluations and recommendations by DESE, and various performance and financial reports.[26] The state board ultimately followed the recommendations of the advisory committee and DESE by reestablishing the TSD in February

19. *Id.* at *14-15.

20. *Id.* at *16.

21. *Id.* at *10.

22. Appellant's Brief at 19, 21, Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1 (Mo. 2008) (No. SC 89139).

23. Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 6 (Mo. 2008) (en banc).

24. Appellant's Brief at 23, Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1 (Mo. 2008) (No. SC 89139).

25. *Id.* at 32. The manual included statistics for the St. Louis school district. *Id.* at 28-32.

26. *Bd. of Educ. of St. Louis*, 217 S.W.3d at 6.

2007 and unaccrediting the district one month later.[27] The unaccreditation decision became effective June 15, 2007.[28]

In response to this decision, the St. Louis Board of Education ("city board"), five board members, and children of those board members sued the Missouri Board of Education ("state board"), the Missouri commissioner of education, and DESE.[29] The city board filed a motion for a temporary restraining order, which would have prevented the accreditation decision from becoming effective and would have extended provisional accreditation to the St. Louis school district.[30] The Cole County Circuit Court denied the motion after finding the city board could not prove any of the three elements necessary to grant such an order: that irreparable harm would occur without the issuance of the order, that the public interest favored issuing the order, or that the city board was likely to prevail on the merits.[31] Because the temporary restraining order was denied, the TSD took control of the St. Louis school district after the district lost accreditation on June 15.[32]

Along with the motion for a temporary restraining order, the city board filed a declaratory judgment suit.[33] The amended suit contained twenty-nine claims, which the trial court classified as "separate, but overlapping," all seeking to void the decision to unaccredit the district, to declare the transfer of control to the TSD unconstitutional, or to find that not all powers transferred from the district to the TSD.[34] The Cole County Circuit Court ruled

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27. *Id.* During the March meeting when the state board voted to unaccredit the district, student protestors temporarily shut down the meeting. David A. Lieb, *Missouri Court Upholds Takeover of St. Louis Schools*, COLUMBIA MISSOURIAN, Dec. 17, 2008, *available at* http://www.columbiamissourian.com/stories/2008/12/17/mo-court-upholds-takeover-st-louis-schools/ (last visited Apr. 10, 2009). Undeterred by the demonstration, the state board voted 5-1 in favor of unaccrediting the St. Louis school district. *State Board Votes to Rescind St. Louis Schools' Accreditation*, ST. LOUIS BUS. J., Mar. 23, 2007, *available at* http://stlouis.bizjournals.com/stlouis/stories/2007/03/19/daily48.html (last visited Apr. 10, 2009).

28. *Bd. of Educ. of St. Louis*, 217 S.W.3d at 6.

29. *Id.* at 5. City board members claimed to have received $40,000 in donations for litigation expenses from parents and residents in the community, which they cited as indicating support for their efforts. Lieb, *supra* note 27.

30. *Bd. of Educ. of St. Louis*, 217 S.W.3d at 6.

31. Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., No. 07AC-CC00488, 2008 WL 5251151, at *2-*3 (Mo. Cir. Ct. June 14, 2007) (order).

32. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 6. University of Missouri law student (Class of 2010) and St. Louis native Cole Bradbury hand-delivered Governor Matt Blunt's appointment of a CEO for the St. Louis school district to Secretary of State Robin Carnahan's office, which was the next step in the takeover process. See *infra* note 105 and accompanying text for the legal justification for Governor Blunt's action.

33. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 6.

34. Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., No. 07AC-CC00488, 2008 WL 5251151, at *3 (Mo. Cir. Ct. Jan. 23, 2008) (final order and judgment). The

for the state board on all counts.[35] The court found that the state board decision to unaccredit was not void because it was based on a wealth of information independent of the UYAPR published by DESE;[36] the decision was not arbitrary or capricious because the state board treated the St. Louis district like any other district;[37] the governor's appointment could take office immediately like any other appointment;[38] all constitutional claims were without merit;[39] and Section 162.1100 vested the TSD with full power, not just those powers existing on or before August 28, 1998.[40]

After the circuit court's decision, the city board raised six points of error on appeal to the Supreme Court of Missouri.[41] The city board argued that (1) the reestablishment of the TSD violated the federal and state constitutional rights of voters, (2) Section 162.1100 violated the federal and state due process rights of the city board, (3) Section 162.1100 was an unconstitutional violation of the prohibition against special laws, (4) the state board decision to unaccredit the district was arbitrary and capricious, (5) the state failed to properly promulgate a rule, and (6) the city board retained all the powers it had prior to Section 162.1100's enactment on August 28, 1998.[42] The Supreme Court of Missouri affirmed the circuit court's ruling and held that Section 162.1100 constitutionally allowed the state board to take control of the St. Louis school district.[43]

III. LEGAL BACKGROUND

A. History of Education in St. Louis

Missouri has a dark and shameful past when it comes to race and education. Teaching black children was outlawed by the Missouri legislature in 1847,[44] and violators of this law faced a $500 fine or six months in jail.[45]

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city board argued that only those board powers existing on or before August 28, 1998, the date that Section 162.1100 became effective, transferred to the TSD. *Id.* at *59.

35. *Id.* at *61.

36. *Id.* at *34. The court acknowledged that the DESE manual, the UYAPR, should have been promulgated as a rule. *Id.* However, the court found that the failure to promulgate the UYAPR was not a sufficient basis to void the decision to unaccredit the St. Louis school district. *Id.*

37. *Id.* at *47.

38. *Id.* at *48.

39. *Id.* at *49-59.

40. *Id.* at *59-61.

41. Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 6 (Mo. 2008).

42. *Id.* at 6-7.

43. *Id.* at 17-18.

44. Freivogel, *supra* note 2, at 210.

This despicable law was replaced in 1865 by a series of equally despicable segregation statutes that were in effect for almost 100 years.[46] One such statute required separate schools for "white and colored children," a requirement that was part of the Missouri Constitution from 1865 until 1976.[47] According to another one of the 1865 statutes, local districts did not have to establish a new school if fewer than twenty students would attend, which exempted many districts with low black populations from building schools for black students.[48] Many blacks thus were forced to move to urban areas if they wanted an education for their children.[49]

St. Louis was no stranger to the practice of racial discrimination and segregation in Missouri. In accordance with the state constitution, St. Louis schools were segregated before the *Brown v. Board of Education* decision.[50] Perhaps in anticipation of such a decision, the St. Louis school district hired a desegregation consultant in 1947.[51] The consultant's desegregation plan was ready when *Brown* was decided, and one week after *Brown* the St. Louis school board unanimously approved the plan.[52] According to the plan, all schools in the district were to be desegregated by September 1955.[53]

But the St. Louis desegregation plan simply disguised the change from de jure to de facto segregation. Instead of enforcing racial segregation in schools by law, the new school plan continued racial segregation by exploit-

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45. WELLS & CRAIN, *supra* note 4, at 76. To avoid prosecution under this law, a steamboat was anchored in the Mississippi River to serve as a school for black students. *Id.* Because the river was under federal jurisdiction, the state law prohibiting the teaching of black children was not enforceable. *Id.*

46. William L. Taylor & Corrine M. Yu, *The Context of Magnet Schools: The Policies and Politics of Desegregation in Cincinnati and St. Louis*, *in* SCHOOL CHOICE IN URBAN AMERICA: MAGNET SCHOOLS AND THE PURSUIT OF EQUITY 15, 17 (Claire Smrekar & Ellen Goldring eds., 1999). The majority of these statutes were not repealed until 1957. *Id.*

47. Liddell v. Missouri, 731 F.2d 1294, 1305-06 (8th Cir. 1984) (en banc); *see also* Freivogel, *supra* note 2, at 210; Taylor & Yu, *supra* note 46, at 17. The Supreme Court of Missouri upheld the constitutionality of this provision and found that significant differences in the quality of school buildings for white and black students did not render educational opportunities unequal. State *ex rel.* Hobby v. Disman, 250 S.W.2d 137, 141 (Mo. 1952).

