

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LINDA STOUT, et al.,)	
)	
Plaintiffs,)	
)	
UNITED STATES OF AMERICA,)	Case No.: 2:65-cv-00396-MHH
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
JEFFERSON COUNTY BOARD OF EDUCATION,)	
)	
Defendant,)	
)	
GARDENDALE CITY BOARD OF EDUCATION,)	
)	
Defendant-Intervenor.)	

**THE UNITED STATES' OBJECTION TO DEFENDANT-INTERVENOR
GARDENDALE CITY BOARD OF EDUCATION'S MOTION TO OPERATE
MUNICIPAL SCHOOL SYSTEM AND PLAN OF SEPARATION**

In accordance with this Court's April 27, 2016 Amended Scheduling Order (Doc. 1070), Plaintiff-Intervenor the United States ("United States") respectfully submits this Opposition to Defendant-Intervenor Gardendale City Board of Education's ("Gardendale") Motion to Operate Municipal School System and Plan of Separation from the Jefferson County Board of Education ("Jefferson County" or "County").

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INTRODUCTION

Since the advent of this school desegregation case, the City of Gardendale has been a part of Jefferson County and has shared equally in Jefferson County's obligation to eliminate racial discrimination "root and branch." Despite this history, Gardendale now believes that it should be permitted to separate from Jefferson County and – in doing so – insulate the City of Gardendale from Jefferson County's ongoing obligation to desegregate. While Gardendale seeks the benefit of being unburdened by this obligation, it offers nothing to Jefferson County in return. Indeed, Gardendale's proposed separation hinges on, and is made financially feasible by, the expectation that it will receive – at no cost – a multi-million dollar high school facility that has served as a regional education center in the County and successfully drawn a desegregated student enrollment. Should Gardendale be permitted to separate, Jefferson County would lose not only one of its most prized assets but also a set of centrally-located schools that are key to its desegregation efforts. The proposed separation would also exacerbate racial and socioeconomic isolation throughout the County, hinder the County's ability to provide quality educational programming, and deplete the County's financial resources. In short, far from facilitating Jefferson County's attainment of a unitary school system, Gardendale's proposed separation would accomplish just the opposite. Under these circumstances, and for the reasons set forth more specifically below, Gardendale's Motion to Separate should be denied.

BACKGROUND

Jefferson County operates the second largest school system in the state of Alabama. As of October 2015, it enrolled 35,988 students, of whom 17,095, or 47.5%, were black and 15,665, or 43.5%, were white. Doc. 1033-1. The City of Gardendale is a municipality located within Jefferson County. It is home to four Jefferson County schools: Gardendale High School, Bragg

Middle School, Gardendale Elementary School, and Snow Rogers Elementary School (together, the “Gardendale schools”). These schools serve students living in Jefferson County’s Gardendale attendance zones, which encompass the area located within Gardendale city limits as well as surrounding neighborhoods outside of the city limits. Of the 3,110 students who attended one of the four Gardendale schools in 2015-16, 786, or 25%, were black and 2,200, or 71%, were white. Doc. 1033-1.

Beginning in 2012, residents of the City of Gardendale and the area of Jefferson County known as Mt. Olive began seriously exploring the possibility of forming a separate municipal school system. In the spring of 2014, the City of Gardendale formally established the Gardendale City Board of Education. Doc. 1001 at 3. A few months later, members of the Gardendale City Board of Education hired Dr. Patrick Martin to serve as superintendent of the system they were working to form. *Id.*

In light of the existence of this school desegregation case – brought against Jefferson County on June 4, 1965¹ – and the September 8, 1971 Order entered in the case contemplating that this Court would assume jurisdiction over separate school systems formed in Jefferson County after the issuance of the Order (“*Stout* Order”), Amended Order, *Stout v. Jefferson Cnty. Bd. of Educ.*, 466 F. 2d 1213 (5th Cir. 1972) (No. 65-396-S), Doc. 226 (Sept. 18, 1971), Gardendale moved to intervene in this action on March 13, 2015 for the purpose of demonstrating to the Court that the creation of a Gardendale municipal school district would not “adversely affect” desegregation. Doc. 1002 at 2. On March 24, 2015, the Court granted the motion to intervene. Doc. 1010.

