dual school system. To put it in the simplest terms the Court, in adopting the District Court's approach, goes too far.

407 U.S. 484, 33 L.Ed.2d 75

UNITED STATES, Petitioner,

v.

SCOTLAND NECK CITY BOARD OF EDUCATION et al.

Pattie Black COTTON et al., Petitioners,

v.

SCOTLAND NECK CITY BOARD OF EDUCATION et al.

Nos. 70-130, 70-187.

Argued Feb. 29 and March 1, 1972.

Decided June 22, 1972.

Consolidated actions challenging implementation of North Carolina statute authorizing creation of a new school district for city which at time of enactment of statute was part of county school district then in the process of dismantling a dual school system. The United States District Court for the Eastern District of North Carolina permanently enjoined implementation of statute, and the city board of education and state appealed. The Court of Appeals, Fourth Circuit, 442 F.2d 575, reversed and remanded, and certiorari was granted. The Supreme Court, Mr. Justice Stewart, held that implementation of statute which would have effect of carving out of existing district a new unit in which 57% of students would be white and 43% Negro, while schools remaining in existing district would be 89% Negro, would impede disestablishment of dual school system in county and implementation would be enjoined.

Reversed.

Mr. Chief Justice Burger filed opinion concurring in the result, in which Mr. Justice Blackmun, Mr. Justice Powell and Mr. Justice Rehnquist joined.

1. Schools and School Districts ⇐13

Fact that creation of new school district out of existing school district was authorized by special act of legislature rather than by school board or city authorities was of no constitutional significance on issue of desegregation. Laws N.C.1969, c. 31.

2. Injunction ⇐78

Schools and School Districts ⇐13

Any attempt by state or local officials to carve out a new school district from an existing district that is in process of dismantling a dual school system must be judged according to whether it hinders or furthers the process of school desegregation and, if proposal would impede dismantling of dual system, district court, in exercise of its remedial discretion, may enjoin it from being carried out.

3. Injunction ⇐78

Schools and School Districts ⇐13

Implementation of statute which authorized creation of new school district for city, which at time of enactment of statute had been part of county school district then in process of dismantling dual school system, and which would have effect of carving out of existing district a new unit in which 57% of students would be white and 43% Negro, while schools remaining in existing district would be 89% Negro, would impede disestablishment of dual school system in county and implementation would be enjoined. Laws N.C.1969, c. 31.

4. Schools and School Districts ⇐13

"White flight" into private schools by children who had formerly attended white schools in dual system was not acceptable reason for achieving anything less than complete uprooting of dual public school system.

Syllabus *

A state statute authorized creation of a new school district for Scotland Neck, N. C., a city that was part of the larger Halifax County school district, then in the process of dismantling a dual school system. The District Court in this litigation instituted by the United States enjoined implementation of the statute as creating a refuge for white students and promoting school segregation in the county. The Court of Appeals reversed, ruling that the statute's impact on dismantling the county dual system was minimal and that it should not be regarded as an alternative desegregation plan for the county since it was enacted by the legislature and not by the school board. *Held*: Whether the action affecting dismantling of a dual school system is initiated by the legislature or by the school board is immaterial, North Carolina State Board of Education v. Swann, 402 U.S. 43, 91 S.Ct. 1284, 28 L.Ed.2d 586; the criterion is whether the dismantling is furthered or hindered by carving a new school district from the larger district having the dual school system, and a proposal that would impede the dismantling process may be enjoined. Wright v. Council of City of Emporia, 407 U.S. 451, 92 S.Ct. 2196, 33 L.Ed.2d 51. Pp. 2216–2218.

442 F.2d 575, reversed.

Lawrence G. Wallace, Washington, D. C., for the United States.

1485 Adam Stein, Charlotte, N. C., for Pattie Black Cotton and others.

William T. Joyner, Raleigh, N. C., and C. Kitchin Josey, Scotland Neck, N. C., for Scotland Neck City Bd. of Ed. and others in both cases.

Mr. Justice STEWART delivered the opinion of the Court.

The petitioners in these consolidated cases challenge the implementation of a North Carolina statute authorizing the creation of a new school district for Scotland Neck, a city which at the time of the statute's enactment was part of a larger school district then in the process of dismantling a dual school system. In a judgment entered the same day as its judgment in Council of City of Emporia v. Wright, 442 F.2d 570, a decision which we reverse today, 407 U.S. 451, 92 S.Ct. 2196, 33 L.Ed.2d 51, the Court of Appeals held that the District Court erred in enjoining the creation of the new school district.