48. WELLS & CRAIN, *supra* note 4, at 78.

49. *Id.*

50. *Id.* at 76-78.

51. Freivogel, *supra* note 2, at 210.

52. *Id.* For a contemporary view of Missouri desegregation efforts in the 1950s, see Albert P. Marshall, *Racial Integration in Education in Missouri*, 25 J. NEGRO EDUC. 289 (1956).

53. WELLS & CRAIN, *supra* note 4, at 85. Desegregation has been called a "ritualized rebellion." *See* Daniel J. Monti, *Ritualized Rebellions in Primitive and Advanced Cultures: The Case of Desegregation in the United States* (Univ. of Mo. – St. Louis Occasional Paper, Mar. 1983).

ing residential segregation developed over decades. In 1916, almost forty years before *Brown*, St. Louis citizens voted by a 3-1 margin to become the first city in the country to enact mandatory residential segregation.[54] After the United States Supreme Court struck down a similar policy in Louisville,[55] the St. Louis planning commission began segregating neighborhoods through zoning boundaries.[56] The racial covenants enforced until *Shelley v. Kraemer*[57] and the policies of the St. Louis Real Estate Exchange, which allowed only property in certain areas to be sold to blacks, also combined to perpetuate segregation.[58] Because of these policies, in 1950 St. Louis had "the highest 'index of racial dissimilarity,' or segregation, of the fourteen largest cities in the country."[59] Stunningly, "[n]inety-three percent of black families would have had to move to achieve a nonsegregated residential pattern."[60]

Rather than determining school assignments on the basis of race, which was now illegal, the plan implemented in the wake of *Brown* created a "neighborhood school policy."[61] Under this policy, attendance boundaries were drawn around neighborhoods, which effectively guaranteed that segregation in St. Louis schools would continue because these neighborhoods were segregated.[62] Some boundaries were carefully drawn to intentionally exclude

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54. WELLS & CRAIN, *supra* note 4, at 37-38.

55. Buchanan v. Warley, 245 U.S. 60 (1917).

56. WELLS & CRAIN, *supra* note 4, at 38. The commission manipulated zoning boundaries and created special residential zones for blacks in order to keep blacks out of white neighborhoods and control black movements. *Id.*

57. 334 U.S. 1 (1948). *Shelley* held that state courts violated the Equal Protection Clause of the Fourteenth Amendment by enforcing racially restrictive covenants in property deeds. *Id.* at 20.

58. WELLS & CRAIN, *supra* note 4, at 38, 41.

59. *Id.* at 41. Of the 232 largest U.S. metropolitan areas, the 1990 Census identified St. Louis as the eleventh most racially segregated. *Id.* at 24. Ten years earlier, a study ranked St. Louis as the sixth most segregated of thirty-eight cities examined. Dennis R. Judd, *The Role of Governmental Policies in Promoting Residential Segregation in the St. Louis Metropolitan Area*, 66 J. NEGRO EDUC. 214, 223 (1997).

60. WELLS & CRAIN, *supra* note 4, at 41.

61. *Id.* at 85.

62. *Id.* This may contribute to why residents of St. Louis almost immediately ask each other, "What high school did you go to?" because the answer reveals where the person lived and suggests the lifestyle and affluence, and potentially the religious and political beliefs, of the person's family. Children of rich parents lived in rich neighborhoods and therefore attended either a public school, likely with other rich kids, or a private school, again likely with other rich kids. Children of poor parents lived in poor neighborhoods and very likely attended public school with other poor kids because of the inability to afford private school. To learn more about what the high school question can reveal about a St. Louisian, see Nancy Larson, *High School Forever*, ST. LOUIS MAGAZINE, June 2005, *available at* http://www.stlmag.com/media/St-Louis-Magazine/June-2005/High-School-Forever/ (last visited Mar. 15, 2009).

black neighborhoods,[63] and new schools were located where they could not draw from neighborhoods of both races.[64] When black schools became overcrowded, black students were bused to white schools with available space.[65] However, the approximately 5,000 black students in this part of the desegregation plan, known as "intact busing," traveled by classes with their teacher, arrived after and left before the white students, were kept in separate classrooms, and even had separate lunch hours and recesses.[66]

The intact busing program ended when ten new schools opened in 1964.[67] Black students in these new schools comprised 98.5% to 100% of the student body.[68] In fact, thirty-six new elementary schools were opened between 1962 and 1975 to reduce overcrowding; thirty-one schools opened with black student populations of more than 93%, and four opened with white student populations of more than 94%.[69]

Even with all these new schools, overcrowding remained.[70] To address this overcrowding, the school board instituted "block busing," sending students from certain population blocks in overcrowded attendance zones to other schools.[71] Although both black and white schools were overcrowded, and both black and white schools had space for students, very few white stu-

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63. WELLS & CRAIN, *supra* note 4, at 85-86.

64. *Id.* at 87. According to projections in a 1956 St. Louis school board report, forty-six of eighty-three white elementary schools would remain all white and twenty-seven of forty black elementary schools would remain all black. Adams v. United States, 620 F.2d 1277, 1284 (8th Cir. 1980). The remaining thirteen black elementary schools would have black populations between 82% and 99%. *Id.* The projections proved accurate, and by 1962 81% of black students and 67% of white students attended schools where at least 90% of students were of their race. *Id.* at 1285.

65. Freivogel, *supra* note 2, at 211.

66. *Id.*; *see also* WELLS & CRAIN, *supra* note 4, at 87; Taylor & Yu, *supra* note 46, at 18; DANIEL J. MONTI, A SEMBLANCE OF JUSTICE: ST. LOUIS SCHOOL DESEGREGATION AND ORDER IN URBAN AMERICA 131 (1985). The busing program was one of 136 "criticisms and allegations" made by the NAACP and Urban League against the St. Louis school board in April 1963. MONTI, *supra*, at 131. A citizen committee appointed by the school board reviewed the charges and issued a report recommending better integration for black students bused to white schools and that integration be promoted through attendance boundaries, teacher assignments, and an open-enrollment policy that would assign students to schools with available space. *Id.* The St. Louis school board and the school superintendent rejected the recommendations, opposing "any policy that might repudiate the idea that neighborhood schools were inherently superior." *Id.* at 131-32. The intact busing program, they claimed, was only a "temporary and emergency measure." *Id.* at 132.

67. Taylor & Yu, *supra* note 46, at 18.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

dents were sent to black schools.[72] Another policy that continued segregation, known as "permissive transfer," allowed students to transfer to schools with available space.[73] The district did not provide transportation until 1974, and accordingly "affluent white children," with parents able to provide transportation, benefited most from this program, since they could leave integrated schools for white schools.[74] Because of all these policies, by 1979, twenty-five years after *Brown* and the implementation of the St. Louis desegregation plan, 77.3% of St. Louis schools were essentially one-race schools.[75]

It was under these circumstances that the first desegregation lawsuit in St. Louis was filed on February 18, 1972, by a north St. Louis parents' group on behalf of their children.[76] The parents claimed that the defendants, comprised of the St. Louis Board of Education, the individual board members, and the school superintendents, violated the Fourteenth Amendment by perpetuating racial segregation and discrimination in the St. Louis school district.[77] The parents sought to force the district to take steps to integrate the St. Louis schools.[78]

For more than a decade, the lawsuit remained tied up in the federal courts. The U.S. District Court for the Eastern District of Missouri allowed the NAACP and the Department of Justice to intervene as plaintiffs.[79] After a thirteen-week trial,[80] the district court found that the plaintiffs had failed to meet their burden of proving that the defendants intentionally segregated the St. Louis schools and that no action or inaction by the St. Louis school district had the foreseeable effect of causing or perpetuating segregation.[81] The U.S. Court of Appeals for the Eighth Circuit reversed and remanded, holding that the St. Louis school district did not adequately desegregate following *Brown v. Board of Education* and that the district policies had preserved segregation

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72. *Id.* An exact number could not be located for how many white students were sent to black schools.