¹ A more detailed recitation of the history of this school desegregation case is set forth in the parties’ February 6, 2015 Joint Report to the Court (Doc. 998).

Gardendale filed its Motion to Operate Municipal School System and Plan of Separation (“Motion to Separate” or “Motion”) on December 11, 2015. Doc. 1040. That Motion seeks Court approval for Gardendale to separate from Jefferson County and operate its own municipal school system. The Motion attaches a draft agreement that outlines the terms on which Gardendale proposes to separate (“Separation Plan” or “Plan”). Doc. 1040-1. Pursuant to Gardendale’s Separation Plan, Gardendale would receive the four County schools located within Gardendale city limits at no cost, and those schools would serve the new municipal system. *Id.* at 2-3. All students currently living within Gardendale city limits would be zoned to attend the new system. *Id.* at 4. Students residing in the North Smithfield and Greenleaf Heights Fire District (“North Smithfield”) – a non-contiguous area south of the City of Gardendale – would also be zoned to attend the new system “for the indefinite future.” Doc. 1040 at 5. As of 2015-16, the North Smithfield student population consisted of 209 children in grades kindergarten through 12, 99.5% of whom are black. Cropper Report at 5. With the exception of approximately 80 students in kindergarten through fifth grade who are zoned for Fultondale Elementary School, most of these students live in a Gardendale attendance zone and have historically attended the Gardendale schools. Sachs Dep. 77:9-17.

While the Separation Plan uses the Gardendale city limits and the boundaries of North Smithfield to determine which students will and will not be included in the new school system on a long-term basis, the Plan contemplates a 13-year period during which those students who currently attend Gardendale schools but live in the “transition zone” – *i.e.*, the areas of the current Gardendale attendance zones that lie outside of the city limits and the boundaries of

North Smithfield – will be permitted to continue at those schools.² Doc. 1040-1 at 3-5. Transition zone students include Jefferson County students who have historically attended Mt. Olive and Brookville Elementary Schools before matriculating through Bragg Middle School and Gardendale High School.³ *Id.* at 3.

In addition to addressing issues pertaining to student assignment, the Separation Plan addresses the operation of specialized programs, conveyance of school facilities and supplies, transfer of transportation equipment, employment of personnel, and apportionment of local taxes and revenues, among other things. *Id.* at 7-16. In particular, the Plan allows Gardendale to place its students with certain special needs at Jefferson County’s Burkett Learning Center on a fee per-pupil basis. *Id.* at 6. The Plan would also give Gardendale students who currently attend Jefferson County’s International Baccalaureate (“IB”) Program the right to remain in that program until graduation, so long as Gardendale remits proper payment to Jefferson County. *Id.* at 7. With regard to Gardendale High School’s career tech programs, the Plan would permit currently enrolled Jefferson County students to remain in the programs until graduation, but only if Jefferson County remits proper payment and there is capacity in the programs following enrollment by Gardendale students. *Id.* at 7-8. Finally, the Plan provides that every Jefferson County employee assigned to one of the Gardendale schools at the time the new system is officially recognized will become an employee of Gardendale. *Id.* at 12.

Although Gardendale’s Motion does not identify the reasons for its separation proposal, Gardendale officials and employees have since taken the position that the proposed separation

² Students who move into the transition zone after the formation of the new school system would be required to enroll in Jefferson County. Doc. 1040-1 at 3. As the Plan contains no special treatment for siblings, the same would be true of siblings of transition zone students who are not enrolled in Gardendale schools at the time of separation.

³ Gardendale and Jefferson County dispute the precise number of transition zone students and their demographic makeup. *See* Ex. 22, Gardendale Resp. to Interrog. 3 of United States’ 2nd Set of Disc. Reqs., Bates No. 001690 (noting this dispute and outlining Gardendale’s estimate that there are 955 students outside of the city limits, 655 of whom are white and 300 of whom are black). However, this dispute does not alter the bases for the United States’ Objection.

arises from Gardendale’s desire to provide an “excellent educational experience” for Gardendale students, decrease class sizes and reduce overcrowding, and exercise “local control” over the operation of the Gardendale schools. *See, e.g.,* Martin 30(b)(6) Vol. I Dep. 32:25-33:4, 63:22-25; Segroves Dep. 78:23-79:2; Lucas 30(b)(6) Dep. 28:19-29:11, 27:22-25.

