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Liddell v. Missouri: Financing the Ancillary Costs ofPublic School Desegregation Through a Court-OrderedTax Increase

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COMMENTS

LIDDELL v. MISSOURI: FINANCING THE ANCILLARY COSTS OF PUBLIC SCHOOL DESEGREGATION THROUGH A COURT-ORDERED TAX INCREASE

Since *Brown v. Board of Education*,[1] the Supreme Court's command that local school districts effect integration with "all deliberate speed"[2] has encountered opposition through a variety of creative avoidance measures promulgated by state and local governments.[3] In response to drastic instances of municipal resistance to court-ordered desegregation plans,[4] the Supreme Court declared that lower courts could exercise broad equitable powers to

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1. 349 U.S. 294 (1955) (*Brown II*). Reasoning that racial segregation of students deprives minority children of educational opportunities equal to the opportunities afforded to white children, the Supreme Court held that racial discrimination in public schools violates the fourteenth amendment equal protection clause. Brown v. Board of Educ. of Topeka, Kansas, 347 U.S. 483, 494-95 (1954) (*Brown I*); *see* U.S. CONST. amend. XIV, sec. 1 (no state shall deny persons within state jurisdiction equal protection of laws). Because of local differences in the disposition of school segregation, the Supreme Court solicited further argument on the issue of fashioning a general decree to mandate that states desegregate public schools. *Brown I*, 347 U.S. at 492. In response to the recommendations of the *Brown I* parties and several states appearing as amici curiae, the Supreme Court held that local school officals have primary responsibility to desegregate schools, that district courts may exercise equitable powers to ensure school integration proceeds expeditiously, and that district courts may retain jurisdiction over school desegregation cases until violating school districts admit students to public schools on a nondiscriminatory basis. *Brown II*, 349 U.S. at 299-301.

2. Brown v. Board of Educ. of Topeka, Kansas, 349 U.S. 294, 301 (1955).

3. *See Comment, Community Resistance to School Desegregation: Enjoining the Undefinable Class*, 44 U. CHI. L. REV. 111, 112-17 (1976) (explaining types of community resistance to desegregation plans and court-ordered remedies invoked by federal courts to counter public resistance). *See generally* D. BELL, RACE, RACISM AND AMERICAN LAW, 455-97 (1973) (citing cases and history of resistance to school integregation in South after *Brown II*); Wilkinson, *The Supreme Court and Southern School Desegregation, 1955-1970: A History and Analysis*, 64 VA. L. REV. 485, 505-30 (1978) (discussing state-initiated resistance to court-ordered desegregation plans).

4. *See* Griffin v. School Bd. of Prince Edward County, 377 U.S. 218, 225 (1964) (county school district cannot summarily close public schools to avoid integration); Cooper v. Aaron, 358 U.S. 1, 9 (1958) (enjoining Arkansas governor from mobilizing state militia to prevent black children from entering all-white high school); *cf.* Park View Heights Corp. v. City of Black Jack, 605 F.2d 1033, 1035 (8th Cir. 1979) (overturning city ordinance that rezoned city to prevent construction of court-ordered low income housing project); United States v. City of Parma, Ohio, 494 F. Supp. 1049, 1099-1100 (N.D. Ohio 1980) (invalidating building code amendment that prevented construction of court-ordered integrated housing project), *appeal dismissed*, 633 F.2d 218 (6th Cir. 1980), *rehearing en banc*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 102 S.Ct. 2308 (1982). Resistance to court-ordered desegregation erupted into civil violence in South Boston. *See* Morgan v. McDonough, 540 F.2d 527 (1st Cir. 1976) (district court may place school in receivership if desegregation plan meets continued violent resistance by students and parents), *cert. denied*, 429 U.S. 1042 (1977); *see also* Roberts, *The Extent of Federal Judicial Equitable Power: Receivership of South Boston High School*, 12 NEW ENG. L.

eliminate state-perpetuated segregation in public schools.[5] Among a federal district court's broadened equitable powers is the authority to expedite the desegregation process by requiring a municipality to fund a desegregation plan.[6] The authority to appropriate state funds, however, vests primarily in the political processes of state legislatures.[7] Therefore, even though a district court may order a state or local government to pay for a desegregation plan,[8] the Supreme Court has warned that a district court abrogates the principles of federalism if the district court prescribes the specific method by which a state or local government must comply with a desegregation plan funding order.[9]

The costs involved in implementing a desegregation plan have increased substantially since the Supreme Court first ordered the integration of public schools.[10] The high cost of desegregation programs typically requires significant increases in municipal revenues.[11] Accordingly, if a municipality's existing tax rate is lower than the level required to secure the funds necessary

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REV., 55, 74 (1976) (discussing receivership as remedy for local resistance to desegregation plan).

5. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971) (*Swann I*). In *Swann I*, the Charlotte-Mecklenburg School Board failed to submit to the United States District Court for the Western District of North Carolina a workable desegregation plan in a timely manner. *Id.* at 8. Because the school district's response to the district court's desegregation order was unacceptable, the district court appointed an education administrator to present an independent desegregation plan to the court. *Id.* The district court adopted the administrator's plan over the plan proposed by the school board. *Id.* at 11. Recognizing that district courts often encountered stiff dilatory tactics from school authorities in desegregation cases, the Supreme Court held that the district court's solicitation of an integration plan from a source independent of the local school board was justified. *Id.* at 31. Because dilatory tactics by local school officials aggravated the effectiveness of desegregation plans, the Court further held that district courts may exercise broad equitable powers to cure segregation when local officials fail to act affirmatively in accordance with the mandate of *Brown II*. *Id.* at 15; *see Brown II*, 349 U.S. at 300 (federal courts may eliminate obstacles to desegregation through exercise of appropriate equitable powers).

6. *See* Milliken v. Bradley, 433 U.S. 267, 289-90 (1977) (*Milliken II*) (court-ordered desegregation plans and concomitant funding orders are entirely prospective and therefore in compliance with eleventh amendment); *see also* Arthur v. Nyquist, 712 F.2d 809, 813 (2d Cir. 1983) (reiterating district court's equitable power to require expenditure of funds to implement a desegregation plan), *cert. denied*, 104 S.Ct. 1907 (1984).

7. *See* Green v. Frazier, 253 U.S. 233, 239 (1920) (taxing power of state vests in state legislature and acts of state legislature on tax policy deserve highest presumption of constitutionality).

8. *See* Milliken v. Bradley, 433 U.S. 267, 290 (1977) (*Milliken II*) (district court may order state to fund desegregation plan prospectively).

9. *Id.* at 291 (district court's mandate of particular method of financing desegregation plan exceeds federal court's equitable powers by abrogating principle of federalism); *cf.* San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 41 (1973) (federal courts lack familiarity and expertise necessary to manage local school system financing arrangements).

10. *See Comment, Columbus Board of Education v. Penick*, 58 U. DET. J. URB. L. 139, 155 (1980) (asserting courts must weigh costs of desegregation against benefits because costs of desegregation programs are much higher than when Supreme Court first mandated school desegregation).

11. *See* Liddell v. Missouri, 731 F.2d 1294, 1319 (8th Cir. 1984) (en banc) (*Liddell VII*)

for the effective implementation of a desegregation plan, a federal judge may perceive the necessity for a local tax increase to assure compliance with the court's desegregation order.[12] In desegregation cases, federal courts have avoided the Supreme Court's proscription of judicial interference in the state's legislative prerogative of determining tax policy by deferring to state and local authorities to implement taxes necessary to fund desegregation plans.[13] In *Liddell v. Missouri*,[14] however, the Eighth Circuit considered whether a federal court possesses the inherent power to increase local tax levies to assure the funding of a comprehensive desegregation plan.[15]

The series of *Liddell* cases[16] began in 1972 in the United States District Court for the Eastern District of Missouri as a class action suit against the

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(estimating cost of court-ordered capital improvements incident to desegregation plan at $127 million), *cert. denied*, 105 S.Ct. 82 (1984); *see also* Reaves, *Eyes on Surburia*, A.B.A.J., Aug. 1984, at 31 (estimating first year cost of desegregation plan that *Liddell* court required at $64 million).

12. *See* Evans v. Buchanan, 582 F.2d 750, 779 (3d Cir. 1978) (en banc) (recognizing district court must be concerned with local tax rates if existing tax levels will not raise enough revenue to fund desegregation plan), *cert. denied*, 446 U.S. 923 (1980).

13. *See infra* notes 139-53 and accompanying text (analysis of case law limiting extent of federal court's involvement in state affairs); *see also* Green v. Frazier, 253 U.S. 233, 239 (1920) (only state's clear usurpation of power will justify judicial intervention in state legislative process).

14. 731 F.2d 1294 (8th Cir. 1984) (en banc) (*Liddell VII*), *cert. denied*, 105 S.Ct. 82 (1984).

15. *Id.* at 1319-23.

16. *See* Liddell v. Board of Educ. of St. Louis, 469 F. Supp. 1304, 1309-12 (E.D. Mo. 1979) (recounting procedural history of *Liddell* cases). The Eighth Circuit has reviewed the *Liddell* controversy on seven occasions. *See* Liddell v. Missouri, 731 F.2d 1294, 1302-18 (8th Cir. 1984) (en banc) (*Liddell VII*) (state funded interdistrict student transfers and quality education incentive programs are proper school desegregation remedies, and broad equitable powers of district court in school desegregation cases include limited power to increase local tax levies to assure funding of desegregation plan); Liddell v. Missouri, 717 F.2d 1180, 1182-84 (8th Cir. 1983) (*Liddell VI*) (denying stay of desegregation plan pending appeal in opposition of plan); Liddell v. Board of Educ. of St. Louis, 677 F.2d 626, 628-29 (8th Cir.) (*Liddell V*) (affirming district court allocation of funding responsibilities for desegregation plan and holding adjacent county school districts that voluntarily participate in city school integregation plan do not thereby admit liability or waive right to exclusion from plan), *cert. denied*, 459 U.S. 877 (1982); Liddell v. Board of Educ. of St. Louis, 693 F.2d 721, 723 (8th Cir. 1981) (*Liddell IV*) (district court order directing school board to formulate and submit proposal for integration of schools not appealable); Liddell v. Board of Educ. of St. Louis, 667 F.2d 643, 656-57 (8th Cir.) (*Liddell III*) (approving district court decision to implement desegregation plan and denying stay of district court desegregation order pending filing of petition for certiorari in Supreme Court), *cert. denied*, 454 U.S. 1081 (1981); Liddell v. Caldwell, 553 F.2d 557, 557-58 (8th Cir. 1977) (*Liddell II*) (denying stay of implementation of desegregation plan pending third party petition for intervention); Liddell v. Caldwell, 546 F.2d 768, 772-74 (8th Cir. 1976) (*Liddell I*) (reversing district court's denial of third party's motion to intervene in desegregation plan formulation), *cert. denied*, 433 U.S. 914 (1977); *see also* Adams v. United States, 620 F.2d 1277, 1291 (8th Cir.) (holding City of St. Louis failed affirmative duty to disestablish dual school system and requiring city to develop systemwide plan for school integration), *cert. denied*, 449 U.S. 826 (1980).

City Board of St. Louis, Missouri.[17] The plaintiffs, a group of black parents, alleged that racial discrimination in St. Louis schools violated the equal protection clause of the fourteenth amendment.[18] The State of Missouri intervened as a defendant[19] upon the encouragement of the Eighth Circuit, to assist in the formulation of a workable interdistrict desegregation plan.[20] The district court eventually held the State of Missouri and the City of St. Louis jointly liable for the unconstitutional segregation existing in St. Louis public schools.[21] The district court further ordered the state and local governments to submit to the district court an effective desegregation proposal to alleviate the constitutional violation.[22] Consequently, the plaintiffs, along with the St. Louis City Board and twenty-three adjacent county school

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17. *See* Liddell v. Board of Educ. of St. Louis, 469 F. Supp. 1304, 1309 (E.D. Mo. 1979) (noting class certification in procedural history of *Liddell*). The plaintiff class in *Liddell* consisted of school age children and parents in the St. Louis, Missouri area. *Id.*

18. *See id.* (plaintiffs in *Liddell* alleged St. Louis City School Board had maintained and perpetuated racial discrimination and segregation in St. Louis city schools in contravention of fourteenth amendment); *see also* U.S. CONST. amend. XIV, sec. 1 (state may not deny equal protection of laws to persons within state's jurisdiction); Brown v. Board of Educ. of Topeka, Kansas, 347 U.S. 483, 493 (1954) (equal protection clause of fourteenth amendment requires state to ensure that all students have equal access to state-provided educational opportunities).

19. *See* Liddell v. Board of Educ., 469 F. Supp. 1304, 1312 (E.D. Mo. 1979) (noting intervention of State of Missouri in procedural history of *Liddell*).