73. *Id.*

74. *Id.*

75. Adams v. United States, 620 F.2d 1277, 1285 (8th Cir. 1980). In all of the schools included in this statistic, at least 90% of students were of the same race. *Id.* Out of 119 schools in the district, 78 (65.5%) schools were 90% or more black, and 14 (11.7%) schools were 90% or more white. *Id.*

76. Liddell v. Bd. of Educ. of St. Louis, 469 F. Supp. 1304, 1309 (E.D. Mo. 1979).

77. *Id.*

78. *Id.* The parents sought integration through the allocation of resources, the drawing of school boundaries and transportation routes, and the assignments of student and staff. *Id.*

79. *Id.* at 1311-12. Initially, the Department of Justice declined to intervene as a plaintiff and instead intervened as amicus curiae. *Id.* at 1311.

80. *Id.* at 1312.

81. *Id.* at 1364.

since *Brown*.[82] On remand, the district court found the State of Missouri and the St. Louis school board responsible for the segregation and approved a desegregation plan submitted by the St. Louis school board.[83] The court ordered the state and school board to share the costs of implementing the plan[84] and to develop an "interdistrict" desegregation plan that involved the surrounding districts.[85]

Following additional litigation,[86] in 1983 the parties agreed on an interdistrict desegregation plan involving all twenty-three surrounding school districts.[87] The agreement provided for voluntary interdistrict student transfers, the creation of magnet schools, and the improvement of educational quality and school facilities.[88] The district court approved the plan, finding it fair, reasonable, and adequate.[89] Ultimately, the Eighth Circuit approved the plan with only slight modifications.[90]

This plan governed the St. Louis school district throughout the 1980s and 1990s.[91] In the waning days of the court-ordered desegregation program during the late 1990s, buses carried roughly one out of three black students in St. Louis – approximately 13,000 students – to schools in the suburbs and integrated classrooms.[92] Although students in this transfer program did not

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82. Adams v. United States, 620 F.2d 1277, 1288 (8th Cir. 1980). The Eighth Circuit concluded that the St. Louis school district had continued segregation by "subsequently enforced policies with respect to the assignment of students, the transportation of students, the assignment of personnel and the construction of school facilities which cannot be reasonably explained without reference to racial concerns." *Id.* at 1280.

83. Liddell v. Bd. of Educ. of St. Louis, 491 F. Supp. 351, 352, 360 (E.D. Mo. 1980).

84. *Id.* at 357.

85. *Id.* at 353.

86. *See, e.g.*, Liddell v. Bd. of Educ. of St. Louis, 677 F.2d 626 (8th Cir. 1982); Liddell v. Bd. of Educ. of St. Louis, 667 F.2d 643 (8th Cir. 1981); Liddell v. Bd. of Educ. of St. Louis, 491 F. Supp. 351 (E.D. Mo. 1980).

87. Liddell v. Bd. of Educ. of St. Louis, 567 F. Supp. 1037, 1040 (E.D. Mo. 1983). The City of St. Louis opposed the settlement agreement, apparently based on the belief that the city would lose tax dollars because of the settlement. D. Bruce La Pierre, *The St. Louis Plan: Substantial Achievements – and Unfulfilled Promises*, *in* CONCEPTS AND ISSUES IN SCHOOL CHOICE 182, 186 (Margaret D. Tannenbaum, ed., 1995). The State of Missouri opposed the settlement as well because of the expenses that would be incurred by the state under the agreement. *Id.*

88. D. Bruce La Pierre, *Voluntary Interdistrict School Desegregation in St. Louis: The Special Master's Tale*, 1987 WIS. L. REV. 971, 1001 (1987).

89. *Liddell*, 567 F. Supp. at 1040.

90. Liddell v. Missouri, 731 F.2d 1294, 1326 (8th Cir. 1984) (en banc).

91. Liddell v. Bd. of Educ. of St. Louis, No. 4:72CV100 SNL, 1999 WL 33314210, at *1 (E.D. Mo. Mar. 12, 1999).

92. Freivogel, *supra* note 2, at 217. The fact that districts could screen black students applying for transfer led to the accusation that the suburban schools were

see significant academic gains in elementary grades, eighth and tenth grade transfer students had greater increases in math and reading than students attending regular or magnet schools in the St. Louis school district.[93] Black students attending suburban middle and high schools scored about ten points better in math and communications than black students in the city.[94] Black students in the transfer program had a 50% graduation rate, while the graduation rate for black students was 24% in all-black city schools and 16% in other regular city schools.[95] A study in the early 1990s showed that almost 70% of transfer students attended some post-secondary institution after graduation; on the other hand, 52% of graduating city students did not attend any post-secondary institution.[96] Of 100 black ninth-grade students attending city schools, statistically only six would graduate and attend a four-year college.[97] Based on this data, black students who attended suburban schools performed better on standardized tests than their black friends who remained in the city schools. This suggests, but does not conclusively establish, that black transfer students received a better education than black city students.

In 1996, then-Attorney General Jay Nixon, on behalf of the State of Missouri, sought a court declaration that "unitary status" had been achieved and that the schools were no longer segregated, which, if granted, would release the state of its obligation to fund the desegregation program.[98] Attorney General Nixon's claim that St. Louis schools were no longer segregated came despite the fact that, in 1995, almost 18,000 black students, or 40.6% of the black student population, still attended city schools classified by a civic task force as "non-integrated."[99] Following the filing of the attorney general's

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taking the best and smartest black students out of the urban schools. *Id.* at 222. Another theory is that transfer students might have had parents who took a more active role in their education. WELLS & CRAIN, *supra* note 4, at 155-56.

93. Freivogel, *supra* note 2, at 219-20.

94. *Id.* at 220. In fact, between 1988 and 1992, students attending integrated schools scored an average of twenty-four to thirty points better on tests than students attending non-integrated schools. Sam Stringfield, *Research on Effective Instruction for At-Risk Students: Implications for the St. Louis Public Schools*, 66 J. NEGRO EDUC. 258, 272 (1997). Black students in city schools also scored significantly lower than white students in city schools. William T. Trent, *Why the Gap Between Black and White Performance in School?: A Report on the Effects of Race on Student Achievement in the St. Louis Public Schools*, 66 J. NEGRO EDUC. 320, 324 (1997).

95. Freivogel, *supra* note 2, at 220; CIVIC PROGRESS TASK FORCE, DESEGREGATION: A REPORT FROM THE CIVIC PROGRESS TASK FORCE ON DESEGREGATION OF THE ST. LOUIS PUBLIC SCHOOL SYSTEM PART 1 (BACKGROUND AND RECOMMENDATIONS) 8 (1995).

96. Freivogel, *supra* note 2, at 221.

97. WELLS & CRAIN, *supra* note 4, at 198.

98. *Id.*

99. CIVIC PROGRESS TASK FORCE, *supra* note 95, at 5, 11.

motion, the district court appointed a settlement coordinator to begin negotiations.[100]

During the negotiations, the Missouri legislature passed, and Governor Mel Carnahan signed, Senate Bill 781 (SB 781), which the federal district court later credited with giving "great impetus to the settlement process."[101] SB 781 allocated approximately $40 million annually to the St. Louis school district on the condition that the federal district court enter a final judgment before March 15, 1999, and on the condition that St. Louis voters approve a $20 million sales or property tax for the school district.[102] SB 781 was codified in part at Section 162.1100, and its conditions were met just days before the legislatively mandated deadline.[103]

Under a provision of Section 162.1100 that applied specifically to the St. Louis school district, a Transitional School District (TSD) was created to oversee the St. Louis school transition from federal oversight to city control.[104] If the St. Louis school district lost accreditation while the TSD was in existence, the governor would appoint a chief executive officer to supervise the district,[105] and any powers granted to the St. Louis school board would revert to the TSD.[106] The TSD would be dissolved by decision of the Missouri Board of Education, or by July 1, 2008, whichever came first.[107] However, the state board could reestablish the TSD at any time if necessary to accomplish the purposes listed in Section 162.1100.[108]

Finally, after twenty-seven years, dozens of decisions by the federal courts, $1.7 billion spent by the state of Missouri,[109] and countless hours billed by attorneys, the St. Louis desegregation litigation reached a final settlement in 1999.[110] Just a few months after the court entered the final settle-

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100. *Id.*

101. *Id.*

102. *Id. See also* S.B. 781, 89th Gen. Assembly, 2d Reg. Sess. (Mo. 1998).