LEGAL STANDARD

The objective of any school desegregation case is “to eliminate from the public schools all vestiges of state-imposed segregation.” *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971). In the service of this objective, “school authorities are ‘clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.’” *Id.* (quoting *Green v. Cnty. Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430, 437-38 (1968)). Federal court supervision continues until the school system is able to prove that it has “(1) complied in good faith with the desegregation decree, and (2) eliminated the vestiges of prior *de jure* segregation to the extent practicable.” *N.A.A.C.P., Jacksonville Branch v. Duval Cnty. Sch.*, 273 F.3d 960, 966 (11th Cir. 2001).

In considering whether the vestiges of *de jure* segregation have been eliminated to the extent practicable, the district court looks not only at student assignment, but “to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities,” *Green*, 391 U.S. at 435, and to other indicia, such as “quality of education,” *Freeman v. Pitts*, 503 U.S. 467, 492-93 (1992). To demonstrate the requisite “good faith” commitment to compliance with the desegregation decree, “[a] school district must show not only past good-faith compliance, but also a good-faith commitment to the future operation of the school system through ‘specific policies, decisions, and courses of action that extend into the future.’” *Lee v. Autauga Cnty. Bd.*

of Educ., No. 2:70CV2098-T, 2004 WL 2359667, at *4 (M.D. Ala. Oct. 19, 2004) (quoting *Dowell v. Bd. of Educ. of Okla. City Pub. Schs., Indep. Dist. No. 89*, 8 F.3d 1501, 1513 (10th Cir. 1993)).

When a city and a county under desegregation order have “constituted but one unit for the purpose of student assignments during the entire time that the dual system was maintained,” as is the case with the City of Gardendale and Jefferson County, “they [are] properly treated as a single unit for the purpose of dismantling that system.” *Wright v. Council of City of Emporia*, 407 U.S. 451, 459-60 (1972). The City of Gardendale thus shares the larger County’s affirmative obligations to desegregate the school system to the extent possible, and to demonstrate full, good faith compliance with the federal court’s desegregation decree. *Id.* Because Alabama state law provides a mechanism for a municipality like the City of Gardendale to create its own “city” school system, and to take on the obligations of an independent school board, Ala. Code § 16-1-11 *et seq.*, a “problem arises when the rights and obligations created by this statute come in conflict with an existing court order requiring the county school system, of which [the city] is a part, to eliminate all vestiges of the dual school system[.]” *Lee v. Chambers Cnty. Bd. of Educ.*, 849 F. Supp. 1474, 1500 (M.D. Ala. 1994).

The Supreme Court directly addressed this problem in *Wright v. Council of City of Emporia* and *United States v. Scotland Neck City Board of Education*, two cases decided on the same day involving similar attempts by cities to carve out new “splinter” school districts from existing districts under federal desegregation order. The rule articulated in those cases is a straightforward one: “[A] new school district may not be created where its effect would be to impede the process of dismantling a dual system.” *Wright*, 407 U.S. at 470; *United States v. Scotland Neck City Bd. Of Educ.*, 407 U.S. 484, 489-90 (1972). In articulating this now-

longstanding rule, the Supreme Court made clear that (1) the focus of the inquiry is on the *effects* of the proposed separation upon the larger school system's ability to desegregate its schools, rather than on the city's purported purpose, *Wright*, 407 U.S. at 462; *see also Stout v. Jefferson Cnty. Bd. of Educ.*, 466 F.2d 1213, 1214 n.2 (5th Cir. 1972) (“[t]he process of desegregation shall not be swayed by innocent action which results in prolonging an unconstitutional dual school system”); and (2) the proponents of the new district bear the “heavy burden to show the lack of deleterious effects on desegregation,” *Ross v. Houston Indep. Sch. Dist.*, 583 F.2d 712, 714 (5th Cir. 1978) (citing *Wright*, 407 U.S. at 467). To carry this burden, “it is not sufficient for a splinter district merely to agree to accept a desegregation role.” *Chambers*, 849 F. Supp. at 1502. Rather, the separating district must “establish what its operations will be,” and “must express its precise policy positions on each significant facet of school district operation.” *Id.* (quoting *Ross v. Houston Indep. Sch. Dist.*, 559 F.2d 937, 944 (5th Cir. 1977)).