20. *See* Liddell v. Caldwell, 546 F.2d 768, 774 (8th Cir. 1976) (*Liddell I*) (encouraging State of Missouri to intervene in *Liddell* case). In *Liddell I*, the Eighth Circuit noted that disagreements among the *Liddell* parties had delayed formulation of an effective desegregation plan. *Id.* To assist in the expeditious resolution of the parties' disagreements over how to implement the integration plan, the Eighth Circuit invited the State of Missouri and the United States Department of Justice to intervene. *Id.*

21. Liddell v. Board of Educ., 491 F. Supp. 351, 359 (E.D. Mo. 1980), *aff'd*, 667 F.2d 643 (8th Cir. 1981) (*Liddell III*), *cert. denied*, 454 U.S. 1081, 1091 (1982). The district court in *Liddell III* found the State of Missouri a primary constitutional violator because the state constitution and state statutes perpetuated racial discrimination in St. Louis schools. *Id.*; *see* MO. CONST. art. IX, sec. 1(a) (1945) (repealed 1954) (providing for separate schools for black and white children); MO. REV. STAT. § 161.020 (1945) (repealed 1955) (providing for separate distribution of educational funds for black and white schools); MO. REV. STAT. §§ 163.130, 164.030, 165.117, 165.297 (1945) (repealed 1957) (providing for interdistrict transfers of black students to ensure segregation from white students). *But see* Liddell v. Board of Educ., 469 F. Supp. 1304, 1314 (E.D. Mo. 1979) (Missouri legislature's prompt action to repeal racially discriminatory education laws removed all state-promulgated obstacles to desegregation in Missouri schools), *rev'd*, Adams v. United States, 620 F.2d 1277 (8th Cir. 1980) (en banc), *cert. denied*, 449 U.S. 826 (1980); *see also Comment, St. Louis Desegregation Plan Found Inadequate: Adams v. United States*, 14 CREIGHTON L. REV. 1048, 1952-55 (1981) (discussion and analysis of Eighth Circuit's holding in *Adams*). Racial segregation in St. Louis is the result of a complex array of housing and demographic problems. *See generally Comment, Federal Housing and School Desegregation: Interdistrict Remedies Without Busing*, 25 ST. LOUIS U.L.J. 575, 577-79 (1981) (discussing nature and causes of segregation in St. Louis) [hereinafter cited as *Federal Housing and School Desegregation*].

22. Liddell v. Board of Educ., 491 F. Supp. 351, 359 (E.D. Mo. 1980).

districts,[23] entered into a consent agreement[24] to desegregate the city's schools.[25] The resulting agreement called for a comprehensive voluntary integration plan using economic and educational incentives[26] to encourage student transfers.[27]

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23. Liddell v. Board of Educ., 677 F.2d 626, 641-42 (8th Cir.) (*Liddell V*), *cert. denied*, 459 U.S. 877 (1982). In *Liddell III*, the District Court for the Eastern District of Missouri found that the state was the primary constitutional violator in the segregation of St. Louis schools. Liddell v. Board of Educ., 491 F. Supp. 351, 359 (E.D. Mo. 1980) (*Liddell III*), *aff'd*, 667 F.2d 643 (8th Cir. 1981), *cert. denied*, 454 U.S. 1081, 1091 (1982). In *Liddell V*, the plaintiffs alleged that the State of Missouri had ultimate responsibility to desegregate the St. Louis City schools, and that the state should realign St. Louis metropolitan school district boundaries to effectuate school integration. *Liddell V*, 677 F.2d at 640. The State of Missouri and the counties adjacent to St. Louis, however, alleged that since the counties were not constitutional violators, the district court could not order the counties to comply with an interdistrict desegregation plan. *Id.* at 641. In *Liddell V*, the Eighth Circuit reasoned that mandatory participation in the St. Louis integration plan by non-violating county school districts would exceed the scope of the district court's equitable powers. *Id.*; *see* Milliken v. Bradley, 418 U.S. 717, 744 (1974) (*Milliken I*) (district court must tailor desegregation remedy to affect only segregated school districts). The Eighth Circuit in *Liddell V*, therefore, held that the district court may not require adjacent county school districts to participate in the St. Louis desegregation plan but that the district court may require the State of Missouri to institute fiscal incentives to encourage adjacent counties to assist voluntarily in the city's desegregation effort. *Liddell V*, 677 F.2d at 641-42. On remand from the Eighth Circuit, the District Court for the Eastern District of Missouri ordered the state to reimburse the adjacent county governments for costs incurred by the adjacent county school districts' voluntarily participating in the St. Louis desegregation plan. Liddell v. Board of Educ., 567 F. Supp. 1037, 1052 (E.D. Mo. 1983), *aff'd*, Liddell v. Missouri, 731 F.2d 1294, 1301-09 (8th Cir. 1984) (Liddell VII), *cert. denied*, 105 S.Ct. 82 (1984). All twenty-three adjacent county school districts subsequently volunteered to participate in the St. Louis desegregation plan. *Liddell VII*, 731 F.2d at 1300.

24. *See* Liddell v. Board of Educ., 469 F. Supp. 1304, 1387-90 (E.D. Mo. 1979) (outlining consent agreement between *Liddell* plaintiffs, St. Louis City Board and State of Missouri that required St. Louis to expand school facilities, realign student allocations, and hire limited number of new teachers with objective of eradicating segregation in St. Louis schools); *see also* Liddell v. Board of Educ., 567 F. Supp. 1037, 1040 n.2 (E.D. Mo. 1983) (consent agreement is accord among parties to desegregation lawsuit that resolves racial discrimination in schools through voluntary settlement).

25. Liddell v. Board of Educ., 567 F. Supp 1037, 1040 (E.D. Mo. 1983).

26. *See* Liddell v. Board of Educ., 677 F.2d 626, 641-42 (8th Cir.) (*Liddell V*) (district court may require State of Missouri to provide fiscal and educational incentives for interdistrict transfers to effectuate desegregation of St. Louis city schools), *cert. denied*, 459 U.S. 877 (1982). The Eighth Circuit in *Liddell VII* approved the St. Louis school desegregation plan which allocated the costs of implementing quality education programs in St. Louis city schools between the city and the state and required the State of Missouri to reimburse adjacent county school districts for costs incurred in transporting county students to inner-city schools. Liddell v. Missouri, 731 F.2d 1294, 1297-98 (8th Cir. 1984) (*Liddell VII*). One of the desired effects of the *Liddell* desegregation plan was to increase the quality of education in St. Louis city schools to a level that would encourage predominately white students in outlying counties to volunteer to attend predominately black inner-city schools. *Id.* at 1301-02.

27. *See* Liddell v. Board of Educ., 567 F. Supp. 1037, 1055-58 (E.D. Mo. 1983) (delineating approved provisions of St. Louis City school desegregation plan).

The *Liddell* parties subsequently presented the consent agreement to the district court for approval in *Liddell v. Board of Education of St. Louis.*[28] In *Liddell v. Board of Education*, the United States District Court for the Eastern District of Missouri determined that the consent agreement proposed a satisfactory means of correcting segregation in St. Louis city schools.[29] The district court, therefore, approved the desegregation plan promulgated in the consent agreement and allocated funding responsibilities between the State of Missouri and the City of St. Louis.[30] The district court concluded that the high cost of implementing the *Liddell* desegregation plan would require St. Louis city school districts to increase revenues substantially.[31] In addition, the district court opined that a federal court possesses the equitable power to order a municipality to raise revenues to fund a desegregation program.[32] The district court's holding, therefore, included an order for the City Board to submit a bond referendum to St. Louis voters, as required by state law,[33] to fund the desegregation plan.[34] Additionally, the district court held that if the bond referendum failed, the district court would reserve authority to increase the city's tax levies to obtain revenues necessary to fund the plan.[35]

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28. *Id.*

29. *Id.* at 1047 (finding St. Louis desegregation plan outlined in consent agreement fair, reasonable, adequate and constitutionally permissible).

30. *Id.* at 1055. Federal courts possess authority to allocate funding responsibilities in a desegregation plan. *See* Milliken v. Bradley, 433 U.S. 267, 289 (1977) (district court may allocate desegregation costs to state if state is adjudged constitutional violator); *see also* United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1186 (7th Cir. 1982) (allocating desegregation costs is within remedial power of district court), *cert. denied*, 103 S.Ct. 568 (1983); *cf.* Hutto v. Finney, 437 U.S. 678, 696 (1978) (district court may impose costs of correcting deficiencies in state prison system upon state).

31. Liddell v. Board of Educ., 567 F. Supp. at 1051. In *Liddell*, the District Court for the Eastern District of Missouri estimated that the cost of the St. Louis school desegregation plan in the first year alone would exceed $38 million and might reach $100 million. *Id.* The *Liddell* court further noted that the high cost of the St. Louis desegregation plan would require the City Board to make difficult decisions regarding the raising of revenues required to fund the plan. *Id.* The district court expressed concern over the St. Louis city government's expediency in obtaining additional revenues to fund the desegregation plan by interjecting that eventually someone must "pay the piper." *Id.* at 1053.

32. Liddell v. Board of Educ., 567 F. Supp. at 1052 (federal court possesses authority to raise local taxes to pay for judgment against governmental unit).

33. Liddell v. Board of Educ., 567 F. Supp. at 1054. The State of Missouri imposes strict constitutional debt and tax limitations on municipalities. *See* MO. CONST. art. 10, sec. 11(b) (1971) (limiting annual property tax levy by school districts to $1.25 per $100 assessed value); *id.* sec. 11(c) (1970) (requiring consent by two-thirds of qualified electors in school district to increase tax levies above constitutional limit); *id.* art. 6, sec 26(b) (1952) (requiring consent by two-thirds of qualified electors in municipality to approve bond referendum); *see also* MO. REV. STAT. § 164.013 (1983) (approving voter referendum, known as "Proposition C," which directs local school boards to reduce operating levies to amount equal to fifty percent of anticipated revenue under one-cent increase in state sales tax).

34. Liddell v. Board of Educ., 567 F. Supp. at 1056.

35. *Id.* After the *Liddell* court ordered the City Board to submit a bond referendum to St. Louis voters to pay for the desegregation plan, the St. Louis voters failed to approve the court-ordered bond referendum. Liddell v. Missouri, 731 F.2d 1294, 1319 (8th Cir. 1984) (*Liddell VII*). The *Liddell* court probably anticipated the failure of the bond referendum. *See*

The City of St. Louis appealed to the Eighth Circuit, however, arguing that the district court did not have the authority to increase a municipality's tax rate to assure funding of a court-ordered desegregation plan.[36] In affirming the district court's reservation of authority to increase taxes, the Eighth Circuit, sitting en banc, noted that the scope of the district court's equitable powers to correct the wrongs of school segregation is extremely broad.[37] Furthermore, the *Liddell* court stated that a district court's broad equitable powers include the authority to exercise all reasonable means of ensuring the efficacy of a desegregation plan in the school district perpetuating racial discrimination.[38] The *Liddell* court reasoned, therefore, that if a municipality had failed to fund adequately a court-ordered desegregation plan, a district court may order a tax increase to satisfy the local government's obligation to integrate public schools.[39] The Eighth Circuit further observed that the Supreme Court and other courts had approved judicially-ordered tax increases in the past as reasonable means of ensuring that local governments satisfy contractual and tort liability obligations.[40]

In addition to holding that a district court may order a tax increase to fund a desegregation plan, the Eighth Circuit acknowledged that a district court's unqualified order to raise taxes would circumvent the traditional integrity of the local political funding process.[41] Accordingly, the *Liddell* court asserted that a federal judge should not order a tax increase to fund a desegregation plan unless the district court has exhausted all other funding alternatives.[42] The Eighth Circuit noted that a factual finding that a mandatory tax increase was the only available or sufficient means of funding the *Liddell* integration plan did not accompany the district court's desegregation

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United States v. Missouri, 388 F. Supp. 1058, 1059 (E.D. Mo. 1975) (finding that no reasonable possibility existed for two-thirds voter approval of tax increase to fund integration plan in the wake of desegregation order), *acq.*, 515 F.2d 1365, 1371-72 (8th Cir. 1975).

36. Liddell v. Missouri, 731 F.2d 1294, 1301 (8th Cir. 1984) (*Liddell VII*).

37. *Id.* at 1320 (citing Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971) (*Swann I*)); *see supra* note 5 (textual discussion of *Swann I*).

38. *Liddell*, 731 F.2d at 1320 (citing North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43 (1971) (*Swann II*)). In *North Carolina State Bd. of Educ. v. Swann*, the North Carolina state legislature enacted an anti-busing statute that prohibited mandatory student busing to create racial balance in public schools. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43, 44 n.1 (1971) (*Swann II*). The Supreme Court determined that the anti-busing statute interfered with local school officials' affirmative duty to desegregate schools. *Id.* at 46. The *Swann II* Court therefore held that a state may not abridge the range of remedies available to a district court in a desegregation case by proscribing a reasonable means of achieving integration. *Id.* at 46.

39. *Liddell*, 731 F.2d at 1320 (citing Griffin v. School Bd. of Prince Edward County, 377 U.S. 218 (1964)); *see infra* notes 53-61 and accompanying text (textual discussion of *Griffin*).

40. *Liddell*, 731 F.2d at 1322; *see infra* notes 75-82 and accompanying text (analysis of municipal contract and tort liability cases in which court successfully compelled municipality to pay debt by raising taxes).