103. Liddell v. Bd. of Educ. of St. Louis, No. 4:72CV100 SNL, 1999 WL 33314210, at *1 (E.D. Mo. Mar. 12, 1999).

104. MO. REV. STAT. § 162.1100.1 (2000). The composition of the TSD consisted of an appointee of the St. Louis mayor, the president of the St. Louis Board of Alderman, and the governing body of the St. Louis school district. *Id.* § 162.1100(2).

105. *Id.* § 162.1100.2(2).

106. *Id.* § 162.1100.3. The provision enumerating the powers of the St. Louis school board vests those powers in the TSD if the St. Louis school district ever loses accreditation. *Id.* § 162.621.2.

107. *Id.* § 162.1100.12. The Missouri Board of Education dissolved the TSD and transferred full control to the St. Louis Board of Education in June 1999. Appellant's Brief at 17-18, Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1 (Mo. 2008) (No. SC 89139).

108. MO. REV. STAT. § 162.1100.12.

109. Freivogel, *supra* note 2, at 209.

110. Liddell v. Bd. of Educ. of St. Louis, No. 4:72CV100 SNL, 1999 WL 33314210, at *9 (E.D. Mo. Mar. 12, 1999).

ment, the Missouri Board of Education dissolved the TSD and transferred total control to the St. Louis school board.[111]

B. Voter Rights Claim

The first of five claims made by the plaintiffs in the instant case asserted that the decision to unaccredit the St. Louis school district infringed upon the rights of St. Louis voters by transferring power from their elected school board to an appointed board. Because this is a case of first impression, two decisions from Illinois merited consideration by the Supreme Court of Missouri. In *Tully v. Edgar*,[112] the Illinois legislature enacted a statute that changed the University of Illinois Board of Trustees from an elected to an appointed body.[113] The terms of the then-current trustees would end one week after the statute went into effect or when a quorum of trustees had been appointed, whichever date was later.[114] The elected trustees thus effectively would be removed from office before their six-year terms had expired.[115] The Illinois Supreme Court held that the legislation undermined, nullified, voided, and destroyed the votes cast by citizens and therefore was an unconstitutional violation of the fundamental right to vote.[116]

One year later in *East St. Louis Federation of Teachers v. East St. Louis School District No. 189 Financial Oversight Panel*,[117] a financial oversight panel exercised its authority under Illinois statute and removed an entire school board from office.[118] Citing *Tully*, the school board challenged the constitutionality of the statute as a violation of the fundamental right to vote because it allowed the school board members to be removed from office prior to the expiration of their terms in office.[119] The Illinois Supreme Court, however, held that the fundamental right to vote had not been violated.[120] The court distinguished *Tully* on the basis that the statute at issue in *Tully* was enacted after the election of the board of trustees, while the statute in *East St. Louis* had been enacted prior to the election of the school board members.[121] School board members elected after the statute's enactment, therefore, by definition could be removed according to the statute.[122] These two decisions

111. Appellant's Brief at 17-18, Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1 (Mo. 2008) (No. SC 89139).
112. 664 N.E.2d 43 (Ill. 1996).
113. *Id.* at 45.
114. *Id.* at 46.
115. *Id.*
116. *Id.* at 49.
117. 687 N.E.2d 1050 (Ill. 1997).
118. *Id.* at 1055.
119. *Id.* at 1059.
120. *Id.* at 1060.
121. *Id.*
122. *Id.*

would guide the Supreme Court of Missouri as the court determined whether the rights of St. Louis voters had been violated.

C. Other Claims

In addition to the voter rights challenge, the St. Louis plaintiffs raised four other issues on appeal.[123] The plaintiffs contended that Section 162.1100 was a special law.[124] Special laws are prohibited by the Missouri Constitution when a general law is applicable.[125] A general law applies to an entire class of persons or things, while a special law applies to some, but not all, persons or things in a class.[126] To determine if a law is a general law or a special law, courts apply equal protection analysis[127] and classify the law as "open-ended" or "closed-ended."[128] A law is closed-ended and facially special if the law's classifications are based on immutable factors such as historical facts or geography.[129] A facially special law is presumed to be unconstitutional.[130] The party defending the law must demonstrate a "substantial justification" for the special law.[131]

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123. Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 6-7 (Mo. 2008) (en banc). The due process claim is discussed in Part IV, *infra*.

124. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 6.

125. MO. CONST. art. III, § 40(30) ("The general assembly shall not pass any local or special law . . . where a general law can be made applicable, and whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject.").

126. City of Springfield v. Sprint Spectrum, L.P., 203 S.W.3d 177, 184 (Mo. 2006) (holding that a Missouri statute capping imposition of municipal business taxes on wireless providers was facially special and unconstitutional because the statute exempted cities that adopted and enforced a wireless tax prior to January 15, 2005, without a substantial justification).

127. Blaske v. Smith & Entzeroth, Inc., 821 S.W.2d 822, 832 (Mo. 1991) (holding that a Missouri statute that provided special statutes of limitations for tort actions against designers and builders, but not material men, was not a special law because it had a rational basis). Like equal protection analysis, the standard of review for general and special law determinations is rational basis review. *Id.*

128. Harris v. Mo. Gaming Comm'n, 869 S.W.2d 58, 65 (Mo. 1994) (finding a Missouri statute that exempted riverboat casinos near the Eads Bridge in St. Louis from design and cruise requirements was a special law, but leaving for the trial court on remand to determine whether the law had a substantial justification).

129. *Id.* A law is open-ended if the status of class members could change. *Id.* An open-ended law is not facially special and presumed constitutional. O'Reilly v. City of Hazelwood, 850 S.W.2d 96, 99 (Mo. 1993) (en banc) (holding a Missouri statute that allowed the creation of a boundary commission only for St. Louis County was unconstitutional because it was a special law that had no substantial justification).

130. State *ex rel.* City of Blue Springs v. Rice, 853 S.W.2d 918, 921 (Mo. 1993) (en banc) (holding a Missouri statute that altered training requirements only for offi-

The plaintiffs also claimed that the decision by the Missouri Board of Education was arbitrary and capricious. A decision is arbitrary if it is not based on substantial evidence[132] and is without rational basis or cause.[133] Capriciousness refers to an impulsive or unpredictable action.[134] The agency cannot act in a totally subjective manner, without guidelines or criteria.[135] When reviewing an agency's decision to determine if it was arbitrary or capricious, a court has the authority to substitute its discretion for that of the agency.[136] If a decision is not arbitrary and capricious, it will be upheld.[137]

Finally, the plaintiffs argued that DESE failed to promulgate a rule when it issued its annual manual and that this failure should nullify the decision to unaccredit the St. Louis school district, since the Missouri Board of Education relied upon the DESE manual when making the unaccreditation decision. Missouri statute defines a rule as an "agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency."[138] A rule "announces '[a]n agency statement of policy or interpretation of law of future effect which acts on unnamed and unspecified facts'"[139] and "affects

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cers of Blue Springs was unconstitutional because it was a special law based on immutable characteristics that had no substantial justification).