Applying these standards, a district court ruling on a splinter district's separation proposal must conduct a fact-based inquiry, taking into consideration the “totality of the circumstances,” to determine whether the proponents of the new district have demonstrated that the separation will not have the effect of impeding the desegregation efforts of the larger district. *Wright*, 407 U.S. at 463-66; *see also Ross*, 583 F.2d at 714 (“The task of evaluating the effects of carving a new school district out of an old one is complex, and many variables must be considered in determining whether desegregation will be impeded or advanced.”). In addition, the district court must be satisfied “by clear and convincing evidence that [the splinter district] is able and intends to comply with the court's orders concerning its role in the desegregation” of the larger district. *Stout*, 466 F.2d at 1215.

Among the factors courts have considered in carrying out this “delicate task” are the potential impacts of the separation on the remaining district’s student demographics, faculty and staff, curricular and extracurricular course offerings, transportation, facilities, finances, and other potential complexities and conflicts that may require continued court supervision. *See Wright*, 407 U.S. at 463-66; *Ross*, 583 F.2d at 714-15; *Chambers*, 849 F. Supp. at 1486-89, 1493-98. If, based on consideration of these and other relevant factors, the splinter district fails to demonstrate that its creation will not have the effect of thwarting final implementation of a unitary school system, “the district court may not, consistent with the teachings of *Swann v. Charlotte-Mecklenburg* . . . recognize [its] creation.” *Stout*, 466 F.2d at 1214.

ARGUMENT

I. Gardendale’s Proposed Separation Would Impede Efforts to Finally Desegregate Jefferson County.

As noted, “a new school district may not be created where its effect would be to impede the process of dismantling a dual system.” *Wright*, 407 U.S. at 470. Gardendale’s establishment of a separate municipal school system would, however, impede the desegregation of Jefferson County. In particular, a Gardendale separation would appropriate centrally-located County schools that currently have diverse student bodies and, by so doing, leave County students with schools that are more racially and socioeconomically segregated, thus hampering their opportunity to receive a desegregated education. Gardendale’s separation would also negatively affect the quality of education for students remaining in Jefferson County by denying them access to the Gardendale schools’ unique and high quality educational programming, personnel, and facilities. *See id.* at 463; *Ross*, 559 F.2d at 944-45 (“[I]f upgrading the quality of education for students in the new district would have a substantial adverse effect on the quality of

education for students remaining in the old district, then operation should not be allowed.”). For these reasons, Gardendale’s Motion to Separate should be denied.

A. Gardendale’s separation would remove diverse, centrally-located schools that have been key to Jefferson County’s desegregation efforts, leaving the remaining County schools more racially and socioeconomically isolated.

As a municipality located in the north central part of Jefferson County, the City of Gardendale occupies a geographic region that is uniquely situated near areas where relatively large proportions of black and white students live in proximity to one another. Yun Report at 2, 11. The Gardendale schools are thus of central importance to the County’s desegregation efforts. Pouncey 30(b)(6) Dep. 29:8-24, 37:3-38:12. Gardendale High School, in particular, capitalizes on the City’s central geographic location by drawing students from five feeder patterns throughout Jefferson County to generate a student body that is 73% white and 27% black. Pouncey 30(b)(6) Dep. 127:7-15, 30:5-31:4. It is, in fact, the only school in the County to draw from such a diverse group of feeder patterns. As a result of their unique geographic locations, Gardendale High School, Bragg Middle School (71% white and 29% black), and Gardendale Elementary School (75% white and 25% black) are the only schools in Jefferson County whose student populations are predominantly, but not overwhelmingly, white.⁴ Cropper Report at 23; Yun Report at 11.

