

STILL ON THE BOOKS: JIM CROW AND SEGREGATION LAWS FIFTY YEARS AFTER *BROWN* *V. BOARD OF EDUCATION*

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PREFACE

In the fall of 2003, we—a group of students and faculty at the University of Arizona—decided to celebrate the fiftieth anniversary of *Brown v. Board of Education*¹ by examining the laws of the fifty states to see what laws, if any, designed to promote segregation, remained on the books. Of course, there were centuries of laws segregating schools in the United States. Also, following *Brown* in 1954, legislatures in some former Confederate states responded with a flood of legislation designed to delay or prevent implementation of the integration of public schools. We were curious how much and what sorts of this legislation remained on the books.

The result is the report that follows. Even in states with the most deeply entrenched traditions of racial discrimination, we expected to find that most of the legal structure of Jim Crow had been repealed. We were surprised, however, to find that discriminatory laws remained on the books in eight states. Most of the laws were unenforced and unenforceable because they were in violation of the Fourteenth Amendment's guarantee of equal protection of the laws—some had been the subject of injunctions or other declarations of invalidity. Yet, they remained part of the law.

In April 2004, we circulated the report to the legislatures of the states where the segregation laws were still on the books.² To some extent, the

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1. 347 U.S. 483 (1954).

2. See, e.g., Editorial, *Repeal Remaining 'Jim Crow' Laws*, VICTORIA ADVOCATE, June 20, 2004, at 14A, available at <http://thevictoriaadvocate.com/opinion/editorials/story/2009814p-2326943c.html>; Ernesto Portillo Jr., *Jim Crow Laws Endure*, ARIZ. DAILY STAR, Mar. 6, 2004, at B1, available at <http://www.azstarnet.com/dailystar/relatedarti->

legislatures acted as we expected. In 2004 and 2005, four states repealed their laws because of the report: Georgia,³ Louisiana,⁴ Missouri,⁵ and West Virginia.⁶ Since these laws were unenforced and unenforceable, there was no reason to keep them around.

However, the legislatures of Alabama, Mississippi, South Carolina, and Virginia have not repealed their laws. In 2005 and 2006, the Mississippi Legislature rejected bills proposed by Senator Joseph C. Thomas to make clear that the “Negro 4-H Camp” we discussed in the report is no longer segregated.⁷ Bills are pending in Alabama to eliminate some of the Jim Crow references from that state’s constitution,⁸ but they have failed before.⁹ South Carolina apparently ignored our report.

Virginia’s responses were the most interesting. We had some informal contacts from individual legislators. Of course, there is a long history of resentment of outside interference in the Southern way of life; we received an email from Virginia asking whether we had any problems in Arizona that we should be working on instead—the implication being that we should not be interfering in other people’s business.

We also received a thoughtful letter and memorandum from the Dr. Martin Luther King, Jr. Memorial Commission in Virginia, which contended that any continuing effects of the laws we identified were minimal. For example, in 1982, Virginia repealed laws allowing teachers at “segrega-

<http://www.azstarnet.com/dailystar/relatedarticles/12733.php>; Kristin Roberts, *Some U.S. States Slow to Drop Segregation Laws*, REUTERS, June 18, 2004, available at <http://209.157.64.200/focus/f-news/1156474/posts>.

3. H.B. 26, 2005 Leg. (Ga. 2005) (repealing GA. CODE ANN. § 20-2-702); H.B. 27, 2005 Leg. (Ga. 2005) (repealing GA. CODE ANN. § 20-2-642); H.B. 25, 2005 Leg. (Ga. 2005) (repealing GA. CODE ANN. § 20-3-70); H.B. 372, 2005 Leg. (Ga. 2005) (amending GA. CODE ANN. § 20-2-553); see also Ernie Suggs, *Jim Crow Laws Live On*, ATLANTA J. CONST., June 16, 2004, at D1.