131. *Id.*

132. Barry Servs. Agency Co. v. Manning, 891 S.W.2d 882, 892 (Mo. App. W.D. 1995) (holding a decision by the Commissioner of Finance for the State of Missouri to reject loan rate schedules to be arbitrary, unreasonable, and capricious because it was based on a "gut feeling" and not on substantial evidence).

133. D.L. Dev., Inc. v. Nance, 894 S.W.2d 258, 259 (Mo. App. W.D. 1995) (holding that the decision to deny a sublease was arbitrary because it was unreasonable).

134. Thoroughbred Ford, Inc. v. Ford Motor Co., 908 S.W.2d 719, 730 (Mo. App. E.D. 1995) (holding that Ford did not act capriciously towards a dealership when it withdrew approval for the dealership to move and failed to disclose that the dealership was in a monitored area of decline).

135. *Barry Servs. Agency*, 891 S.W.2d at 893-94.

136. *Id.* at 892.

137. *See* Mo. Nat'l Educ. Ass'n v. Mo. State Bd. of Educ., 34 S.W.3d 266, 281 (Mo. App. W.D. 2000) (upholding teacher compensation exemptions granted to school districts by the Missouri State Board of Education because the exemptions were based on substantial evidence and not arbitrary).

138. MO. REV. STAT. § 536.010(6) (2000).

139. NME Hospitals, Inc. v. Dep't of Soc. Servs, 850 S.W.2d 71, 74 (Mo. 1993) (holding that the Missouri Department of Social Services should have promulgated a rule on Medicaid reimbursement for psychiatric services and that failure to do so voided the amendment and denial of reimbursement) (quoting Missourians for Separation of Church & State v. Robertson, 592 S.W.2d 825, 841 (Mo. App. W.D. 1979)). *But see* Baugus v. Dir. of Revenue, 878 S.W.2d 39, 42 (Mo. 1994) (en banc) ("Not every generally applicable statement or 'announcement' of intent by a state agency is a rule. Implicit in the concept of the word 'rule' is that the agency declaration has a potential, however slight, of impacting the substantive or procedural rights of some member of the public.").

the rights of individuals in the abstract."[140] A rule must be promulgated in accordance with Section 536.021, and failure to do so voids the decision.[141]

The Supreme Court of Missouri decided the effect of failing to promulgate a rule in *Department of Social Services, Division of Medical Services v. Little Hills Healthcare, L.L.C.*[142] In *Little Hills*, a hospital sued after the Division of Medical Services readjusted the formula for estimating the number of Medicaid patient days, which affected the direct Medicaid payment calculation.[143] The court found that the new formula was generally applicable because it applied to all hospitals receiving Medicaid payments.[144] The court also found that the formula had future effect because it affected Medicaid payments for the rest of the year, as well as future years.[145] Because the division did not promulgate the decision as a rule like it should have, the court upheld invalidation of the rule.[146]

IV. INSTANT DECISION

In *Board of Education of the City of St. Louis*, the Supreme Court of Missouri upheld the Cole County Circuit Court's decision to allow the Missouri Board of Education to take control of the St. Louis school district.[147] While this was the second time that the State of Missouri had invoked its statutory authority to run an unaccredited school district,[148] it was the first time the Supreme Court of Missouri ruled on the issue.

The appellant, the city board, raised six points of error before the court.[149] The standard of review applied would affirm the judgment below in favor of the defendants unless the lower court's decision had no evidence to support it, was against the weight of the evidence, or erroneously declared or applied the law.[150] A de novo standard applied to the constitutional challenges to the statute.[151]

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140. *Baugus*, 878 S.W.2d at 42 (holding the Missouri Department of Revenue's addition of the word "prior" before "salvage" on vehicle titles was not a rule because it simply explained the type of title and did not "substantially affect the legal rights of any party").

141. *NME Hospitals, Inc.*, 850 S.W.2d at 74-75.

142. 236 S.W.3d 637 (Mo. 2007).

143. *Id.* at 639-40.

144. *Id.* at 642.

145. *Id.* at 643.

146. *Id.* at 643-44.

147. Bd. of Educ. of St. Louis v. Mo. State Bd. of Educ., 271 S.W.3d 1, 17-18 (Mo. 2008) (en banc).

148. The state took over the Wellston school district in 2005 by using an analogous statutory provision. This takeover will be addressed in Part V, *infra*.

149. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 6-7.

150. *Id.* at 7.

151. *Id.*

The city board first claimed that Section 162.1100 unconstitutionally violated the voting rights of St. Louis voters by allowing power to be transferred from an elected school board to an appointed board.[152] The court distinguished the city board's argument, based on *Tully v. Edgar*,[153] from that of another Illinois case, *East St. Louis Federation of Teachers v. East St. Louis School District No. 189 Financial Oversight Panel*.[154] Though neither case was controlling, the court agreed with the holding in *East St. Louis* that because the Missouri statute at issue was effective before the election of any current board members, the powers of the office were limited when the board members took office.[155] As a result, the court held that Section 162.1100 did not infringe St. Louisans' fundamental right to vote.[156]

The court quickly dismissed the second issue raised, in which the city board claimed a denial of procedural due process.[157] The court noted that the term of office for board members was limited by the provision allowing the state to take control and that the city board could not rely on one provision while ignoring the other.[158] Because the term of office was limited by the provisions allowing the state to assume power, the court found that there was no infringement of any constitutionally protected property interest, and therefore there was no violation of the city board's procedural due process rights.[159]

The third issue raised by the city board was that Section 162.1100 was an unconstitutional special law.[160] In conducting the special law analysis, the court classified the law as closed-ended because the St. Louis school board was the only board to which the statute would ever apply.[161] Closed-ended laws require a substantial justification in order to be constitutional, and the role Section 162.1100 played in the desegregation settlement provided substantial justification for its enactment.[162] The court therefore held that even

152. *Id.*

153. 664 N.E.2d 43 (Ill. 1996).

154. 687 N.E.2d 1050 (Ill. 1997).

155. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 8.

156. *Id.* Although persuasive case law on point existed, the court did not reference decisions upholding the constitutionality of statutes authorizing city takeovers of the Cleveland and Detroit school districts. Both challenges to the takeover statutes enacted in Ohio and Michigan contained a wide spectrum of claims, some of which included voter rights claims. *See* Moore v. Detroit Sch. Reform Bd., 293 F.3d 352 (6th Cir. 2002); Mixon v. Ohio, 193 F.3d 389 (6th Cir. 1999).

157. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 9.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 10.

162. *Id.*

though the law was facially special, it was not unconstitutional because a substantial justification existed.[163]

In its fourth issue, the city board claimed that the failure to promulgate the Understanding Your Annual Report (UYAPR) manual as a rule voided the Missouri Board of Education decision to unaccredit the St. Louis school district.[164] Under *Department of Social Services, Division of Medical Services v. Little Hills Healthcare, L.L.C.*, a failure to promulgate a rule only voids the decision that should have been promulgated as a rule.[165] In this case, the voided decision would have been DESE's recommendation that was based on the manual.[166] Voiding DESE's recommendation would not change the state board's decision to unaccredit, a decision that did not have to be promulgated as a rule.[167]

Though the state board did not have to promulgate a rule, the decision to unaccredit still must have been based on substantial and competent evidence in order to be valid.[168] Such evidence existed in the multiple performance reports, recommendations, evaluations, and data and information relied upon by the state board.[169] This collected information satisfied the substantial and competent evidence requirement, and therefore the decision to unaccredit the St. Louis school district was not void.[170]

Although the fifth issue asserted that the circuit court should have applied Chapter 536, the city board essentially repeated its rule promulgation argument.[171] Specifically, Section 536.150 governs how courts analyze administrative decisions that are not subject to administrative review.[172] The city board wanted this statute applied to the state board's decision to obtain a different standard of review,[173] again claiming that the state board failed to properly promulgate a rule.[174] Referring to its earlier rule promulgation analysis, the court ruled that *Little Hills* was not controlling because voiding the DESE recommendation would not affect the state board's decision to unaccredit the district.[175] Therefore, the court rejected the city board's fifth issue.[176]

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163. *Id.* at 11.