41. *See Liddell*, 731 F.2d at 1321 (district court should defer to political funding process before considering tax increases).

42. *Id.* at 1322-23.

order.[43] The *Liddell* court held, therefore, that absent a finding that no other funding alternative to raise revenues for the St. Louis desegregation plan existed, the district court's order reserving the power to increase St. Louis tax levies was improper.[44] The Eighth Circuit further held, however, that if during the district court's continuing jurisdiction in the *Liddell* case[45] a district judge determines that the St. Louis City Board and the Missouri state legislature have failed to fund adequately the desegregation plan, the district court may properly order that St. Louis city taxes be increased to a level necessary for the solvency of the *Liddell* integration program.[46]

Despite the Eighth Circuit's permissive holding that the district court may order a tax increase to fund the St. Louis desegregation plan, the *Liddell* dissent maintained that the district court should not have the power to increase taxes to fund a desegregation plan, and that a district court never should need to resort to such a tax increase.[47] Asserting that the taxing power of the states vests primarily in the state legislatures, the *Liddell* dissent concluded that federal courts could not exercise the power to increase taxes, nor could the federal courts interfere with local or state tax structures.[48] Additionally, the *Liddell* dissent stated that the Supreme Court had supported a court-ordered tax increase to fund a desegregation plan only when the effect of the court order was to restore tax rates to a level which the local government previously had approved.[49] The dissent further noted that even

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43. *Id.* at 1323; *see also* Liddell v. Board of Education, 567 F. Supp. 1037, 1055-58 (E.D. Mo. 1983) (district court's order for implementation of *Liddell* desegregation plan).

44. *Liddell*, 731 F.2d at 1323.

45. *See id.* (remanding *Liddell* case to district court for additional findings on funding issue); *see also* Brown v. Board of Educ. of Topeka, Kansas, 349 U.S. 294, 301 (1955) (*Brown II*) (district court retains jurisdiction of desegregation case throughout violating school system's transition from segregation to integration).

46. *Liddell*, 731 F.2d at 1321.

47. *Liddell*, 731 F.2d at 1332 (Gibson, J., concurring and dissenting).

48. *Id.* (citing Green v. Frazier, 253 U.S. 233, 239 (1920)). The case of *Green v. Frazier* involved a North Dakota state statute which created a state bank and an enterprise plan in which the state government would have participated in certain private ventures deemed necessary to the general welfare of the state citizens. Green v. Frazier, 253 U.S. 233, 234-38 (1920) (citing 1919 N.D. Sess. Laws 147, 148, 150-51). North Dakota taxpayers petitioned the North Dakota Supreme Court to enjoin the state statute's implementation alleging that the measure was an illegal exercise of a state's taxing power and a deprivation of taxpayer property without due process. *Id.* at 238; *see* Green v. Frazier, 176 N.W. 11, 12 (N.D. 1920) (tax policy which state legislature enacted in accordance with state law does not violate due process). The United States Supreme Court held that federal courts could not question the validity of a state legislature's taxing policy when the legislature promulgated the policy to nurture the general welfare of the state. *Green*, 253 U.S. at 239; *see also* Lenhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 365 (1973) (federal court cannot substitute court's judgment for state legislature's discretion to invalidate state tax law); Madden v. Kentucky, 309 U.S. 83, 86 (1940) (state legislatures possess greatest freedem of discretion in determining local tax policies); Carmichael v. Southern Coal Co., 301 U.S. 495, 525 (1937) (function of distributing state's tax burden vests in state legislature).

49. *Liddell*, 731 F.2d at 1332 (Gibson, J., concurring and dissenting) (citing Griffin v. County School Bd. of Prince Edward County, 377 U.S. 218 (1964)); *see infra* notes 53-61 and accompanying text (textual discussion of *Griffin*).

when the court-ordered tax increase restored tax rates to a previously approved level, the Supreme Court required the district judge to defer to state and local officials to execute the court-ordered tax increase.[50] The *Liddell* dissent concluded that although a district court possesses the power to fund a desegregation plan by entering a money judgment against a municipality in the amount necessary to finance the court-ordered integration program, the district court may not exercise the solely legislative prerogative of altering tax rates.[51]

Although the majority and dissent in *Liddell* disagreed on the ultimate issue of a district court's power to increase taxes to fund a desegregation plan, the majority and dissent agreed that taxation is a political power outside of the traditional purview of the federal courts.[52] Federal courts, however, have attempted to determine the precise circumstances under which a tax increase would enter the purview of a federal district judge's power in a desegregation case by variously construing the Supreme Court's holding in *Griffin v. School Board of Prince Edward County*.[53] In *Griffin*, the Prince Edward County, Virginia, Board of Supervisors closed all public schools in the county to prevent school integration.[54] Furthermore, the Board of Supervisors refused to collect property taxes which would provide funds to keep the schools open.[55] Instead, the Board of Supervisors channeled state tax revenues to all-white private schools.[56] The effect of the Supervisors' actions, therefore, was to provide subsidized private education to the county's white children while denying public education to the county's black children.[57] The Supreme Court reasoned that the Prince Edward County Supervisors' tax policy denied Prince Edward County students the same access to public education as that afforded by other Virginia school districts.[58] Furthermore, the Supreme Court specified that the Prince Edward County tax policy was

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50. *Liddell*, 731 F.2d at 1332 (Gibson, J., concurring and dissenting) (citing United States v. Missouri, 515 F.2d 1365 (8th Cir. 1975), *cert. denied sub nom.* Ferguson Reorganized School Dist. v. United States, 423 U.S. 951 (1975)).

51. *Id.* (Gibson, J., concurring and dissenting).

52. *Id.* at 1321, 1332 (Gibson, J., concurring and dissenting).

53. Griffin v. County School Bd. of Prince Edward County, 377 U.S. 218 (1964).

54. *Id.* at 222; *see also* Allen v. County School Bd. of Prince Edward County, 266 F.2d 507, 511 (4th Cir. 1959) (ordering Prince Edward County Board of Supervisors to make preparations to admit children to county schools on integrated basis).

55. *Griffin*, 377 U.S. at 222 (noting that Prince Edward County Supervisors would not levy taxes to operate public schools which white and black children would attend together).

56. *Id.* at 223 (noting that Prince Edward County Supervisors passed ordinance providing for transfer of Virginia state educational grants to private white schools).

57. *See* Allen v. County School Bd. of Prince Edward County, 198 F. Supp. 497, 503 (E.D. Va. 1961) (Prince Edward County Supervisors designed tax policy of revoking property tax collections to perpetuate racial segregation in private county schools), *rev'd on other grounds*, 322 F.2d 332 (4th Cir. 1963), *rev'd*, 377 U.S. 218 (1964).

58. *Griffin*, 377 U.S. at 225 (denial of public education in Prince Edward County, while other Virginia counties provided public education, constituted deprivation of equal protection of state laws to Prince Edward County school children).

an essential factor in depriving black school children equal access to public education.[59] The *Griffin* Court concluded that the Supervisors closed the public schools and refused to exercise the County Board's power to levy taxes for the sole purpose of preventing racial integration of Prince Edward County schools.[60] The Supreme Court, therefore, held that the United States District Court for the Eastern District of Virginia could compel the Prince Edward County Supervisors to exercise the County Board's power to reinstate property taxes to reopen and operate the Prince Edward County schools on an educational basis equal to that of other Virginia school districts.[61]

The Supreme Court's holding in *Griffin*, that a district court could compel local officials to increase taxes to reopen public schools, suggests that a tax increase is within the bounds of a federal court's equitable powers in desegregation cases.[62] The federal circuits, however, have interpreted the *Griffin* decision in three different ways. The Seventh Circuit has narrowly construed the *Griffin* decision as allowing a district court to require only that a state legislature allocate unappropriated funds[63] for the implementation of a desegregation plan.[64] Accordingly, the Seventh Circuit would limit a district court's intervention into a local government's tax policy by only allowing the district court to mandate that a state spend tax receipts on a

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59. *Id.* at 233 (Prince Edward County ordinance providing state educational grants to private white schools constituted essential part of county supervisors' scheme to prevent integration of public schools).

60. *Id.* at 231 (asserting that Prince Edward County Supervisors closed schools in county to prevent white and colored children from going to same schools).

61. *Id.* at 233.

62. *See Liddell*, 731 F.2d at 1320 (asserting that *Griffin* holding acknowledges district court's authority to increase taxes where state has failed to provide equal educational opportunity to all children).

63. *See* United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1189 (7th Cir. 1982) (describing "unappropriated funds" as tax receipts which state has not allocated for specific purpose), *cert. denied*, 103 S.Ct. 568 (1983).

64. *Id.* at 1190. In *United States v. Board of School Comm'rs of Indianapolis*, the State of Indiana had implemented a statute which required the state to pay one-half of all transportation costs incident to desegregation programs in state school districts. *See id.* at 1186 (citing IND. CODE § 20-8.1-6.5-1 (1974)). The United States District Court for the Southern District of Indiana, however, found the State of Indiana a primary violator of the equal protection clause of the fourteenth amendment for causing school segregation in the City of Indianapolis. United States v. Board of School Comm'rs of Indianapolis, 456 F. Supp. 183, 188 (S.D. Ind. 1978). The district court subsequently allocated the full cost of the desegregation order to the State of Indiana. United States v. Board of School Comm'rs of Indianapolis, 506 F. Supp. 657, 671-74 (S.D. Ind. 1979), *aff'd*, 637 F.2d 1101 (7th Cir.), *cert. denied*, 449 U.S. 838 (1980). The state claimed that the district court's order for the state to pay full costs of the integration plan for Indianapolis violated the state statute which mandated that the state pay only one-half of the costs of any desegregation plan. United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1187 (7th Cir. 1982), *cert. denied*, 103 S.Ct 568 (1983). The Seventh Circuit therefore held that the federal court could compel the State of Indiana to allocate unappropriated funds in excess of one-half the cost of the desegregation plan to pay for the plan's enactment. *Id.* at 1189-90.

desegregation plan.[65] The Seventh Circuit, therefore, would forbid a district court from exercising taxing power, but would affirm a district court's order that a state or municipality reserve unspent tax revenues for an integration program.[66]

Unlike the Seventh Circuit, the Third, Fifth and Sixth Circuits have interpreted *Griffin* as a stern reaction by the Supreme Court in response to an egregious and affirmative act of segregation.[67] Accordingly, the Third, Fifth and Sixth Circuits would limit a district court's exercise of the power to increases taxes only to instances in which the state or local government has affirmatively perpetuated school segregation by alternating tax policies to frustrate a court-ordered desegregation plan.[68] The Third Circuit, therefore, would affirm a court-ordered tax increase only if the violating municipality purposely reduced or totally eliminated tax collection to prevent integration of public schools.[69] Similarly, the Fifth and Sixth Circuits would

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65. *See Board of School Comm'rs of Indianapolis*, 677 F.2d at 1190 (federal court's desegregation funding order requires state legislature to support desegregation plan adequately but does not limit legislature's prerogative to reallocate state appropriations or to raise taxes), *cert. denied*, 103 S.Ct. 568 (1983).

66. *See id.* (federal court may not instruct state legislature to finance obligations through specific measures).

67. *See* Evans v. Buchanan, 582 F.2d 750, 780 (3d Cir. 1978) (en banc) (court may intervene in state tax policy to assure funding of desegregation plan only in extreme cases), *cert. denied*, 446 U.S. 923 (1980); National City Bank v. Battisti, 581 F.2d 565, 569 (6th Cir. 1977) (federal court may intervene in school financing policy only if municipality purposely closes public schools to defeat desegregation order); *see also* Wright v. Regan, 656 F.2d 820, 831 n.27 (D.C. Cir. 1981) (acknowledging egregious actions of state and county officials in *Griffin*); Plaquemines Parish School Bd. v. United States, 415 F.2d 817, 833 (5th Cir. 1969) (considering *Griffin* as unique case of drastic resistance to court-ordered desegregation). In *Evans v. Buchanan*, for example, the Delaware State Board of Education petitioned the Third Circuit for a writ of mandamus to compel the district court for the District of Delaware to enforce an injunction requiring the New Castle County, Delaware school district to observe a state-enacted property tax ceiling. *Evans*, 582 F.2d at 774-77. New Castle County had to exceed the tax ceiling, in violation of state law, to pay for a court-ordered desegregation plan. *Id.* at 775-76. Reasoning that state legislatures must determine tax policy without interference, the Third Circuit issued the requested writ of mandamus and held that unless the State of Delaware failed to allocate sufficient funds to operate the New Castle County schools, the district court could not alter state tax policy. *Id.* at 780.