Scotland Neck is a community of about 3,000 persons, located in the southeastern portion of Halifax County, North Carolina. Since 1936, the city has been a part of the Halifax County Administrative Unit, a school district comprising the entire county with the exception of two towns located in the northern section. In the 1968–1969 school year, 10,655 students attended schools in this system, of whom 77% were Negro, 22% white, and 1% American Indian.

The schools of Halifax County were completely segregated by race until 1965. In that year, the school board adopted a freedom-of-choice plan that produced very little actual desegregation. 1486 In the 1967–1968 school year, all of the white students in the county attended the four traditionally all-white schools, while 97% of the Negro students attended the 14 traditionally all-Negro schools. The school-busing system, used by 90% of the students, was segregated by race, and faculty desegregation was minimal.

In 1968, the United States Department of Justice entered into negotiations with the Halifax County School Board to bring the county's school system into compliance with federal law.

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

An agreement was reached whereby the school board undertook to provide some desegregation in the fall of 1968, and to effect a completely unitary system in the 1969–1970 school year. The State Department of Public Instruction, acting on a request from the county board, recommended a detailed plan (the Interim Plan) for the unitary system that would have put some white students in every school in the county, and that would have left a white majority in only one school.

In January 1969, after the Interim Plan had been submitted to the county school board but before any action had been taken upon it, a bill was introduced in the state legislature to authorize the creation of a new school district bounded by the city limits of Scotland Neck, upon approval by a majority of the city's voters.[1] The bill was enacted on March 3, 1969, as Chapter 31 of the 1969 Session Laws of North Carolina. The citizens of Scotland Neck approved the new
487 school district in a referendum a month later,[2] and the new district began taking steps toward beginning a separate school system in the fall of 1969.

The effect of Chapter 31 was to carve out of the Halifax school district a new unit with 695 students, of whom 399 (57%) were white and 296 (43%) were Negro. Under a transfer plan devised by the newly appointed Scotland Neck City Board of Education, 360 students (350 white and 10 Negro) residing outside the city limits applied to transfer into the Scotland Neck schools, while 44 students (all Negro) applied to transfer out of the city system to a nearby school in the Halifax County system. The new district planned to use the facilities of the formerly all-white Scotland Neck High School, including one building located outside the city limits that would be leased from the county.

The United States filed this lawsuit in June 1969 against both city and county officials, seeking desegregation of the existing Halifax County schools.[3] The complaint asked for preliminary and permanent injunctions against the implementation of Chapter 31. Various Negro children, parents, and teachers, the petitioners in No. 70–187, were permitted to intervene as plaintiffs.

After a three-day hearing before two district judges on both this case and a similar case involving two newly created school districts in neighboring Warren County, the District Court preliminarily 488
enjoined the implementation of Chapter 31, finding that "the Act in its application creates a refuge for white students, and promotes segregated schools in Halifax County," and further that "[t]he Act impedes and defeats the Halifax County Board of Education from implementing its plan to completely desegregate all of the public schools in Halifax County by the opening of the school year 1969–70."[4] After further hearings, the District Court on May 23, 1970, found Chapter 31 unconstitutional and permanently enjoined its enforcement. 314 F.Supp. 65. The Court of Appeals reversed, 442 F.2d 575, and we

1. An earlier bill had been introduced in the 1965 session of the legislature, which would have created a separate school district for Scotland Neck and the four surrounding townships, an area with a three-to-one Negro majority. It was contemplated that the new district would operate under a freedom-of-choice plan similar to that existing in the county at the time. The bill was defeated in the State Senate.

2. The vote in the referendum was 813 to 332 in favor of the new school district. Of Scotland Neck's 1,382 registered voters, 360 were Negro.

3. After the preliminary injunction was issued in this case, the District Court dismissed the Halifax County Board of Education from that part of the case dealing with Scotland Neck's efforts to implement a separate school system. On May 19, 1970, the court ordered the county school board to implement, beginning in the fall of 1970, the Interim Plan proposed by the State Department of Public Instruction, with certain modifications proposed by the school board.

4. The opinion of the District Court on the issuance of the preliminary injunction is unreported.

granted certiorari. 404 U.S. 821, 92 S. Ct. 47, 30 L.Ed.2d 49.