164. *Id.*

165. *Id.* at 12.

166. *Id.* DESE does not have the authority to promulgate rules. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.* at 12-13.

171. *Id.* at 15.

172. MO. REV. STAT. § 536.150 (2000).

173. In a footnote, the court remarked that the Chapter 536 standard of review would not help the city board. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 15 n.7.

174. *Id.*

175. *Id.*

176. *Id.*

The city board's sixth and final point on appeal was that Section 162.1100 transferred to the TSD only the powers that the city board had on or before August 28, 1998.[177] If the court accepted this interpretation, the city board would retain the power to collect the sales tax and collect and expend the debt service levy, both of which were authorized after August 28, 1998.[178] The court, however, looked to Section 162.621, which is referenced in Section 162.1100.[179] The court rejected the city board's arguments and interpreted Section 162.621 as reserving power to the city board to audit and make public reports but transferring all other powers to the TSD.[180] Granting any other authority to the school board, according to the court, would conflict with Section 162.621.[181] Therefore, the court ruled that all powers except those of auditing and public reporting were transferred to the TSD.[182]

Ultimately, the Supreme Court of Missouri denied all six points of error brought by the city board and affirmed the trial court ruling that Section 162.1100 was constitutional, holding that the Missouri Board of Education had properly exercised its authority to unaccredit the St. Louis school district and transfer power to the TSD.[183]

V. COMMENT

Though this important decision was one of first impression in Missouri, the Supreme Court of Missouri wasted no words in dismissing all challenges to the takeover. The surprisingly brief opinion for a decision of this magnitude discussed only a handful of analogous cases and cited very few others.

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177. *Id.* at 15-16.

178. *Id.* at 16.

179. *Id.* Section 162.1100.3 states,

> In the event that the school district loses its accreditation, upon the appointment of a chief executive officer, any powers granted to any existing school board in a city not within a county on or before August 28, 1998, shall be vested with the special administrative board of the transitional school district containing such school district so long as the transitional school district exists, except as otherwise provided in section 162.621.

MO. REV. STAT. § 162.1100.3 (2000).

180. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 17. Section 162.621(2) states,

> Except as otherwise provided in this subsection, the powers granted in subsection 1 of this section shall be vested, in the manner provided in section 162.1100, in the special administrative board of the transitional school district containing the city not within a county if the school district loses its accreditation from the state board of education. . . . The board of directors of the school district shall, at all times, retain auditing and public reporting powers.

MO. REV. STAT. § 162.621(2) (2000).

181. *Bd. of Educ. of St. Louis*, 271 S.W.3d at 17.

182. *Id.* at 18.

183. *Id.* at 17-18.

The court handled this case as one of statutory interpretation, which resulted in a very narrow decision.

If the State of Missouri could take over only the St. Louis school district, such an opinion might be acceptable. However, if any school district in Missouri is classified as unaccredited for two consecutive years, Section 162.081 automatically transfers power from the school board to the Missouri Board of Education.[184] Because this is a different statute than the statute authorizing the takeover of the St. Louis school district, the Supreme Court of Missouri could have helped attorneys and judges by better explaining its rationale behind approving of the takeover and any relevant policy justifications. This rationale and policy could then be applied if the State of Missouri were to take over other districts through this analogous statute. As it stands, precedent has been set, but the strength of that precedent will be known only after future legal battles.

Indeed, the power in Section 162.081 already has been exercised to take over a school district. On June 29, 2005, two years before the takeover of the St. Louis school district, the state of Missouri took over the Wellston school district by appointing a special administrative board to run the district.[185] The Wellston school board's motion for a temporary restraining order was denied,[186] and the temporary injunction hearing was postponed.[187] The suit was dropped, and the state took control.

Examining the results of the Wellston school district takeover can provide much insight into the likely road ahead for the St. Louis school district. This analysis is made more reliable by the fact that the Wellston school district borders the St. Louis school district's western side, though Wellston has a higher minority population. Since 2004, all of Wellston's more than 500 students have been black.[188] In the St. Louis school district today, approximately 80% of students are black, 14% are white, and the rest are Hispanic, Asian, or another minority.[189]

In the first two years following the takeover, the new Wellston leadership attempted to improve student test scores by replacing about one of every three teachers, hiring a new chief academic officer who would design a quar-

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184. MO. REV. STAT. § 162.081(1) (2000).

185. Matthew Franck, *Missouri Education Board Votes to Disband Wellston School District*, ST. LOUIS POST-DISPATCH, June 30, 2005, at B2. The Wellston school district had been unaccredited since June 2003, meeting the two-year unaccreditation required by Section 162.081 for takeover. Kelly Wiese, *Missouri Takes Helm of Troubled Schools in St. Louis Suburb*, KANSAS CITY STAR, June 30, 2005, at B2.

186. Kelly Wiese, *Judge Denies Plea to Block State Takeover of School District*, JEFFERSON CITY NEWS-TRIBUNE, July 2, 2005.

187. *Metropolitan Area Digest*, ST. LOUIS POST-DISPATCH, July 7, 2005, at B2.

188. MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION SCHOOL STATISTICS, STUDENT DEMOGRAPHICS (2008), *available at* http://dese.mo.gov/schooldata/ftpdata.html.

189. *Id.*

terly test to identify struggling students, hiring a curriculum monitor to ensure consistent improvement before the MAP tests, and hiring four additional Teach for America instructors.[190] These reforms and the likely others since have resulted in some improvement, especially on the communication arts test. On the 2006 communication arts test, below basic scores came from 42% of third graders, 58.1% of fourth graders, and 41.3% of fifth graders.[191] When these students were tested three years later, 29.5% of sixth graders, 22.9% of seventh graders, and only 5.9% of eighth graders were below basic.[192]

However, the results were not as encouraging for Wellston on the mathematics test. In 2006, below basic mathematics scores came from 36% of third graders, 54.8% of fourth graders, and 21.7% of fifth graders.[193] Three years later, 40.9% of sixth graders, 48.6% of seventh graders, and 47.1% of eighth graders were below basic.[194] Also discouraging is the percentage of students graduating high school, from an 81.8% high in 2005 before the takeover to 51.4% in 2008,[195] and the decline of high school graduates attending college. While 71.4% of 2004 graduates went to college, just 22.2% of 2007 graduates continued their education after high school.[196]

Because the St. Louis school district has been under state control for only two years, less data exists from which to draw conclusions. Movement generally does appear, however, to be in the right direction. Before the takeover, on the 2007 communication arts test, below basic scores came from

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190. Paul Hampel, *The Road Back for Wellston Schools*, ST. LOUIS POST-DISPATCH, Aug. 26, 2007, at C1.

191. MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION SCHOOL STATISTICS, MAP AND END-OF-COURSE (EOC) (2009), *available at* http://dese.mo.gov/schooldata/ftpdata.html.

192. *Id.* The MAP's four classifications for student test results are below basic, basic, proficient, and advanced. *Id.*

193. *Id.*

194. *Id.*

195. MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION SCHOOL STATISTICS, GRADUATION RATES (2008), *available at* http://dese.mo.gov/schooldata/ftpdata.html. Discrepancy exists in DESE data concerning the number of dropouts in Wellston. According to the DESE Graduation Rates spreadsheet, high school dropouts numbered twelve in 2004, six in 2005, nineteen in 2006, seventeen in 2007, and twenty-six in 2008. *See id.* However, according to the DESE Dropouts spreadsheet, high school dropouts numbered two in 2004, seventeen in 2005, thirty in 2006, twenty-seven in 2007, and sixteen in 2008. *See* MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION SCHOOL STATISTICS, DROPOUTS (2008), *available at* http://dese.mo.gov/schooldata/ftpdata.html. Based on these dropout numbers, the dropout rate in Wellston reported by DESE only was 13% in 2005 and 8.8% in 2008. *See id.*

196. MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION SCHOOL STATISTICS, GRADUATE FOLLOW-UP (2008), *available at* http://dese.mo.gov/schooldata/ftpdata.html.