In *National City Bank v. Battisti*, fiscal shortfalls threatened the closing of Cleveland, Ohio, schools. *National City Bank*, 581 F.2d at 566-67. The City of Cleveland operated public schools under a desegregation plan ordered by the United States District Court for the Northern District of Ohio. Reed v. Rhodes, 422 F. Supp. 708, 797 (N.D. Ohio 1976). The Sixth Circuit reasoned that public school financing is the responsibility of the state alone. *National City Bank*, 581 F.2d at 569. The Sixth Circuit held, therefore, that a federal court may intervene in Cleveland school funding matters only if city officials purposefully closed the public schools to prevent integration. *Id.*

68. *See supra* note 67 (Third, Fifth and Sixth Circuits' interpretations of tax power implications of *Griffin* holding).

69. *See* Evans v. Buchanan, 582 F.2d 750, 780 (3d Cir. 1978) (federal court may consider tax increase to fund desegregation plan only if municipality purposely fails to fund school system sufficiently), *cert. denied*, 446 U.S. 923 (1980).

authorize a court-ordered tax only if a school district closed public schools to avoid racial integration.[70]

Finally, the Eighth Circuit's interpretation of *Griffin* in *Liddell* asserts that *Griffin* authorizes a district court to increase local taxes above existing, approved levels to meet the costs of implementing a desegregation plan.[71] Accordingly, the Eighth Circuit would approve a court-ordered tax increase if the district court determined that a tax increase would be the only available or sufficient means of providing funds for a desegregation plan.[72] The Eighth Circuit in *Liddell*, therefore, approved a court-ordered tax increase only if a district court found that no other fiscal alternatives existed to finance the St. Louis integration program.[73] Consequently, the federal circuits disagree on the extent of a federal court's power to increase taxes in desegregation cases as conferred by the Supreme Court's holding in *Griffin*.[74]

Although the circuit courts disagree on the tax power implications of the *Griffin* holding, the Supreme Court and the federal circuits agree on the authority of district courts to increase taxes in a municipality to secure payment of a retroactive public debt.[75] When a local government incurs a retroactive debt due to a public contract, bond or tort liability, the municipality, as an organization of taxpayers, becomes indebted pecuniarily to private individuals.[76] The contracts clause of the United States Constitution[77] embodies the public policy notion that a government may not misuse

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70. *See* National City Bank v. Battisti, 581 F.2d 565, 569 (6th Cir. 1977) (federal court may mandate school financing measures only if local officials close public schools to avoid racial integration); Plaquemines Parish School Bd. v. United States, 415 F.2d 817, 833 (federal court may not order school system to seek desegregation funds from particular source unless school officials close schools to prevent integration of students).

71. *Liddell*, 731 F.2d at 1320.

72. *See id.* (district court may raise local taxes if tax increase is necessary to prevent further racial discrimination in public schools and to maintain integrated public education).

73. *See id.* at 1323 (district court may raise local taxes upon finding that no other fiscal alternative to tax increase is sufficient to fund desegregation plan).

74. *See supra* notes 62-73 and accompanying text (analysis of federal circuit courts' interpretations of *Griffin* holding on power of federal court to raise taxes to fund desegregation plans).

75. *See* Edelman v. Jordon, 415 U.S. 651, 666 n.11 (1974) (noting that difference between retroactive and prospective obligations is that retroactive obligations require state to pay for debts incurred through past activity while prospective obligations only require state to conform future conduct to newly acquired debts); Louisiana *ex rel.* Hubert v. Mayor of New Orleans, 215 U.S. 170, 175-76 (1909) (federal court may not review state action based on contracts clause unless subsequent legislation substantially impairs prior agreement).

76. *See* Murray v. Charleston, 96 U.S. 432, 455 (1877) (municipality acts as individual, instead of sovereign, when local government enters into contract, bond or other financial obligation). The difference between the responsibility of a sovereign and an individual under a financial debt is that, unlike an individual, an unfettered sovereign conceivably could eliminate the government's pecuniary liability through legislation. *Id.* In the United States, however, the contracts clause of the Constitution prevents states from ignoring contract debts through legislation. *See* U.S. CONST. art. I, sec. 10, cl. 1 (state may not pass law that impairs contract obligations).

77. *See supra* note 76 (content of contracts clause).

sovereign power to abandon a public debt through legislation.[78] The contracts clause, therefore, dictates that federal and state courts prevent local governments from avoiding financial obligations by issuing orders which assure the proper discharge of municipal debts.[79] Furthermore, courts have ordered tax increases to guarantee payments to aggrieved creditors when local officials have defaulted on a municipal debt.[80] Although the federal circuits agree on the power of federal courts to order tax levies to discharge municipal debts,[81] the Eighth Circuit's majority opinion in *Liddell,* likening the St. Louis desegregation funding problem to a municipal debt for purposes of court-ordered taxation, is apparently unique.[82]

The disparity between the Eighth Circuit's singularly broad interpretations of *Griffin*[83] and the municipal debt cases,[84] and the interpretations of

78. *See* Energy Reserves Group, Inc. v. Kansas Power and Light Co., 103 S.Ct. 697, 705 (1983) (municipality cannot avoid bond debt by reserving authority to declare bond contract void); United States Trust Co. v. New Jersey, 431 U.S. 1, 26 (1977) (contracts clause prevents state from reducing state financial obligations); *cf.* Wichita Finance & Thrift Co. v. City of Lawton, 131 F. Supp. 788, 790 (W.D. Okla. 1955) (municipality cannot avoid tort liability by pleading that state-enforced statutory debt limitation precludes satisfaction of judgment).

79. *See* Louisiana *ex rel.* Hubert v. Mayor of New Orleans, 215 U.S. 170, 181 (1909) (federal court may issue writ of mandamus to compel local officials to collect taxes necessary for payment of contract debt); Harshman v. Knox County, 122 U.S. 306, 319-20 (1887) (federal court may compel collection of taxes as provided in municipal contract provision); Ralls County Court v. United States, 105 U.S. 733, 735 (1881) (federal court may compel increase in local taxes beyond level authorized by state law to discharge contract debt); *see also* Town of Flagstaff v. Gomez, 29 Ariz. 481, -, 242 P. 1003, 1004 (1926) (state court may enjoin state from enforcing statutory tax limits against town whose town council approved excessive tax to discharge municipal debt); City of Long Beach v. Lisenby, 180 Cal. 52, -, 179 P. 198, 200 (1919) (city may issue bond to satisfy municipal debt notwithstanding bond's effect of raising future taxes above state-imposed tax limits); City of Catlettsburg v. Davis's Administrator, 262 Ky, 726, -, 91 S.W. 2d 56, 59-60 (1936) (authorizing city to raise tax levies above state-imposed tax limits to satisfy municipal tort liability); State *ex rel.* Martin v. Harris, 45 N.M. 335, -, 115 P.2d 80, 83 (1941) (issuing writ of mandamus to prevent state tax commissioner from enforcing statutory tax limitation against municipality that enacted voter-approved tax to satisfy municipal tort liability); Raynor v. King County, 2 Wash. 2d 199, -, 97 P.2d 696, 708 (1940) (state laws requiring expenditure of municipal funds supercede state-imposed statutory tax limitations).

80. *See supra* note 78 (cases in which federal or state court ordered tax increase to discharge municipal debt).

81. *See generally* Virginia v. West Virginia, 246 U.S. 565, 594 (1918) (federal court may compel tax increase to pay for public indebtedness caused by default of municipal obligation when municipality has power to levy taxes).

82. *See Liddell,* 731 F.2d at 1322 (supporting district court's power to increase local taxes to fund desegregation plan by relying on cases in which courts have increased taxes for payment of retroactive municipal debts). *But see* Griffin v. Board of Supervisors of Prince Edward County, 322 F.2d 332, 347 (4th Cir. 1963) (Bell, J., dissenting) (asserting that municipal debt case law supports court's exercise of taxing power in desegregation cases), *rev'd sub nom.* Griffin v. School Bd. of Prince Edward County, 377 U.S. 218 (1964); Virginia v. West Virginia, 246 U.S. 565, 594 (1918) (when Congress agrees to credit arrangement between states incident to creation of new state, federal court may compel debtor state to levy taxes to discharge indebtedness to creditor state).

83. *See supra* notes 71-73 and accompanying text (Eighth Circuit's analysis of reasoning and holding in *Griffin*).

84. *See supra* note 82 and accompanying text (Eighth Circuit's application of holdings in

Griffin and the municipal debt cases by the other federal circuits,[85] raises doubts concerning the Eighth Circuit's ability to authorize the district court to raise taxes to assure the success of the *Liddell* desegregation plan.[86] The *Griffin* case, upon which the *Liddell* court relied heavily,[87] differs from the *Liddell* case in several respects. First, while fiscal restraints beyond the statutory control of the St. Louis City Board[88] perpetuated the racial segregation found in St. Louis city schools in *Liddell*,[89] the outright closing of all public schools to prevent integration in *Griffin* was a blatant and positive discriminatory act intended to frustrate a court order to implement a school desegregation plan.[90] Additionally, the district court in *Griffin* neither promulgated nor enforced an affirmative desegregation plan[91] while the district court in *Liddell* ordered a costly and comprehensive remedial integration program.[92] Furthermore, the *Griffin* Court endorsed the lower court's reinstatement of a tax levy which previously had been approved by the Virginia legislature and the Prince Edward County Board.[93] The district court in *Liddell*, however, proposed to institute a tax increase which had

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municipal debt cases to desegregation funding issue in *Liddell*).

85. *See supra* notes 63-70 and accompanying text (federal circuits' application of *Griffin* holding to desegregation funding problems); *supra* notes 75-81 and accompanying text (federal circuits' application of municipal debt cases to federal courts' authority to raise local taxes to prevent contracts clause violations).

86. *See Liddell*, 731 F.2d at 1333 (Bowman, J., dissenting) (*Liddell* majority's authorization that district court may increase taxes to fund desegregation plan is uniquely inappropriate under constitutional system).

87. *See Liddell*, 731 F.2d at 1320 (*Griffin* acknowledges federal court's authority to impose taxes to fund desegregation plan).

88. *See* MO. REV. STAT. § 164.013 (1982) (requiring local officials to roll back local school district operating expenses to amount equal to one-half anticipated revenues based upon one-cent increase in state sales tax); *see also* MO. CONST. art VI, sec. 26(b) (1952) (requiring two-thirds voter approval to issue bonds in excess of statutory limit). *See generally* Thomas, *Recent Developments in Missouri: Local Government Taxation,* 49 UMKC L. REV. 491 (1981) (analysis of statutory and constitutional fiscal limitations imposed upon local governments in Missouri).

89. *See* Liddell v. Board of Educ., 567 F. Supp. 1037, 1051-53 (E.D. Mo. 1983) (acknowledging difficulty in funding *Liddell* plan because of high cost and state statutes limiting local debts and taxes).

90. *See* Village of Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 267 (1977) (acknowledging that actions by Prince Edward Board of Education in *Griffin* were invidious); *see also* Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 494 (1979) (Powell, Rehnquist, JJ., dissenting) (acknowledging that *Griffin* case involved massive resistance to desegregation by closing schools to avoid court-ordered integration); *Griffin*, 377 U.S. at 232 (local officials' actions in Prince Edward County, Virginia, desegregation case perpetuated racial segregation in county schools).

91. *See* Allen v. County Bd. of Prince Edward County, 198 F. Supp. 497, 503 (E.D. Va. 1961) (enjoining county officials from paying grants in aid to private schools which only enrolled white students until county supervisors reopened county public schools).

92. *See* Liddell v. Board of Educ., 491 F. Supp. 351, 352-57 (E.D. Mo. 1980) (outlining provisions of St. Louis remedial integration program); *see also supra* note 28 (indicating costs of implementing St. Louis integration plan).

93. *Griffin*, 377 U.S. at 222 (noting that Prince Edward County Supervisors avoided integration of schools by refusing to levy taxes previously used to operate schools).

been expressly disapproved in accordance with Missouri law.[94] Finally, the *Griffin* holding would apply only to a district court exercising jurisdiction over local officials who possess the inherent authority to levy taxes.[95] Securing funds for the desegregation plan in *Liddell*, however, necessarily would require local officials to exceed the limited taxing authority delegated by the Missouri state government.[96] Accordingly, the Eighth Circuit improperly compared the *Liddell* case to the *Griffin* case with respect to the severity of the fourteenth amendment equal protection violation,[97] the extent of the court-ordered remedy,[98] and the power of local officials to effect the chosen remedy.[99]

In addition to the Eighth Circuit's inappropriate comparison of the circumstances in the *Griffin* case to the circumstances in *Liddell*, the municipal debt cases,[100] with which the *Liddell* court reinforced its conclusion that the district court had the authority to order a tax increase to fund the St. Louis desegregation plan,[101] also differ substantially from the *Liddell* case. In contrast to the municipal debt cases cited by the Eighth Circuit, the plaintiffs in *Liddell* were not creditors of the City of St. Louis, nor were the St. Louis taxpayers in any way pecuniarily liable to the individual plaintiffs.[102] Rather, the district court and the Eighth Circuit in *Liddell* held the St. Louis City Board responsible to all of the St. Louis taxpayers for implementing a

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94. *See Liddell*, 731 F.2d at 1300 n.5 (stating that court-ordered bond election to obtain funds for *Liddell* desegregation plan failed to accrue necessary two-thirds voter approval that Missouri Constitution requires); *supra* note 33 (explaining statutory and constitutional tax limitations imposed upon Missouri municipalities).