Unlike the schools within the Gardendale city limits, many Jefferson County schools in surrounding communities have student bodies that are essentially one race. In particular, the schools located to the north of Gardendale in the Mortimer Jordan feeder pattern – Mortimer Jordan High School, North Jefferson Middle School, and Bryan Elementary School – are nearly all white, while most of the schools located to the southwest and east of Gardendale in the Minor

⁴ Snow Rogers Elementary School, located in the northern portion of Gardendale City, is 94% white and 6% black. Cropper Report at 23.

and Center Point feeder patterns – Minor High School, Bottenfield Middle School, Crumly Chapel Elementary School, Hillview Elementary School, Center Point High School, Erwin Middle School, Erwin Intermediate School, and Center Point Elementary School – are nearly all black.⁵ Cropper Report at 23; Yun Report at 7-9. Over the past ten years, several hundreds of students have transferred into Gardendale schools from these less racially diverse schools pursuant to the County’s racial desegregation transfer policy.⁶ *See* Jefferson County’s Resp. to Interrog. 6 of United States’ Third Set of Disc. Reqs., Attachs. 6-F through 6-Q.

Given the student demographics outlined above, removing the Gardendale schools from Jefferson County would eliminate several student bodies where desegregation is working, as well as existing transfer options for students attending less racially diverse schools. A Gardendale separation would also require the County to reassign students living outside the city limits who currently enjoy these desegregated environments to schools that are more racially isolated. For example, under Gardendale’s proposal, students who currently attend Bragg Middle School but live outside of the Gardendale city limits would be reassigned to either North Jefferson Middle School, which is 93% white, or Bagley Junior High School, which is 99% white. Sachs Report at 12; Cropper Report at 23. Gardendale’s alternative proposal would reassign these students to Bottenfield Middle School, which is 85% black. Sachs Report at 14; Cropper Report at 23. High school students’ opportunities to attend desegregated schools would be similarly curtailed.

⁵ Only the schools in Fultondale – located directly south of Gardendale – have racially integrated student bodies comparable to those of the Gardendale schools. Cropper Report at 23. Fultondale High School is 63% white and 37% black, and Fultondale Elementary School is 60% white and 40% black. Cropper Report at 23. For several reasons, including overcrowding, aging facilities, and a lack of amenities and educational offerings, the Fultondale schools are not currently a desirable option for reassigning students. Pouncey 30(b)(6) Dep. 48:2-49:4; Cropper Report at 21.

⁶ Per Jefferson County’s racial desegregation transfer policy, “[a] racial desegregation transfer will be allowed if there is space available and if: a. The transfer will have the effect of moving the racial composition of both the sending and receiving schools closer to the district-wide racial composition; or b. The transfer will have the effect of moving one of the schools closer to the district-wide racial composition without negatively impacting the other school, that is, without moving either the sending or receiving school outside a range of percentage points around the district-wide racial composition.” Order Approving Joint Report on Transfer Procedure, Doc. 780 at 11-13.

Gardendale proposes that students who currently attend Gardendale High School but live outside of the Gardendale city limits be reassigned to Mortimer Jordan High School, which is 93% white, or Corner High School, which is 99% white. Sachs Report at 12; Cropper Report at 23. Gardendale's alternative proposal would reassign these students to Minor High School, which is 87% black. Sachs Report at 14; Cropper Report at 23. As these figures show, and as Gardendale's own demographic expert concedes, Gardendale's separation plan would result in transition zone students being reassigned to more segregated educational environments. Sachs Dep. 128:7-130:9, 140:6-141:2; *see also* Cropper Report at 34.

In addition to being reassigned to more segregated educational environments, the majority of transition zone students would be required to travel several miles farther to school as compared to their current commutes. Cropper Report at 2, 25-33. In particular, Gardendale's proposal to reassign high school students living in the City of Brookside to Corner High School would, on average, more than double the distance of those students' commutes and require travel over rural roads and uneven terrain. Cropper Report 31-32. Thus, to the extent sending these students to Corner High School would create a slightly more diverse student body at that school (*i.e.*, from 99% white to 95% white), the burden would be borne by the black students traveling far from their current school zone to attend what would remain an essentially one-race school.⁷ Cropper Report at 24.