[1] The Court of Appeals did not believe that the separation of Scotland Neck from the Halifax County system should be viewed as an alternative plan for desegregating the county system, because the "severance was not part of a desegregation plan proposed by the school board but was instead an action by the Legislature redefining the boundaries of local governmental units." 442 F.2d, at 583. This suggests that an action of a state legislature affecting the desegregation of a dual system stands on a footing different from an action of a school board. But in North Carolina State Board of Education v. Swann, 402 U.S. 43, 91 S.Ct. 1284, 28 L.Ed.2d 586, decided after the decision of the Court of Appeals in this case, we held that "if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct . . . the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees." *Id.*, at 45, 91 S.Ct., at 1286. The fact that the creation of the Scotland Neck school district was authorized by a special act of the
1489 state legislature rather than by the school board or city authorities thus has no constitutional significance.

[2] We have today held that any attempt by state or local officials to carve out a new school district from an existing district that is in the process of dismantling a dual school system "must be judged according to whether it hinders or furthers the process of school desegregation. If the proposal would impede the dismantling of a dual system, then a district court, in the exercise of its remedial discretion, may enjoin it from being carried out." Wright v. Council of City of Emporia, *supra*, 407 U.S., at 460, 92 S.Ct., at 2202. The District Court in this case concluded that Chapter 31 "was enacted with the effect of creating a refuge for white students of the Halifax County School system, and interferes with the desegregation of the Halifax County School system . . . ." 314 F.Supp., at 78. The Court of Appeals, however, did not regard the separation of Scotland Neck as creating a refuge for white students seeking to escape desegregation, and it held that "the effect of the separation of the Scotland Neck schools and students on the desegregation of the remainder of the Halifax County system is minimal and insufficient to invalidate Chapter 31." 442 F. 2d, at 582. Our review of the record leads us to conclude that the District Court's determination was the only proper inference to be drawn from the facts of this litigation, and we thus reverse the judgment of the Court of Appeals.

[3] The major impact of Chapter 31 would fall on the southeastern portion of Halifax County, designated as District I in the Interim Plan for unitary schools proposed by the State Department of Public Instruction. The projected enrollment in the schools of this district under the Interim Plan was 2,948 students, of whom 78% were Negro. If Chapter 31 were implemented, the Scotland Neck schools would be 57% white, 1490
while the schools remaining in District I would be 89% Negro. The traditional racial identities of the schools in the area would be maintained; the formerly all-white Scotland Neck school would retain a white majority, while the formerly all-Negro Brawley school, a high school located just outside Scotland Neck, would be 91% Negro.

In Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554, we said that district judges or school authorities "should make every effort to achieve the greatest possible degree of actual desegregation," and that in formulating a plan to remedy state-enforced school segregation there should be "a presumption against schools that are substantially disproportionate in their racial composition." *Id.*, at 26, 91 S.Ct., at 1281. And we have said today in Wright v. Council of City of Emporia, *supra*, 407 U.S., at 463, 92 S.Ct., at 2204 that "desegregation

is not achieved by splitting a single school system operating 'white schools' and 'Negro schools' into two new systems, each operating unitary schools within its borders, where one of the two new systems, is, in fact, 'white' and the other is, in fact, 'Negro.' "

In this litigation, the disparity in the racial composition of the Scotland Neck schools and the schools remaining in District I of the Halifax County system would be "substantial" by any standard of measurement. And the enthusiastic response among whites residing outside Scotland Neck to the school board's proposed transfer plan confirmed what the figures suggest: the Scotland Neck school was to be the "white school" of the area, while the other District I schools would remain "Negro schools." Given these facts, we cannot but conclude that the implementation of Chapter 31 would have the effect of impeding the disestablishment of the dual school system that existed in Halifax County.

[4] The primary argument made by
1491 the respondents in support of Chapter 31 is that the separation of the Scotland Neck schools from those of Halifax County was necessary to avoid "white flight" by Scotland Neck residents into private schools that would follow complete dismantling of the dual school system. Supplemental affidavits were submitted to the Court of Appeals documenting the degree to which the system has undergone a loss of students since the unitary school plan took effect in the fall of 1970.[5] But while this development may be cause for deep concern to the respondents, it cannot, as the Court of Appeals recognized, be accepted as a reason for achieving anything less than complete uprooting of the dual public school system. See Monroe v. Board of Commissioners, 391 U.S. 450, 459, 88 S. Ct. 1700, 1705, 20 L.Ed.2d 733.

Reversed.