95. *See Griffin*, 377 U.S. at 233 (district court may compel Prince Edward County Supervisors to raise taxes to operate county schools in accordance with tax powers Supervisors legitimately possess); *id.* at 232 (noting that county supervisors in Virginia possess specific responsibility of levying taxes to operate public schools or aid private schools). The language in *Griffin* presupposes that the local officials, whom the court would compel to raise taxes in a desegregation case, must possess the power to levy taxes. *See Comment, Local Taxes, Federal Courts, and School Desegregation in the Proposition 13 Era*, 78 MICH. L. REV. 587, 594 (1980) (asserting that federal court cannot create power to tax in municipal official who possesses no power to tax under state law) [hereinafter cited *Desegregation in the Proposition 13 Era*].

96. *See supra* note 33 (reviewing state constitutional provisions that limit tax authority of local officials in Missouri).

97. *See supra* notes 88-89 and accompanying text (differentiating between severity of desegregation violations in *Griffin* and *Liddell*).

98. *See supra* notes 91-92 and accompanyaing text (differentiating between court-ordered desegregation remedies in *Griffin* and *Liddell*).

99. *See supra* notes 93-96 and accompanying text (differentiating between power of local officials to levy state-approved taxes in *Griffin* and *Liddell*).

100. *See supra* notes 76-78 (municipial debt cases in which federal and state courts affirmed judicial power to raise local government taxes levies for discharging public debts).

101. *See Liddell*, 731 F.2d at 1322 (municipal debt cases support federal court's exercise of tax authority in desegregation cases).

102. *See Liddell*, 731 F.2d at 1299 (holding State of Missouri and City of St. Louis prospectively liable for cost of desegregation plan); *cf. supra* note 76 and accompanying text (explaining that municipal debts occur when local government incurs debt to individuals).

feasible school desegregation plan.[103] Consequently, the public policy consideration manifested in the contracts clause of the Constitution that a municipality, as an organization of taxpayers, may not avoid financial obligations to individuals[104] is inapplicable to *Liddell* and other desegregation cases because the aggrieved parties are the taxpayers.[105] Additionally, in the municipal debt cases, the courts ordered local governments to increase taxes so that the local governments could discharge retroactive liabilities which the municipalities previously had promised to pay.[106] Since the desegregation plan in *Liddell* was entirely prospective,[107] the district court could not enforce a previous promise to pay which did not exist.[108] Similarly, the contracts clause, which provides the sole basis for enforcement of the court-ordered tax increases ordered in municipal debt cases,[109] only provides protection to individuals against legislation enacted subsequent to the time at which the local government incurs liability.[110] The Missouri state legislature, however, enacted the statutory limitations which threatened the funding of the St. Louis desegregation plan prior to the inception of the *Liddell* case.[111] The Eighth Circuit, therefore, incorrectly extended the narrow taxing power

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103. *See Liddell*, 731 F.2d at 1299 (ordering implementation of comprehensive desegregation plan for St. Louis city schools). School desegregation cases are unique in that the resulting court-ordered integration plans benefit not only the plaintiffs to the suit, but also benefit every child and affect every taxpayer in the violating municipality. *See Comment, School Desegregation and Federalism: The Court Inside the Schoolhouse Door*, 5 U. DAYTON L. REV. 77, 93-104 (1980) (analyzing effects of desegregation plan on community and effects of judicial intervention on authority of municipality) [hereinafter cited as *School Desegregation and Federalism*].

104. *See supra* notes 76-78 and accompanying text (indicating public policy notion embodied in contracts clause that state may not exercise sovereign power to avoid public debts to individual parties).

105. *See* Troy Ltd. v. Renna, 727 F.2d 287, 298-99 (3d Cir. 1984) (contracts clause will not protect against state government's avoidance of contract debt if impairment of contract affects general population instead of individual); *cf. supra* notes 78-79 and accompanying text (courts have compelled municipalities to increase taxes to ensure that taxpayers fully reimburse aggrieved creditors).

106. *See supra* text accompanying note 75 (contract, bond and tort liabilities constitute retroactive debts which local government had previously promised to discharge).

107. *See Liddell*, 731 F.2d at 1300 (noting that relief outlined in *Liddell* desegregation plan is entirely prospective thereby avoiding eleventh amendment problems); *see also id.* at 1308 n.13 (explaining eleventh amendment doctrine proscribing retroactive liability against state).

108. *See* Exxon Corp. v. Eagerton, 103 S.Ct. 2296, 2304 (1983) (contracts clause protections do not apply unless plaintiff can prove that defendant nullified previous agreement to which defendant was beneficiary).

109. *See* Louisiana *ex rel.* Hubert v. Mayor of New Orleans, 215 U.S. 170, 180 (contracts clause provides basis for enforcing obligations in municipal contracts).

110. *See id.* at 175 (impairment cited in contracts clause violation must be subsequent legislation which compromises enforcement of existing contract); J. NOWAK, R. ROTUNDA, J. YOUNG, CONSTITUTIONAL LAW ch. 13, sec. VI, para. A.1., (2d ed. 1983) (Supreme Court never has invalidated prospectively applied legislation based upon contracts clause violation) [hereinafter cited as J. NOWAK].

111. *See supra* note 33 (listing Missouri statutory and constitutional tax limitation effective in 1971 prior to beginning of *Liddell* cases).

granted to federal courts in municipal debt cases to the *Liddell* desegregation case because neither the City of St. Louis nor the State of Missouri enacted, or attempted to enact, subsequent legislation that would compromise retroactive promises to discharge municipal debts to private individuals.[112]

In addition to the *Liddell* court's inordinately broad interpretations of the court-ordered tax holdings of *Griffin*[113] and the municipal debt cases,[114] the Eighth Circuit's decision in *Liddell*, affirming the district court's power to order a tax increase to fund a desegregation plan,[115] broadly construed the limits of the federal court's remedial powers to cure school segregation. Although the Supreme Court granted district courts broad equitable powers to effect desegregation of racially discriminatory school systems,[116] the Supreme Court limited the extent of court-ordered desegregation remedies in Milliken v. Bradley (*Milliken I and Milliken II*).[117] In *Bradley v. Milliken I*,[118] the National Association for the Advancement of Colored People and several parents residing in Detroit instituted a class-action suit against the State of Michigan[119] in the United States District Court for the Eastern District of Michigan alleging that state and city policies had caused unconstitutional segregation in Detroit schools.[120] The district court determined that the City of Detroit and the State of Michigan had perpetuated racial segregation in Detroit schools.[121] Reasoning that a desegregation plan limited to the City of Detroit would not achieve the maximum possible degree of

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112. *See supra* notes 102-111 and accompanying text (court cannot enforce municipal obligation under contracts clause unless obligation is retroactive, accrues to benefit of individuals, and is in contravention of legislation made subsequent to obligation); *see also Note, A Process-Oriented Approach to the Contract Clause*, 89 YALE L. J. 1623, 1647-48 (1980) (clarifying municipal obligations incurred through public and private contracts).

113. *See* Griffin v. School Bd. of Prince Edward County, 377 U.S. 218, 233 (1964) (district court may raise local taxes to open schools which county officials closed to avoid racial integration); *Liddell*, 731 F.2d at 1320 (asserting that *Griffin* authorizes district court to increase local taxes to operate school system without racial discrimination); *supra* notes 87-99 and accompanying text (analysis of Eighth Circuit's application of *Griffin* court-ordered tax increase to *Liddell* desegregation plan).

114. *See supra* notes 100-112 and accompanying text (analysis of Eighth Circuit's application of municipal debt cases' court-ordered tax holding to *Liddell* desegregation plan).

115. *Liddell*, 731 F.2d at 1323.

116. *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971) (*Swann I*) (district courts may exercise broad equitable powers to cure segregation when local officials fail to act affirmatively to desegregate public schools).

117. Milliken v. Bradley, 433 U.S. 267 (1977) (*Milliken II*); Milliken v. Bradley, 418 U.S. 717 (1974) (*Milliken I*).

118. 338 F. Supp. 582 (E.D. Mich. 1971) (*Bradley I*), *aff'd*, 484 F. 2d 215 (6th Cir. 1973) (en banc), *rev'd*, 418 U.S. 717 (1974) (*Milliken I*).

119. *See Milliken I*, 418 U.S. at 722 (noting that named defendant parties included Governor of Michigan, State Attorney General, State Board of Education, State Superintendent of Public Instruction, Board of Education of Detroit, and Detroit Superintendent of Schools).

120. *Id.*

121. *Bradley I*, 338 F.Supp. at 587-89 (state and city housing and student transportation policies caused racial segregation in Detroit schools).

racial integration in city schools,[122] the district court ordered a comprehensive integration program which mandated that non-violating metropolitan school districts assist in the Detroit desegregation effort.[123] On appeal to the Sixth Circuit, the State of Michigan asserted that since the district court had not found the metropolitan school districts to be constitutional violators, the district court could not require the suburban school districts to assist in fulfilling a desegregation order.[124] The Sixth Circuit noted, however, that the State of Michigan exercised authority over all school system in the state.[125] The Sixth Circuit, therefore, held that since the district court had adjudged the state to be a constitutional violator, the district court could properly order the state to establish an interdistrict desegregation plan that involved busing students between violating and non-violating school districts within the state.[126] On review before the United States Supreme Court, however, the *Milliken I* Court determined that the district court could not compel an integrated school system to assist in the desegregation efforts of an adjacent, segregated school district.[127] Consequently, the Supreme Court held that a district court exceeds the scope of the equitable powers of federal courts when the district court orders an interdistrict desegregation remedy without finding an interdistrict constitutional violation.[128] The *Milliken I* Court

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122. Bradley v. Milliken, 345 F. Supp. 914, 916 (E.D. Mich. 1972) (*Bradley II*) (asserting that effective relief from school segregation in Detroit could not occur within city's corporate limits). In addition to finding that the Detroit school desegregation plan had to include school districts outside the city limits to achieve the maximum degree of racial integration, the *Bradley II* court asserted that the district court possessed the duty and authority to consider a desegregation remedy which reached beyond Detroit city limits. *Id.*

123. *Id.* at 918, *aff'd*, 484 F.2d 215 (6th Cir. 1973), *rev'd*, 418 U.S. 717 (1974) (*Milliken I*). In *Bradley II*, the United States District Court for the Eastern District of Michigan ordered the metropolitan school districts which the court had not found violating the fourteenth amendment equal protection clause to participate in the Detroit desegregation plan because the court perceived that suburban school-system participation would achieve greater integration of Detroit schools than a desegregation plan limited to the urban school districts found violating the Constitution. *Id.*; *cf.* Davis v. Board of School Comm'rs of Mobile County, 402 U.S. 33, 37 (1971) (federal courts should strive to achieve greatest possible degree of integration).

124. *See* Bradley v. Milliken, 484 F.2d 215, 221 (6th Cir. 1973) (*Bradley II*) (determining whether implementation of interdistrict desegregation plan involving violating and non-violating school districts represents proper exercise of district court's equitable authority in desegregation case).

125. *Id.* at 249 (since district court determined that state had caused segregation in Detroit schools, district court may disregard artificial school district boundaries within state jurisdiction in fashioning desegregation plan).

126. *Id.* at 250 (district court may exceed school district boundaries in fashioning equitable relief for segregation in Detroit schools).

127. Milliken v. Bradley, 418 U.S. 717, 745-46 (1974) (*Milliken I*) (since disparate treatment of white and minority students occurred only in Detroit city schools, district court could not approve desegregation plan affecting outlying school districts).

128. *Id.* at 746, 752 (if district court finds no interdistrict segregation violation, district court may not order interdistrict desegregation plan). In addition to finding that a district court may not order an interdistrict desegregation remedy in the absence of an interdistrict violation, the *Milliken I* Court held that, despite the apparent flexibility of the cross-district student transportation plan to integrate city schools, a district court only may enforce a student's right

therefore remanded the case to the district court with orders to reformulate the Detroit desegregation plan so that only violating school systems had to participate in the desegregation effort.[129]

In complying with the Supreme Court's order to reformulate the Detroit desegregation plan, the District Court for the Eastern District of Michigan in *Bradley v. Milliken III* approved a new desegregation program in which the district court's remedial order affected only the Detroit city school districts that the district court had found to be operating in violation of the fourteenth amendment equal protection clause.[130] In contrast to the desegregation plan which the Supreme Court rejected in *Milliken I*,[131] the new Detroit desegregation plan included remedial education programs designed to restore school children to the educational level the children would have enjoyed had no segregation existed.[132] On appeal to the Sixth Circuit, the State of Michigan asserted that since the district court determined that Detroit schools were racially segregated, the district court must limit the desegregation remedy to a plan that integrates public schools through reassignment of pupils.[133] The Sixth Circuit indicated, however, that remedial programs are an essential part of correcting the evils of segregation.[134] The Sixth Circuit, therefore, held that the district court properly acknowledged the necessity for remedial educational programs in Detroit schools to reverse effectively the educational inadequacies which black students experienced in segregated schools.[135] In *Milliken II*, the Supreme Court affirmed the new Detroit desegregation plan because the district court limited the scope of the remedial education programs to the victims of past segregation[136] and limited the scope of the desegregation responsibilities to the segregated school system.[137] Consequently, the *Milliken II* Court concluded that since the new

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to attend an integrated school in the school district where the student resides. *Id.* at 746.