4. H.B. 1044, 2004 Leg. (La. 2004) (repealing LA. REV. STAT. ANN. §§ 17:335 & 349.2); H.B. 1713, 2004 Leg. (La. 2004) (repealing numerous statutes); see also Laura Maggi, *Bills Target Jim Crow-era Laws*, TIMES-PICAYUNE (New Orleans), May 15, 2004; Katy Reckdahl, *Statutes Still Tell Story*, GAMBIT WEEKLY, Mar. 16, 2004, available at http://www.bestofneworleans.com/dispatch/2004-03-16/news_feat4.html.

5. H.B. 1631, 2004 Leg. (Mo. 2004) (amending MO. REV. STAT. § 205.900); see also Sarah Overstreet, *Lawmaker Moving to Sweep Jim Crow Relic off State’s Books*, SPRINGFIELD NEWS LEADER, Mar. 16, 2004, available at <http://springfield.news-leader.com/columnists/overstreet/0316-Lawmakermo-40263.html>.

6. H.B. 2466, 2005 Leg. (W.Va. 2005) (repealing W. VA. CODE § 18-14-1 and amending W. VA. CODE § 18-5-32).

7. S.B. 2466, 2005 Leg. (Miss. 2005) (introduced Jan. 14, 2005; died in committee Feb. 1, 2005); S.B. 2206, 2006 Leg. (Miss. 2006) (introduced Jan. 4, 2006; died in committee Jan. 31, 2006).

8. See H.B. 342, 2006 Leg. (Ala. 2006); S.B. 208, 2006 Leg. (Ala. 2006).

9. Manuel Roig-Franzia, *Alabama Vote Opens Old Racial Wounds: School Segregation Remains a State Law as Amendment Is Defeated*, WASH. POST, Nov. 28, 2004, at A01, available at <http://www.washingtonpost.com/wp-dyn/articles/A16443-2004Nov27.html>.

tion academies” (private schools for whites funded by the states) to participate in that state’s pension program. Our report acknowledged that teachers at segregated schools were not now participating, but we questioned whether taxpayer dollars were still being used to fund the retirements of such teachers who had participated in the past. The letter acknowledged this possibility: “[I]t is entirely possible that some of the teachers who taught in the ‘white academies’ in Prince Edward County and other jurisdictions may have been public school teachers in all white segregated schools who switched to private segregated schools,” and thus “could still be receiving retirement benefits.”¹⁰ In addition, the response noted that provisions originally intended to perpetuate discrimination can evolve; for example, it claims that the provision of the Virginia Constitution designed to allow tuition grants to private segregated schools is now used to support private education for individuals with disabilities, without regard to race. We appreciate the efforts of those in Virginia who responded to our report by seriously examining whether their laws continued to be discriminatory in operation.

We should also note that, despite our best efforts, there are undoubtedly Jim Crow laws on the books we did not find. For example, in 2006, we ran across this clearly unconstitutional Mississippi statute:

Establishment and operation of schools exclusively for Indians

In a school district where there are Indian children, or children of any race not otherwise provided for by law with educational advantages, sufficient to form a school, the school board may locate one or more schools exclusively for Indians, or children of such other race, and pay salaries of teachers for same, and provide for the transportation of the children, under rules and regulations prescribed by the State Board of Education. Special licenses may be provided by the director of the division of instruction for teachers of Indian schools and other schools mentioned in this section.¹¹

Obviously, there are now no children “not otherwise provided for by law with educational advantages” because they are “Indian children, or children of any [other] race”; nor can there be “schools exclusively for Indians, or children of such other race.” Yet, this statute remains on the books.

A note on the text. The report is presented as it was drafted in 2004, with minor corrections to the text and citations. We have not updated it, for example, to reflect that it is now 2006, nor have we removed the textual references and citations to laws that have been repealed. Therefore, it reflects the state of the law as it existed in 2004.

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10. Letter from Dr. Martin Luther King, Jr. Memorial Commission to Jim Crow Study Group (undated) (on file with author).

11. MISS. CODE ANN. § 37-7-329 (2006).