23.3% of third graders, 30.6% of fourth graders, and 23.7% of fifth graders.[197] By 2009, 21.2% of fifth graders, 25.5% of sixth graders, and 28.1% of seventh graders were below basic.[198] Interestingly, the only race of students with a consistently higher than district average of below basic scores were black students; in 2009, 22.8% of black fifth graders, 27.2% of black sixth graders, and 30.8% of black seventh graders were below basic.[199]

Like in Wellston, St. Louis math scores have declined since the takeover. In 2007, below basic scores came from 24.5% of third graders, 30.2% of fourth graders, and 25.8% of fifth graders.[200] Two years later, 26.5% of fifth graders, 30.4% of sixth graders, and 41.2% of seventh graders were below basic.[201] Once again, the percentage of black students below basic outpaced the district average unlike any other race, with 29.4% of fifth graders, 32.9% of sixth graders, and 45.6% of seventh graders below basic in math.[202] Why black students score below their classmates is unknown but should be examined by the district. As for dropouts, before the takeover in 2007, 1,221 St. Louis high school students – 12.1% – dropped out, while 1,975 students – 22.8% – dropped out one year later.[203]

Takeovers from other states demonstrate that state control does not always result in improvement.[204] The first school district to be fully taken over

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197. MAP AND END-OF-COURSE (EOC), *supra* note 191.

198. *Id.*

199. MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION SCHOOL STATISTICS, MAP AND EOC DISAGGREGATE (2009), *available at* http://dese.mo.gov/schooldata/ftpdata.html. Other races had 2009 below basic scores as follows: Asian (19.6% fifth grade, 14.6% sixth grade, 22.9% seventh grade), Hispanic (23.6% fifth grade, the only instance of a non-black racial group with a percentage higher than the district average, 20% sixth grade, 12.5% seventh grade), and White (13.1% fifth grade, 18.4% sixth grade, 18.7% seventh grade). *Id.* Data was not available for any other race. *See id.*

200. MAP AND END-OF-COURSE (EOC), *supra* note 191.

201. *Id.*

202. MAP AND EOC DISAGGREGATE, *supra* note 199. Other races had 2009 below basic scores as follows: Asian (17% fifth grade, 17.6% sixth grade, 32.7% seventh grade), Hispanic (20 % fifth grade, 15.6% sixth grade, 26.6% sixth grade), and White (15.1% fifth grade, 21.1% sixth grade, 23.8% seventh grade). *Id.*

203. DROPOUTS, *supra* note 195. Once again, discrepancy exists in the DESE data. According to the DESE Graduation Rates spreadsheet, 1,178 students dropped out in 2007, and 1,702 students dropped out in 2008. *See* GRADUATION RATES, *supra* note 195.

204. Through 2002, twenty-four states possessed the power to takeover a school district through so-called "academic bankruptcy" statutes; eighteen states and the District of Columbia had exercised that power. *See* Kenneth K. Wong & Francis X. Shen, *Measuring the Effectiveness of City and State Takeover as a School Reform Strategy*, 78 PEABODY J. EDUC. 89 (2003). More recent data could not be located. School districts have been taken over by mayors as well, but this form of takeover will not be examined in this Note.

by a state government was the Jersey City school district in New Jersey in 1989.[205] When the district was taken over, it met only 35% of the indicators monitored by the state and possessed large financial and academic problems.[206] The district's financial problems were solved, largely because funding more than doubled due to a funding-equity lawsuit.[207] However, the academic problems persisted. New Jersey tests for proficiency in reading, writing, and math.[208] Ten years after the takeover, eleventh grade students in Jersey City met the minimum standards only for writing.[209] Fourth and eighth grade students failed to meet the minimum standards for any of the three subjects.[210] The State of New Jersey also took over the districts of Patterson and Newark, both of which saw almost across-the-board declines in proficiency scores between the time of takeover and the 1998-1999 school year.[211] All three districts, however, were in better financial shape after the state took control.[212]

A takeover in West Virginia experienced much better academic improvement than the takeovers in New Jersey. The Logan County school district of 7,000 students was taken over by West Virginia in 1992.[213] In the aftermath of the takeover, test scores improved, with third graders jumping from the fiftieth to the sixty-ninth percentile.[214] Attendance rates for all schools increased to more than 90%.[215] The district was put on a sound financial footing.[216] Because of the district's improvement, the state returned the district to local control after five years.[217] Logan County is considered a state takeover success story.[218]

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205. Eloise M. Forster, *State Intervention in Local School Districts: Educational Solution or Political Process?* 3 (1996) (paper presented at the Annual Meeting of the American Education Research Association, Apr. 8-12, 1996), *available at* http://www.eric.ed.gov/ERICWebPortal/contentdelivery/servlet/ERICServlet?accno=ED410677.

206. RICHARD C. SEDER, BALANCING ACCOUNTABILITY AND LOCAL CONTROL: STATE INTERVENTION FOR FINANCIAL AND ACADEMIC STABILITY, POL'Y STUDY NO. 268 1, 5 (2000).

207. *Id.* at 6.

208. *Id.*

209. *Id.* The minimum standard was 85% proficiency. *Id.* Eleventh grade students in 1998-99 received an 85.0% proficiency score. *Id.*

210. *Id.*

211. *Id.* at 7-8. The State of New Jersey took over the Patterson school district in 1991 and the Newark school district in 1995. *Id.* at 7.

212. *Id.* at 8.

213. *Id.*

214. *Id.* at 9.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

More mixed results came from the takeover of Baltimore. The State of Maryland and City of Baltimore entered into a special partnership in 1997 for control of the Baltimore school district.[219] Under the agreement, the governor and mayor jointly appointed a nine-member school board, choosing from names submitted by the state board of education.[220] A CEO was hired to run the district, and the state promised an additional $254 million in funding over a five-year period.[221]

The takeover was needed because of the abysmal academic performance of the Baltimore schools. Before the takeover, third, fifth, and eighth-grade Baltimore students scored last in the state on the three subjects on the state standardized test: reading, writing, and math.[222] Three years after the takeover, third-grade students improved between 3.5 and 12.3 points on the three standardized test subjects, fifth-grade students improved approximately six points, but eighth-grade students improved only in math.[223] Baltimore's four-year high school dropout rate had exceeded 74% in 1993;[224] in 2001, this rate had dropped to 45%, still much too high.[225] There is still a long way to go, but Baltimore is headed in the right direction.

Academics have studied these examples and others to draw conclusions on the effectiveness of district takeovers. Kenneth Wong and Francis Shen found that student achievement suffers when state takeover produces administrative and political turmoil.[226] Much "squabbling" took place between the Commonwealth of Massachusetts and one of its school districts, the Lawrence school district, as the state attempted to take over the district; the district experienced superintendent turnover as well.[227] In the two years following the state takeover, student proficiency percentages decreased in both math

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219. James G. Cibulka, *Introduction: The Evaluation of Baltimore's City-State Partnership to Reform BCPSS: Framing the Context, National Trends, and Key Findings*, 8 J. EDUC. STUDENTS PLACED AT RISK 1, 2 (2003).

220. *Id.* The law specified that at least four appointees had to possess a high level of business expertise, at least three had to possess a high level of education expertise, one had to be a parent of a Baltimore student, and one had to possess a high level of expertise on children with disabilities. *Id.*

221. *Id.* at 2-3.

222. *Id.* at 8.

223. Patricia A. Butler, *Achievement Outcomes in Baltimore City Schools*, 8 J. EDUC. STUDENTS PLACED AT RISK 33, 34 (2003).

224. Cibulka, *supra* note 219, at 4.

225. *Id.* at 12.