129. *Id.* at 753.

130. Bradley v. Milliken, 402 F. Supp. 1096, 1132 (E.D. Mich. 1975) (*Bradley III*) (guidelines for Detroit desegregation plan must maximize integrative effect in Detroit schools given practicalities of situation within geographical boundaries of city).

131. *See Milliken I*, 418 U.S. at 752 (rejecting interdistrict desegregation remedy for Detroit schools).

132. *See Bradley III*, 402 F. Supp. at 1132-45 (outlining comprehensive plan for desegregation of Detroit city schools including remedial education programs for victims of past segregation).

133. Bradley v. Milliken, 540 F.2d 229, 236 (6th Cir. 1976) (*Bradley III*) (State of Michigan attacked new Detroit desegregation plan on ground that district court exceeded authority by ordering remedial educational components for which state had to pay one-half of total cost).

134. *Id.* at 241 (remedial education components are integral to desegregation plan because one of desegregation plan's goals is to remedy undesirable effects of segregation on academic achievement of black students).

135. *Id.* at 241-42 (district court's inclusion of remedial education programs in desegregation plan was proper because educational component of Detroit plan directly addressed reversal of harmful effects of segregation in Detroit schools).

136. Milliken v. Bradley, 433 U.S. 267, 280 (1977) (*Milliken II*) (district court must fashion desegregation plan to remedy segregative conditions that offend Constitution).

137. *Id.* at 281-82 (Detroit desegregation plan remedial education program was within limitations of federal judicial authority because district court tailored remedy to cure segregative

court-ordered desegregation remedy for Detroit attacked only the segregative condition and did not interfere with the autonomy of independent, integrated school systems, the district court's order was within the equitable powers of the federal courts and within the scope of the constitutional violation.[138]

In addition to authorizing the remedial education provisions of the Detroit desegregation plan, the *Milliken II* Court noted that the Supreme Court never had considered the limits to a district court's equitable powers in restoring victims of past segregation.[139] Consequently, the *Milliken II* Court promulgated three limiting factors to which district courts must adhere in fashioning a desegregation decree. First, reasoning that the court's order should affect only the school districts found to have violated the fourteenth amendment equal protection clause by operating a segregated school system, the Supreme Court held that the district court's remedy must reflect the nature and scope of the constitutional violation.[140] Second, the Supreme Court asserted that a court should limit the extent of a desegregation plan to reversing the evil effects of racial segregation in schools so that complaining parties do not view a school desegregation case as an opportunity to change local government policies in areas other than those affecting racial discrimination in schools.[141] The *Milliken II* Court, therefore, held that a desegregation remedy must restore victims of segregation to the position the victims would have enjoyed in the absence of the constitutional violation.[142] Finally, the Supreme Court reemphasized the need for local control over education[143] by holding that district courts must defer to municipal authorities for solving problems related to enacting desegregation plans.[144] The Supreme Court concluded the *Milliken II* opinion by indicating that if a district court's desegregation remedy exceeds the scope of the constitutional violation, changes local government policies in areas unrelated to the eradication of

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condition in violating school system without imposing responsibilities upon school districts that had not violated Constitution).

138. *Id.* at 287-88 (district court did not abuse equity powers in Detroit desegregation case by ordering remedial education program because pupil reassignment alone cannot cure evils of segregation). In addition to finding that a remedial education program was a valid component of the Detroit desegregation plan, the Supreme Court in *Milliken II* noted that the remedial education program did not violate the role of local officials in maintaining authority over public education. *Id.* at 288.

139. *Id.* at 279.

140. *Id.* at 280 (desegregation order must address the segregative condition that district court finds violated Constitution).

141. *Id.* at 280 (desegregation order must restore victims of segregation to educational status victims would have enjoyed in absence of segregation); *see also id.* at 286 n.17 (district court may not order remedial educational program unless court finds that racially discriminatory policies in violation of Constitution caused condition that remedial program will correct).

142. *Id.* at 280.

143. *Id.* at 280-81 (desegregation plan must respect local officials' authority to manage affairs related to public education); *see* Brown v. Board of Educ. of Topeka, Kansas, 349 U.S. 294, 299 (1955) (*Brown II*) (local officials possess primary responsibility in solving desegregation problems).

144. *Milliken II*, 433 U.S. at 281.

segregation in the public schools, or unnecessarily intervenes into the structure and policies of a local government found to be a constitutional violator, the district court oversteps the limits of the federal court's equitable powers in desegregation cases.[145]

In addition to proscribing unnecessary judicial interference with the autonomy of local governments in implementing a court-ordered desegregation plan, the third *Milliken II* limiting factor specifically prohibits federal courts from mandating a particular means of securing state and local funding for a desegregation plan.[146] The Supreme Court's ruling in *Milliken II*, therefore, emphatically declares that a federal district court exceeds its authority by circumventing a municipality's discretion over the creation and implementation of desegregation funding schemes.[147] A district court may approve a desegregation plan,[148] order the plan's implementation,[149] and even order the local government to allocate funds to pay for the plan.[150] The federal court, however, exceeds the equitable limits imposed in *Milliken II*, and abrogates the principles of federalism,[151] by dictating the means of obtaining the funds necessary to implement the desegregation plan.[152] Absolute deference to state and local officials for integration program funding decisions is therefore a notion wholly consistent with the broad equitable powers exercised by the federal courts in desegregation cases.[153]

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145. *Id.* at 291 (district court's desegregation order falls within limits of federal judicial equitable powers if court's order enforces fourteenth amendment without jeopardizing integrity of local and state government); *accord* Hills v. Gautreaux, 425 U.S. 284, 305-06 (1976) (district court may not coerce or restructure local government to restrict municipality's rights and powers under state law).

146. *See Milliken II*, 433 U.S. at 291 (district court abrogates principles of federalism by mandating particular means of financing desegregation plan); *see also* Rosewell v. LaSalle Nat'l Bank, 450 U.S. 503, 522 (1981) (federal court must drastically limit interference with important local concern of collecting taxes).

147. *See Milliken II*, 433 U.S. at 291 (federal court's restructuring of local government or enjoining particular desegregation funding scheme would jeopardize integrity of local government).

148. *See* Brown v. Board of Educ. of Topeka, Kansas, 349 U.S. 294, 301 (1955) (*Brown II*) (federal courts possess authority to determine adequacy of proposed desegregation plan).

149. *See id.* (federal courts will issue orders necessary to implement approved desegregation plans).

150. *See Milliken II*, 433 U.S. at 289-90 (federal court may order state or municipality to provide funds prospectively to eliminate conditions caused by school desegregation); Arthur v. Nyquist, 712 F.2d 809, 813 (2d Cir. 1983) (reasserting district court's power to order government units to fund desegregation plan); United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1190 (7th Cir. 1982) (ordering constitutional wrongdoer to remedy constitutional violation is within federal court's authority), *cert. denied*, 103 S.Ct. 568 (1983).

151. *See* J. NOWAK, *supra* note 110, at ch. 3, sec. I (federalism contemplates that state governments act as sovereigns, limited only by those powers that states have delegated to United States government in Constitution).

152. *See Milliken II*, 433 U.S. at 291 (district court abrogates principles of federalism by mandating specific means of financing school desegregation plan).

153. *See* United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1190 (7th Cir. 1982) (federal court exceeds equitable powers by instructing state legislature on how

Although the Eighth Circuit in *Liddell* recognized the need to defer to local authorities for funding decisions related to the St. Louis desegregation plan,[154] the *Liddell* court asserted that the district court's power to increase taxes would be necessary to ensure the desegregation plan's efficacy if the St. Louis City Board defaulted on the city's obligation to appropriate funds for the plan.[155] Taxation and appropriation, however, are necessary but independent procedures that are integral to the process of spending public funds on municipal programs.[156] A government's tax policies are not necessarily premised upon the same considerations as a government's appropriation policies.[157] Therefore, a change in a government's tax system will not ensure a change in the government's system of spending public funds. Accordingly, a court-ordered tax increase will not ensure the solvency of a desegregation plan unless the court accompanies the tax increase with a concomitant order to allocate the revenues obtained from the tax increase to the desegregation plan. In *Liddell*, however, the Eighth Circuit conditioned the district court's exercise of the power to increase taxes in St. Louis upon a failure of the Missouri state legislature and the City Board to allocate revenues for the *Liddell* desegregation plan.[158] A court-ordered tax increase certainly would raise additional revenues for the City of St. Louis, but since the district court must acknowledge, rather than alleviate, the local government's refusal to appropriate funds for the desegregation plan before ordering increased taxes, the court still has no assurances that the City Board will allocate the new revenues toward the desegregation plan.[159] Consequently, since the district court failed to enforce the order allocating funds for the

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to discharge financial obligations incurred from desegregation decree), *cert. denied*, 103 S. Ct. 568 (1983).

154. *See Liddell*, 731 F.2d at 1321 (district court must defer to political funding process before exploring more intrusive means of funding local government's desegregation responsibilities).

155. *Id.*

156. *See* B. HERBER, MODERN PUBLIC FINANCE 94-95 (4th ed. 1979) (most taxes flow into government's general treasure from which legislative institution independently directs expenditures of revenues).

157. *See id.* at 95 (since taxes have regulatory effect, legislature frequently imposes taxes without intent to allocate proceeds to particular programs or services).

158. *See Liddell*, 731 F.2d at 1323 (district court may enter judgment sufficient to raise funds for St. Louis desegregation plan upon failure of St. Louis City Board and State of Missouri to find alternative source of funds).

159. *See id.* (district court may order local tax increase to fund St. Louis desegregation plan if, after finding no reasonable funding alternatives exist, district court determines that City Board is unable to finance desegregation plan with city resources). Although the Eighth Circuit in *Liddell* directs the district court to determine if the St. Louis City Board possesses sufficient resources to fund the St. Louis desegregation plan before initiating a tax increase, the Eighth Circuit's opinion is devoid of guidelines by which the district court is to analyze the city's budget. *Id.* Since the *Liddell* court delineates no provisions for evaluating the City Board's existing allocations in non-educational areas, the district court possesses no tool with which to evaluate the City Board's allocations after a court-ordered tax increase. *See* Liddel v. Board of Educ. of St. Louis, 677 F.2d 626, 631 (8th Cir. 1982) (*Liddell V*) (district court is ill-equipped to determine fair, reasonable and actual desegregation costs), *cert. denied*, 459 U.S. 877 (1982).

Liddell desegregation plan, the court will not necessarily succeed in funding the *Liddell* plan by ordering a local tax increase.[160]

Rather than ordering a local tax increase, the district court in *Liddell* would have achieved greater success in funding the St. Louis desegregation plan if the district court had enforced rigidly its original order compelling local officials to allocate funds for the desegregation plan. District courts possess the equitable power to require that a local government allocate funds for a desegregation plan.[161] In *Liddell*, therefore, as in any desegregation case in which existing municipal revenues exceed the anticipated cost of the desegregation plan, a court-ordered allocation of municipal funds will ensure adequately the solvency of the plan because the City of St. Louis would have to allocate existing tax revenues to meet the costs of the desegregation plan before the City Board spends the revenues on other municipal services.[162] Accordingly, a tax increase may still be necessary to provide adequate revenues for other municipal functions, but because the district court would have ensured the desegregation plan's success through a mandatory allocation order, a *court-ordered* tax increase would not have been necessary.[163] Consequently, since a court-ordered tax increase would not have guaranteed the solvency of the St. Louis desegregation plan, the Eighth Circuit, by approving the district court's power to increase taxes in *Liddell*, interfered needlessly with the autonomy of the St. Louis city government and exceeded the scope

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Consequently, after the district court orders a tax increase to pay for the desegregation plan, the district court accrues no new powers to ensure that the City Board allocates the revenues realized from the tax increase on the desegregation plan. *Id.*

160. *Liddell*, 731 F.2d at 1322.

161. *See* Evans v. Buchanan, 582 F.2d 750, 779-80 (3d Cir. 1978) (en banc) (district court may enforce monetary judgment against violating municipality by requiring local officials to allocate existing revenues to pay for desegregation plan), *cert. denied*, 446 U.S. 923 (1980). In addition to holding that district court may compel funding of a desegregation plan out of a municipality's existing revenues, the Third Circuit in *Evans v. Buchanan* asserted that local officials would retain discretion and control over funding policies elsewhere in the municipal budget because local officials may or may not decide to raise taxes for maintenance of existing municipal services that the desegregation plan preempted. *Id.* at 780; *see also Desegregation in the Proposition 13 Era*, *supra* note 95, at 595-606 (delineating desegregation funding alternative to court-ordered taxation).