5. The figures supplied to the Court of Appeals were updated by an affidavit submitted to this Court, showing the total enrollment in the Halifax County schools at the start of the 1971–1972 school year to have been 9,094, of whom 14% were white.

Mr. Chief Justice BURGER, with whom Mr. Justice BLACKMUN, Mr. Justice POWELL, and Mr. Justice REHNQUIST join, concurring in the result.

I agree that the creation of a separate school system in Scotland Neck would tend to undermine desegregation efforts in Halifax County, and I thus join in the result reached by the Court. However, since I dissented from the Court's decision in Wright v. Council of City of Emporia, 407 U.S., p. 471, 92 S.Ct., p. 2207, I feel constrained to set forth briefly the reasons why I distinguish the two cases.

First, the operation of a separate school system in Scotland Neck would preclude meaningful desegregation in the southeastern portion of Halifax County. If Scotland Neck were permitted to operate separate schools, more than 2,200 of the nearly 3,000 students in this sector would attend virtually all-Negro schools located just outside of the 1492
corporate limits of Scotland Neck. The schools located within Scotland Neck would be predominantly white. Further shifts could reasonably be anticipated. In a very real sense, the children residing in this relatively small area would continue to attend "Negro schools" and "white schools." The effect of the withdrawal would thus be dramatically different from the effect which could be anticipated in *Emporia*.

Second, Scotland Neck's action cannot be seen as the fulfillment of its destiny as an independent governmental entity. Scotland Neck had been a part of the county-wide school system for many years; special legislation had to be pushed through the North Carolina General Assembly to enable Scotland Neck to operate its own school system. The movement toward the creation of a separate school system in Scotland Neck was prompted solely by the likelihood of de-

segregation in the county, not by any change in the political status of the municipality. Scotland Neck was and is a part of Halifax County. The city of Emporia, by contrast, is totally independent from Greensville County; Emporia's only ties to the county are contractual. When Emporia became a city, a status derived pursuant to longstanding statutory procedures, it took on the legal responsibility of providing for the education of its children and was no longer entitled to avail itself of the county school facilities.

Third, the District Court found, and it is undisputed, that the Scotland Neck severance was substantially motivated by the desire to create a predominantly white system more acceptable to the white parents of Scotland Neck. In other words, the new system was designed to minimize the number of Negro children attending school with the white children residing in Scotland Neck. No similar finding was made by the District Court in *Emporia*, and the record shows that Emporia's decision was not based on the projected racial composition of the proposed new system.

407 U.S. 551, 33 L.Ed.2d 131

LLOYD CORPORATION, LTD., Petitioner,

v.

Donald M. TANNER et al.

No. 71-492.

Argued April 18, 1972.

Decided June 22, 1972.

Action was brought to prevent a shopping center from barring distribution of handbills. The United States District Court for the District of Oregon, 308 F.Supp. 128, enjoined interference with the distribution, and the shopping center appealed. The Court of Appeals affirmed, 446 F.2d 545. On certiorari, the Supreme Court, Mr. Justice Powell, held that where the owner of a shopping center which contained parking facilities, malls, private sidewalks, stairways, escalators, gardens, auditorium and skating rink as well as a single, large, multi-level building complex containing stores put notices in the sidewalk that areas in the center used by the public were not public ways but for use of center tenants and the public transacting business with them and that permission to use such areas could be revoked at any time, and the center had a policy, strictly enforced, against distribution of handbills within the building complex and malls, there was no such dedication of the center to public use as to entitle persons to exercise therein the asserted First Amendment right of distributing handbill invitations to a meeting to protest the draft and the Vietnam War.

Judgment reversed and case remanded with directions to vacate injunction.

Mr. Justice Marshall dissented and filed opinion in which Mr. Justice Douglas, Mr. Justice Brennan and Mr. Justice Stewart joined.

1. Constitutional Law ⇐90(3), 91, 274(1)

First and Fourteenth Amendments safeguard rights of free speech and assembly by limitations on state action, not on action by owner of private property used nondiscriminatorily for private purposes only. U.S.C.A.Const. Amends. 1, 5, 14.

2. Constitutional Law ⇐82, 251

Accommodations between values protected by First, Fifth and Fourteenth Amendments are sometimes necessary and courts properly have shown special solicitude for guarantees of First Amendment. U.S.C.A.Const. Amends. 1, 5, 14.

3. Property ⇐7

Property does not lose its private character merely because public is gen-