226. Kenneth K. Wong & Francis X. Shen, *Do School District Takeovers Work? Assessing the Effectiveness of City and State Takeovers as a School Reform Strategy*, 3 ST. EDUC. STANDARD 19, 22 (2002).

227. *Id.*

and English, and the rate of failure in both subjects increased in every grade.[228]

In the absence of such turmoil, however, academic improvements may be made after a prolonged period of state control.[229] In the Compton, California district, which was taken over by the state in 1993, every grade saw improvements on standardized test scores between 1997 and 2000.[230] The lowest-performing schools saw increases as well, sometimes surpassing the average for other schools in the district.[231]

Another study of the state takeover of Jersey City found that the takeover created a "survival culture" among the school district organization, with concerns about personal survival, jobs, and power relegating the education of children to a lower priority.[232] Overall, some takeovers have resulted in increased academic performance, and some have resulted in decreases, providing a muddled picture of the effectiveness of taking over a district.[233]

In New Jersey, West Virginia, and Baltimore, the state brought financial stability to the district through increased funding.[234] Based on the deficit accumulated by the St. Louis school district,[235] such financial stability would be welcome. However, the State of Missouri has not substantially increased education funding to St. Louis, which was a main factor in successfully stabilizing the districts in New Jersey and Baltimore.[236] Without increased funding, it will be much more difficult and take much more time for the State of Missouri to financially stabilize the St. Louis school district. The federal government is providing $23 million in stimulus funds for specific projects and programs in the St. Louis school district, but how the funds will benefit the district's overall bottom line still is unknown.[237]

But more important than financial improvement is academic improvement. As has been discussed, when school districts have been taken over by the state, academic scores have increased in some districts and decreased in

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228. *Id.* However, it should be noted that some students at the lowest-performing schools in the Lawrence district saw small increases in proficiency scores. *Id.*

229. *Id.*

230. *Id.* For example, second grade reading scores increased almost 13%, and third grade reading scores increased almost 7%. *Id.*

231. *Id.*

232. Forster, *supra* note 205, at 17-18. The author never defines who is included in the term "organization," although its usage and context suggest that "organization" consists of employees of the school district. *See id.*

233. SEDER, *supra* note 206, at 27.

234. *See supra* notes 210, 214, 219 and accompanying text.

235. *See supra* note 21 and accompanying text.

236. *See supra* notes 205, 219 and accompanying text.

237. David Hunn, *Stimulus Sends $114 Million Extra to Area Schools, But Impact Is Unknown*, ST. LOUIS POST-DISPATCH, July 31, 2009, *available at* http://www.stltoday.com/stltoday/news/stories.nsf/education/story/4B59A1718E16991D86257604000251C8?OpenDocument (last visited Sept. 3, 2009).

others.[238] Now that the litigation over the takeover of the St. Louis school district has concluded, hopefully test scores can continue moving in the right direction.

However, it will take more than a change in administration to directly impact the student in the classroom. Existing research on education reform is voluminous, and a detailed examination of this literature is beyond the scope of this Note. To provide just a brief overview, proposals to increase academic performance include implementing standard-based curriculum and certain standard-based teaching practices,[239] establishing single-sex schools,[240] instituting performance-based pay for teachers,[241] hiring better teachers,[242] denying failing students grade promotion,[243] and many others. Everyone involved in the education process – the state, the city, the appointed members of the TSD, superintendents, teachers, and parents – must work together to research

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238. *See supra* notes 206-09, 212-13, 220-23 and accompanying text.

239. Harold L. Schoen et al., *Teacher Variables That Relate to Student Achievement When Using a Standards-Based Curriculum*, 34 J. RES. MATHEMATICS EDUC. 228 (2003).

240. Lea Hubbard & Amanda Datnow, *Do Single-Sex Schools Improve the Education of Low-Income and Minority Students? An Investigation of California's Public Single-Gender Academies*, 36 ANTHROPOLOGY & EDUC. Q. 115 (2005). It does seem ironic that a potential solution for a school district suffering from the aftermath of racial segregation would be to institute gender segregation. Hubbard and Datnow also found that caring teachers improved academic achievement. *Id.* at 123-27.

241. Victor Lavy, *Using Performance-Based Pay to Improve the Quality of Teachers*, 17 FUTURE CHILD. 87 (2007). Beginning in August 2009, merit-based pay became available to St. Louis school district teachers. Tony Messenger, *State Sen. Jeff Smith Considering Resigning, Sources Say*, ST. LOUIS POST-DISPATCH, Aug. 16, 2009, *available at* http://www.stltoday.com/stltoday/news/stories.nsf/politics/story/2D3EB9E5E8C5694C8625761400025E84?OpenDocument (last visited Sept. 3, 2009). To qualify, teachers must opt out of their tenure, a decision they cannot reverse in order to regain tenure with the district. S.B. 42, 95th Leg., 1st Sess. (Mo. 2009). Strong supporters of teachers unions opposed the bill. Tony Messenger, *Merit Pay for St. Louis Attached to Education Bill*, ST. LOUIS POST-DISPATCH, Mar. 26, 2009, *available at* http://www.stltoday.com/blogzone/political-fix/political-fix/2009/03/merit-pay-for-st-louis-attached-to-education-bill/ (last visited Sept. 3, 2009).

242. Steven G. Rivkin et al., *Teachers, Schools, and Academic Achievement*, 73 ECONOMETRICA 417 (2005). Rivkin et al. also noted that lowering the student-to-teacher ratio improved academic performance as well. *Id.* at 444-47. Another study found that increasing teacher salaries attracted more qualified teachers, at least for school districts without teachers unions. David N. Figlio, *Can Public Schools Buy Better-Qualified Teachers?*, 55 INDUS. LAB. REL. REV. 686, 696-97 (2002).

243. Melissa Roderick et al., *The Impact of High-Stakes Testing in Chicago on Student Achievement in Promotional Gate Grades*, 24 EDUC. EVALUATION POL'Y ANALYSIS 333 (2002) (finding some evidence that high-risk students in underperforming Chicago schools increased test scores after implementation of the new standards).

and develop new educational strategies inside and outside the classroom that will increase academic performance. Without this cooperation, as well as an across-the-board evaluation and improvement of school programs and processes, student achievement will continue to suffer.

The Missouri legislature and governor created the mechanism for transferring control of the St. Louis school district to the TSD, and now they are responsible for implementing a new plan for the students of St. Louis. However, political fixes usually are complicated, and this situation is no different. Many variables determine student success, and the St. Louis school board might not have been the only problem, assuming that it was a problem. District leadership may have changed, but the students and the problems they face remain the same. Sadly, in 2009, the St. Louis school district met goals in only one of eighteen subgroups mandated under the federal No Child Left Behind Act.[244] Though this lawsuit ended when the State of Missouri won in court, the hard task of improving education continues.

VI. CONCLUSION

Time will tell whether the takeover of the St. Louis school district is successful. What is most important, however, is not whether the State of Missouri or the St. Louis school board ultimately is vindicated. What is most important is that the children attending St. Louis schools receive a quality education. Our society cannot continue providing inner-city students with an inferior education. We have a responsibility to provide every child with an equal, quality education, regardless of whether the child is a white boy or a black girl, regardless of whether the child lives in a run-down home in the inner-city or a pristine mansion in the suburbs. With a quality education, every child can have the same chance of pursuing happiness and realizing the American dream. Not only will this make for more successful individuals, but it also will result in a stronger country. Hopefully, Missouri can once again be home to a landmark moment in the struggle for racial equality, this time by providing all students with a quality education.

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244. David Hunn & Kevin Crowe, *Better Scores on MAP Fall Short*, ST. LOUIS POST-DISPATCH, Aug. 12, 2009, *available at* http://www.stltoday.com/stltoday/news/stories.nsf/education/story/1BC2D90E2A7181F386257610000D1828?OpenDocument (last visited Sept. 3, 2009).