162. *See* Evans v. Buchanan, 582 F.2d 750, 780 (3d Cir. 1978) (district court may resort to alternative funding orders only if violating municipality's accrued revenues are insufficient to implement desegregation plan and operate schools), *cert. denied*, 446 U.S. 923 (1980). The St. Louis school desegregation plan in *Liddell* will cost the City Board approximately $15 million in the first year. *Liddell*, 731 F.2d at 1333. St. Louis city revenue intake, however, is over $400 million per year. U.S. DEPT. OF COMMERCE, COUNTY AND CITY DATA BOOK 746-47 (1983). Since sufficient revenues exist to fund the *Liddell* desegregation plan, no court-ordered tax increase would be necessary. *Cf. Evans*, 582 F.2d at 780 (district court may not raise current local budget if current revenues are adequate to fund desegregation plan).

163. *See* Evans v. Buchanan, 582 F.2d 750, 780 (3d Cir. 1978) (after district court orders municipality to allocate existing revenues to fund desegregation plan, no tax increase is necessary unless local officials choose to increase taxes to maintain services from which desegregation funds originated), cert. denied, 446 U.S. 923 (1980).

of federal equitable powers in desegregation cases as limited by *Milliken II*.[164]

Even without the protection of the remedial limits upon a federal court's equitable powers which the Supreme Court imposed in *Milliken II*, a federal court dangerously threatens the concept of separation of powers[165] by ordering or affirming a court-ordered tax incident to any controversy. The *Liddell* dissent correctly noted that a state derives taxing power from the state's citizenry and that a state's power to tax vests in the state legislature.[166] Therefore, since taxation is not a judicial function, a court's exercise of taxing power manifestly violates the concept of separation of powers.[167] The United States District Court for the Eastern District of Missouri and the Eighth Circuit have acknowledged in prior cases that a federal court exceeds judicial province by altering a state's tax policy.[168] Furthermore, the Supreme Court has held that each branch of government must resist the tendency to invade the powers of another branch, even if such a restriction compromises a branch's accomplishment of its desired objectives.[169] The three branches of government must remain interdependent rather than independent under the tripartite system.[170] Therefore, when one branch requires the exertion of

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164. *See* Milliken v. Bradley, 433 U.S. 267, 291 (1977) (*Milliken II*) (district court may not jeopardize integrity of local government by dictating method of funding desegregation plan); *Liddell*, 731 F.2d at 1332 (Gibson, J., concurring and dissenting) (federal courts go too far by dictating procedure by which local government must fund desegregation plan); *supra* notes 146-53 and accompanying text (explaining that *Milliken II* demands that federal courts minimize judicial intervention in funding policies of local government); *see also* Liddell v. Board of Educ., 677 F.2d 626, 631 (8th Cir.) (*Liddell V*) (district judge should defer to local officials for financing policy in desegregation plans because federal court is ill-equipped to make funding determinations based upon complex considerations involved), *cert. denied*, 459 U.S. 877 (1982); National City Bank v. Battisti, 581 F.2d 565, 569 (2d Cir. 1977) (school financing is clearly matter for state and local government to resolve); *see generally Federal Housing and School Desegregation, supra* note 21, at 600-02 (comparing desegregation problems of *Liddell* to those encountered in *Milliken*).

165. *See* J. NOWAK, *supra* note 110, at ch. 3, sec. V (separation of powers doctrine contemplates systematic prevention of consolidating executive, judicial and legislative powers in one branch or instrumentality of government).

166. *See Liddell*, 731 F.2d at 1332 (Gibson, J., concurring and dissenting).

167. *See* Taylor v. Secor, 92 U.S. 575, 615 (1875) (*State Railroad Tax Cases*) (exercise of taxing powers by legislative officials is beyond power of courts to control); Heine v. The Levee Comm'rs, 86 U.S. (19 Wall.) 655, 660-61 (1873) (court-ordered tax would invade legislative function of state and compliance with court-ordered tax would involve unforeseeable, extra-judicial consequences).

168. *See* Johnson v. Riverland Levee Dist., 117 F.2d 711, 716 (8th Cir. 1941) (affirming finding by District Court for Eastern District of Missouri that lack of federal court's power to levy taxes is manifest and indisputable).

169. *See* Immigration and Naturalization Serv. v. Chadha, 103 S.Ct. 2764, 2788 (1983) (concept of separation of powers requires that each branch resist temptations to exercise another branch's function).

170. *See* Buckley v. Valeo, 424 U.S. 1, 120-23 (1976) (although United States Constitution does not envisage total separation of powers, triparte government requires interdependence of branches rather than independence of branches to obtain governmental goals); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585-89 (1952) (Constitution requires that lawmaking

another branch's power to achieve desired objectives, the distressed branch must solicit the assistance of the competent branch to exercise those powers rather than exercise those powers itself.[171] In particular, the judicial branch must always depend upon the executive and legislative branches to accomplish judicial goals.[172] Consequently, the Eighth Circuit in *Liddell* abrogated the principle of separation of powers by affirming a district court's power to adjudicate, legislate and execute a local tax increase independent of legislative and executive participation.[173]

Federalism and the traditional concept of local control over education[174] complicate a district court's ability to enforce the funding of a court-ordered desegregation plan.[175] The Supreme Court historically has recognized the difficulty in compelling state and local governments to finance diligently the ancillary costs of complying with a federal court's judgment.[176] A federal

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power vests in Congress alone and one branch of government may not determine and execute policy); Hampton & Co. v. United States, 276 U.S. 394, 406 (1928) (government branch commits breach of fundamental law if branch assumes powers reserved expressly for coordinate branch).

171. *See* Buckley v. Valeo, 424 U.S. 1, 121-22 (1976) (if one branch of government requires power of another branch to achieve government objective, branch requiring assistance must seek augmentation from branch that possesses required power) (citing Hampton & Co. v. United States, 276 U.S. 394, 406 (1927)); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952) (if branch possesses authority to perform some act, branch's power to perform act must derive from Constitution).

172. THE FEDERALIST No. 78, at 490 (A. Hamilton) (B. Wright ed. 1966); *see* Merriwether v. Garrett, 102 U.S. 472, 518 (1880) (federal court cannot seize power of state legislature to raise taxes but federal court may enforce monetary liabilities through executive agencies); *see also* United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1192 (7th Cir. 1982) (Posner, J., dissenting) (if state legislature and executive fail to perform court-ordered duty to assist federal court in enforcing judgment, limit of court's inherent equitable powers is to cite appropriate state officials for contempt).

173. *See Liddell*, 731 F.2d at 1323 (district court possesses authority in desegregation case to determine desegregation funding requirements and to issue order to raise and collect taxes to satisfy requirements); *see also* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 588 (1952) (single branch of government may not determine and execute policy); THE FEDERALIST No. 47, at 338 (J. Madison) (B. Wright ed. 1966) (judicial exercise of legislative functions exposes government policy to arbitrary control, and judicial exercise of executive functions equates to oppression of people that government serves).

174. *See* Milliken v. Bradley, 418 U.S. 717, 741-42 (1974) (*Milliken I*) (local control over education is deeply rooted tradition that is essential to recognition of public concerns and nurturing of community support for public school policy); *School Desegregation and Federalism*, *supra* note 103, at 93 (basis for local control over education lies in court's reluctance to intrude on academic freedom of educational institutions and in maintenance of parental discretion over decisions affecting education of children). *See generally* National League of Cities v. Usery, 426 U.S. 833 (1976) (federal government must resist legislating in areas traditionally reserved for state and local governments).

175. *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 16 (1971) (*Swann I*) (district court must carefully balance countervailing individual and collective interests in devising fair and effective desegregation remedy).

176. *See* South Dakota v. North Carolina, 192 U.S. 286, 320-21 (1904) (acknowledging federal court's difficult task in shaping constitutional, fair and effective monetary judgment against state government).

court, nevertheless, is obliged to search for effective judicial tactics that preserve the community's respect for the federal judiciary and nurture a level of local cooperation beneficial to the administration of an integration program.[177] A federal court's resort to taxing powers not only is unnecessary, but such "taxation without representation"[178] is certain to antagonize the tension between local citizens and the federal courts.[179] The Eighth Circuit, therefore, further complicated the district court's ability to arrive at an amicable solution to the racial problems in St. Louis schools by affirming a court-ordered tax increase in *Liddell*.[180]

To reduce the inherent difficulties in achieving school integration and to secure a cooperative and effective solution to desegregation funding problems, a federal court absolutely should avoid ordering a controversial tax increase.[181] Specifically, the district court should determine the root cause of the fiscal shortfall and issue an appropriate order to alleviate the funding problem at its source.[182] In *Liddell*, state statutory and constitutional tax limitations[183] precluded local officials from adequately funding the court-ordered integration plan.[184] The source of the funding obstacle that prevented expeditious financing of the *Liddell* plan, therefore, was not the St. Louis city government but the State of Missouri.[185] By approving extensive tax

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177. *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 26 (1971) (*Swann I*) (district judge must work together with school authorities in achieving desegregation); Morgan v. Kerrigan, 509 F.2d 618, 620 (1st Cir. 1975) (school officials must work with court to enhance effectiveness of desegregation plan); *see also School Desegregation and Federalism*, *supra* note 103, at 104 (local participation in formulating desegregation remedy instills community cooperation).

178. *See* Evans v. Buchanan, 582 F.2d 750, 777 (3d Cir. 1978) (en banc) (citing American colonist's description of tyranny by which Great Britain ruled over American colonies), *cert. denied*, 446 U.S. 923 (1980); *see also* McCulloch v. Maryland, 17 U.S. (4 Wheat.) 416, 427 (1819) (power to tax also includes power to destroy).

179. *See* THE FEDERALIST No. 46, at 333 (J. Madison) (B. Wright ed. 1966) (unwarranted or unpopular federal interventions into state government operations will aggravate public demeanor).

180. *Liddell*, 731 F.2d at 1323.

181. *See id.* at 1332 (Gibson, J., concurring and dissenting) (*Liddell* majority exceeded power of federal courts by dictating particular tax policy to raise funds for St. Louis desegregation plan); *cf.* Tax Injunction Act, 28 U.S.C. § 1341 (1982) (district courts shall not enjoin, suspend or restrain state government's assessment, levy or collection of tax where state court can grant plain, speedy, and efficient remedy).

182. *See supra* notes 156-59 and accompanying text (explaining that allocation of funds rather than amount of funds is ultimate obstacle in typical school desegregation case).

183. *See supra* note 21 (delineating Missouri state constitutional and statutory limitations on local government taxing powers).

184. *Liddell*, 731 F.2d at 1300.

185. *See Liddell*, 731 F.2d at 1300 n.5 (bond issue election required for municipal indebtedness to pay for desegregation plan failed to accrue necessary two-thirds voter approval); *id.* at 1323 n.21 (operating levy referendum required for increase in local taxes to pay for additional services failed); *supra* note 95 and accompanying text (court order compelling St. Louis officials to raise taxes would be nugatory since St. Louis officials have no inherent power to increase local taxes).

limitations, the Missouri legislature and voters necessarily accepted the fiscal constraints that local governments might experience statewide due to lack of adequate revenues.[186] Therefore, since the district court declared that the State of Missouri had violated the Constitution by contributing to segregation in St. Louis schools,[187] the Missouri state legislature and voters should have exercised the decisive role in reconciling the state's tax limitation provisions with the financial demands of the St. Louis school integration plan.

Accordingly, the Eighth Circuit and the United States District Court for the Eastern District of Missouri might have considered placing the entire funding responsibility for the *Liddell* desegregation plan upon the Missouri state government, with an option to delegate the originally-ordered financial burden of St. Louis to the City Board on the state's own initiative.[188] Under a desegregation funding plan which defers entirely to state discretion, the legislature and the voters of Missouri would have to either direct the state treasury to absorb the total cost of curing St. Louis's segregation, or release the state sovereign's grip on the St. Louis City Board's taxing power by enacting a special exception to statutory and constitutional tax limitations.[189] Upon promulgating an order to the State of Missouri either to fund the entire *Liddell* desegregation plan from state revenues, or to legislate an exception to state tax limitations that permits the St. Louis City Board legitimately to raise tax levies, the district court would have assured funding of the remedial integration plan because the court's power to enforce either option is unquestionable.[190]

Placing the funding decision squarely on the shoulders of the Missouri state government has several advantages over the Eighth Circuit's decision to permit the district court to exercise limited taxing authority in *Liddell*. In *Milliken II*, for example, the Supreme Court affirmed the power of district judges to order state officials to appropriate funds for a court-ordered desegregation plan.[191] Placing the burden of decision to select the funding

186. *See* Thomas, *supra* note 88, at 494-95 (1981) (Missouri state tax limitation statutes that require voter approval for local tax increases impose severe constraints upon local governments in Missouri).

187. *See* Liddell v. Board of Educ. of St. Louis, 491 F. Supp. 351, 359-60 (E.D. Mo. 1980) (State of Missouri abdicated state's responsibility of ensuring operation of constitutionally sufficient school systems), *aff'd*, 677 F.2d 643 (8th Cir. 1981) (*Liddell III*), *cert. denied*, 454 U.S. 1081 (1982).

188. *See Liddell*, 731 F.2d at 1300 (St. Louis must pay one-half cost of quality education programs in inner-city schools and one-half cost of city school plant capital improvements in accordance with original settlement agreement among parties to *Liddell* litigation).

189. *See* Mo. CONST. art. XII, sec. 2(a) (1945) (authorizing legislative initiation of amendment to state constitution at any time). Since the Missouri state legislature can pass state law or initiate process to amend the state constitution at any time, no obstacle exists at state level that would prevent a change in laws to permit the City Board of St. Louis to levy taxes necessary to pay for the *Liddell* desegregation plan. *Id.*

190. *See* Milliken v. Bradley, 433 U.S. 267, 289-90 (1977) (*Milliken II*) (federal courts possess power to order state officials to appropriate funds for desegregation plan regardless of financial strain placed upon state treasury).

191. *Id.*

scheme on the State of Missouri,[192] therefore, permits the court to exercise several uncontroverted powers to alleviate further resistance to funding the *Liddell* integration plan.[193] First, the federal court may issue an injunction in the nature of mandamus compelling the state executive to enforce the state legislature's funding decision.[194] Next, the court could award the City of St. Louis monetary damages from the state treasury by finding the state liable as a constitutional tortfeasor.[195] In addition, the court may compel the Missouri State Comptroller, though not a party to the *Liddell* case, to issue a warrant in the cost of the judgment against the state treasury.[196] Finally, as a last resort, the court may coerce state officials to comply with the district court's funding order through indefinite imprisonment by citing state officials for contempt.[197]

Similarly, if the state legislature decides to delegate a portion of the desegregation funding responsibility to the City of St. Louis by granting the City Board limited taxing authority, the district court readily could enforce funding of the *Liddell* integration plan at the local level.[198] Accordingly, the district court may compel local officials to fund the St. Louis desegregation

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192. *See supra* notes 186-88 and accompanying text (suggesting that court place entire financial burden of *Liddell* desegregation plan on State of Missouri).

193. *See* Milliken v. Bradley, 433 U.S. 267, 289-90 (1970) (*Milliken II*) (federal court may enforce prospective remedial desegregation costs against state).

194. *See* Evans v. Buchanan, 582 F.2d 750, 776-77 (3d Cir. 1978) (en banc) (establishment of financial arrangements for desegregation plan warrants consideration of mandamus as tool to enforce court decree), *cert. denied*, 446 U.S. 923 (1980); State *ex rel.* S.S. Kresge Co. v. Howard, 357 Mo. 302, -, 208 S.W. 2d 247, 249 (1947) (en banc) (since all of Missouri state comptroller's duties are purely ministerial, court may compel state comptroller to perform duties through writ of mandamus); *see also Ex Parte* Young, 209 U.S. 123, 158-60 (1908) (federal court may issue mandamus or otherwise compel state executive to conform enforcement of state laws to constitutional standards); Merriwether v. Garrett, 102 U.S. 472, 518 (1881) (federal court may compel officials to collect taxes approved by state legislature); *cf.* Work v. United States *ex rel.* Rives, 267 U.S. 175, 177 (1925) (federal court may use mandamus power only to compel government officials to perform ministerial duties).

195. *See* Fortin v. Commissioner of Mass. Dept. of Pub. Welfare, 692 F.2d 790, 797 n. 10 (1st Cir. 1982) (fine against state for state's failure to act may be coercive in nature but as long as federal court enforces fine prospectively and state can avoid fine by acting appropriately no eleventh amendment problems result).

196. *See* Spain v. Mountanos, 690 F.2d 742, 746-47 (9th Cir. 1982) (federal court may compel state comptroller to issue warrant to state treasurer to enforce monetary award against state); Gates v. Collier, 616 F.2d 1268, 1271 (5th Cir. 1980) (federal court may order state auditor to issue warrant upon state treasury to satisfy monetary judgment against state); *see also* FED. R. CIV. P. 70 (if party to suit refuses to obey court order, federal court may order another party to perform court-ordered action); MO. REV. STAT. § 33.160 (1959) (comptroller issues warrant for discharge of funds from Missouri state treasury).

197. *See* Morgan v. Kerrigan, 509 F.2d 618, 619 (1st Cir. 1975) (citing members of South Boston school committee for contempt for failure to comply with court's order to submit desegregation proposal); United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1192 (7th Cir. 1982) (Posner, J. dissenting) (contempt is only means of enforcing federal court's order against individuals who ignore court's decree); *see also* FED. R. CIV. P. 70 (federal court may find party who disobeys court-order in contempt).

198. *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971) (*Swann I*)

plan by issuing an injunction in the nature of mandamus,[199] or, as a last resort, cite local officials for contempt.[200] Consequently, by initially vesting the entire *Liddell* desegregation funding decision in the Missouri state legislature, the district court accrues the distinct advantage of assuring the solvency of the St. Louis school desegregation plan through ordinary judicial means rather than through encroachments into the state's tax structure.[201] Furthermore, by avoiding involvement in the state and local governments' tax structures through a court-ordered tax, the district court preserves an atmosphere socially receptive to the implementation of a desegregation plan in the community whose schools are racially segregated.[202]

Other federal circuits have recognized that by allowing the state government to resolve fiscal problems encountered while carrying out a federal court's desegregation order, the district court avoids placing the segregated municipality into a situation where the local government must confront state law to provide adequate funding for the desegregation plan.[203] By attacking the *Liddell* funding problem at the local level, however, the district court and the Eighth Circuit frustrated local cooperation with the desegregation plan[204] and failed to address the root cause of the desegregation plan's

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(failure of local officials to eliminate school segregation justifies federal court's intervention and exercise of equitable powers to achieve desegregation).

199. *See* Griffin v. School Bd. of Prince Edward County, 377 U.S. 218, 233 (1964) (court may compel local officials to exercise powers to raise revenues necessary to operate school system without racial segregation).

200. *See supra* notes 196-97 (citing cases supporting federal court's use of contempt citations in desegregation case for coercing appropriate actions by state and local officials).

201. See United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1192 (7th Cir. 1982) (Posner, J., dissenting) (federal court's only legitimate last resort remedy for disobedience of court order is to cite disobedient party for contempt). *But cf.* Liddell v. Board of Educ., 567 F. Supp. 1037, 1052 (E.D. Mo. 1983) (implying that court would rather encroach upon state legislature's function by promulgating court-ordered tax increase than exercise irrefutable judicial power by citing officials for contempt in failing to raise funds for desegregation plan).

202. *See School Desegregation and Federalism, supra* note 103, at 104 (1980) (explaining that retention of local level decision making in desegregation plan instills cooperation and improves community receptiveness to school integration).

203. *See, e.g.*, United States v. Board of School Comm'rs of Indianapolis, 677 F.2d 1185, 1187-90 (7th Cir. 1982) (upholding district court's order that funds used for desegregation plan must not come from existing state education funds but cautioning that no other judicial intervention into state legislative process is appropriate), *cert. denied*, 103 S. Ct 568 (1983); Evans v. Buchanan, 582 F.2d 750, 777-79 (3d Cir. 1978) (en banc) (federal court must accord deference to state legislature in determining tax requirements incident to desegregation plan), *cert. denied*, 446 U.S. 923 (1980); National City Bank v. Battisti, 581 F.2d 565, 569 (2d Cir. 1977) (school financing is exclusively matter of state responsibility through state's appropriate executive, legislative and judicial branches); Plaquemines Parish School Bd. v. United States, 415 F.2d 817, 833 (5th Cir. 1969) (reversing district court order compelling school system to apply federal aid to help fund desegregation plan because local officials must resolve all financial problems related to desegregation of schools).

204. *See supra* notes 173-78 and accompanying text (direct judicial intervention into local tax policy is certain to instigate community antagonism against federal court).

financial obstacle at the state level.[205] Had the Eighth Circuit required the Missouri state government to resolve the entire *Liddell* financial problem, St. Louis would have enjoyed a degree of control over the desegregation plan which only the Missouri state legislature could have restricted.[206] Accordingly, a court order compelling the state legislature or the St. Louis City Board to allocate funds necessary to implement the *Liddell* desegregation plan would have guaranteed the financial success of the plan without exercising an unwarranted court-ordered tax increase.[207]

A federal court possesses many alternatives to increasing tax levies when a municipality or state inadequately funds a desegregation plan. For example, the federal court may substitute an expedient court-promulgated desegregation plan for the desegregation plan which the parties of the lawsuit proposed in the consent agreement.[208] The federal court also may order the United States Treasury to escrow federal revenue sharing funds in an amount necessary to finance a municipality's fiscal responsibility under a desegregation plan.[209] Indeed, since federal courts possess broad equitable powers in fashioning desegregation remedies,[210] only the immutable principles of federalism, separation of powers, and local control over education impose limitations on a federal court's creativity in formulating an effective integration plan.[211] By allowing the district judge to increase local taxes to pay for a desegregation plan, however, the Eighth Circuit in *Liddell* gave federal courts the final necessary ingredient to exercise unchecked power to effect school desegregation.[212]

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205. *See supra* notes 181-85 and accompanying text (root cause of funding problems in *Liddell* case originated in state-promulgated tax limitations rather than local officials' resistance to finance desegregation plan); *Liddell*, 731 F.2d at 1300 n.5 (state referendum requirement prevents St. Louis City Board from instituting local tax or bond issue without two-thirds voter approval).

206. *See supra* notes 186-88 and accompanying text (delineating legitimate and accordant scheme of allocating desegregation funding responsibility by vesting entire financial burden upon state).

207. *See supra* notes 160-62 and accompanying text (federal court enforcement of order allocating desegregation costs ultimately ensures funding of desegregation plan by ordering municipality or state to pay for integration program before paying for existing services).

208. *See* Morgan v. Kerrigan, 509 F.2d 618, 620 (1st Cir. 1975) (although locally-proposed desegregation plan is desirable, dilatory response by local officials may warrant substitution of desegregation plan created by federal court).

209. *See* Dowdell v. City of Apopka, Florida, 698 F.2d 1181, 1186 (11th Cir. 1983) (federal court may impound federal revenue sharing funds for purpose of correcting unconstitutional racial disparities in community).

210. *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971) (*Swann I*) (if local government fails to discharge adequately court-ordered responsibility to desegregate schools, federal court possesses broad equitable powers to effect expeditious integration).

211. *See supra* notes 146-53 and accompanying text (principle of federalism restricts scope of judicial power in desegregation cases); *supra* notes 164-78 and accompanying text (principles of separation of powers and local control over education restrict scope of judicial power in desegregation cases).

212. *Cf.* Hills v. Gautreaux, 425 U.S. 284, 293 (1976) (federal court's remedial powers to restructure operations and policies of local government in desegregation case is not plenary).

The Supreme Court has mandated that the disestablishment of segregated school systems throughout the United States must be prompt and effective.[213] Federal courts must therefore take swift and serious action to relieve local resistance to the implementation of court-ordered desegregation plans.[214] The Eighth Circuit's holding in *Liddell*, that the United States District Court for the Eastern District of Missouri may increase local taxes to pay for the St. Louis desegregation plan,[215] will probably reduce delays and inconvenience to the district court in the enforcement of school integration programs. Nevertheless, society and the courts must measure the price of avoiding delays and inconvenience in terms of the constitutional protections secured through the separation of powers.[216] Consequently, the *Liddell* court should have avoided using the Supreme Court's mandate of *Brown II* for an expeditious remedy to racial segregation in the public schools as a mandate to encroach upon tax powers traditionally committed to the state legislatures.[217] The concept of "all deliberate speed"[218] certainly never envisaged a federal court's exercise of "all deliberate power" to achieve school desegregation.

DANIEL P. SHAVER

213. *See* Green v. County School Bd. of New Kent County, 391 U.S. 430, 438-39 (1968) (federal court must strive to implement workable desegregation plan that starts school integration process immediately).

214. *See supra* notes 191-99 and accompanying text (suggesting issuance of mandamus and citation for contempt to compel local officials to expedite implementation of court-ordered desegregation plan).

215. *Liddell*, 731 F.2d at 1323.

216. *See supra* notes 164-72 and accompanying text (concept of separation of powers prohibits federal court from dictating tax policies); *see also* Immigration and Naturalization Serv. v. Chadha, 103 S.Ct. 2764, 2788 (1983) (delays and inconvenience in achieving government branch's objectives is not excuse for branch to exercise powers expressly reserved for coordinate branch of government); *cf.* South Dakota v. North Carolina, 192 U.S. 286, 321 (1904) (acknowledging federal court's difficulty in enforcing a money judgment against state because of court's inability to compel state to levy taxes).

217. *See* Green v. Frazier, 253 U.S. 233, 239 (1920) (state taxing powers vest in state legislature); *see also supra* note 164 (cases holding that taxation is legislative function which judicial branch may not exercise).

218. *See* Brown v. Board of Educ. of Topeka, Kansas, 349 U.S. 294, 301 (1955) (federal courts must ensure that local officials take actions to admit victims of segregation to public schools on nondiscriminatory basis with all deliberate speed).