Gardendale's Separation Plan would not only result in transition zone students attending more segregated schools; it would also result in higher levels of racial isolation throughout the

⁷ Similarly, under Gardendale's alternative assignment plan, Brookside students would be reassigned to Bottenfield Middle School and Minor High School, resulting in a slightly more diverse student body at both of those majority black schools. Cropper Report at 24. However, those schools are not comparable to Bragg Middle School or Gardendale High School in terms of facilities or programming. Those transition zone students would effectively be reassigned to less racially diverse (*i.e.*, majority black) schools marked by fewer educational opportunities, inferior facilities, and utilization rates that exceed 90%. Cropper Report at 22.

County. Yun Report at 11. For instance, the average black middle school student in Jefferson County would go from attending a school with 66% black enrollment to one with 68% black enrollment, and the average black high school student would go from attending a school with 64% black enrollment to one with 66% black enrollment. *Id.* As the United States’ quality of education expert observes, “[t]hat the relatively small numbers of students lost if Gardendale left the district would change the district exposure index by even a few percentage points is noteworthy.” *Id.*; see *Ross*, 583 F. 2d at 714 (“a change in the percentage of white and minority students in the old district” is “[a]mong those factors” to “be considered in determining whether desegregation will be impeded or advanced”).

Gardendale’s proposed separation would have an even more pronounced effect on the socioeconomic isolation of black students in Jefferson County. This socioeconomic impact is properly considered by a court when determining whether a municipality should be allowed to separate from a county school system under desegregation order. Indeed, it is well-established that socioeconomically integrated schools offer students valuable opportunities to access different social networks and resources, while schools marked by concentrated poverty typically face a range of educational and organizational challenges. Yun Report at 18, n.7.

In *Lee v. Chambers*, the court decided against allowing the City of Valley to form a splinter district in part because the separation would have left the remaining county system with “a large majority of needy pupils from impoverished families, with the ability of that district to raise adequate local revenues to address [its] problems and deliver a high-quality education severely restricted.” 849 F. Supp. at 1498. So too here, the socioeconomic impact of a Gardendale separation on the remaining County system counsels against granting Gardendale’s Motion to Separate. If the proposed separation were permitted, “the opportunity to attend a

majority non-poor school would virtually vanish for middle school Black students . . . and would be severely curtailed for other Black students in the [county] district.”⁸ Yun Report at 18. Ninety-three percent of black Jefferson County middle school students currently attend a school that is majority poor, while only 7% of such students attend a school that is majority non-poor. *Id.* at 17. A Gardendale separation would result in just 1% of black Jefferson County middle school students attending a non-poor school, an 83% decline from present numbers. *Id.* Likewise, while 85% of black Jefferson County high school students currently attend a school that is majority poor, compared to only 42% of their white counterparts, the percentage of black high school students attending poor schools would rise to 89% if Gardendale separated from the County. *Id.*

The negative impact of Gardendale’s proposed separation on the socioeconomic composition and experience of Jefferson County’s student body is not limited to black students; it extends to the student body as a whole. Unlike many of the schools surrounding Gardendale, the Gardendale schools enjoy some of the lowest free and reduced lunch (“FRL”) eligibility rates in Jefferson County. The percentage of FRL-eligible students in the four schools in Gardendale ranges from 34%-41%,⁹ while the percentage of FRL-eligible students in the schools surrounding Gardendale ranges from 65%-94%.¹⁰ Ultimately, if Gardendale is permitted to

⁸ Majority poor schools are defined as schools where more than 50% of students are eligible for free and reduced lunch, a commonly used proxy for poverty. Yun Report at 12.

⁹ The FRL-eligibility rates for Gardendale High School, Bragg Middle School, Gardendale Elementary School, and Snow Rogers Elementary School are 34%, 41%, 35%, and 41%, respectively. The only schools in Jefferson County with lower FRL eligibility rates are those in the Corner and Mortimer Jordan feeding patterns. Those schools include Corner High School (27%), the Corner School (30%), Bagley Junior High School (36%), Mortimer Jordan High School (33%), North Jefferson Middle School (36%), and Bryan Elementary School (29%). Yun Report at 14-15.

¹⁰ These schools include Fultondale High School (65%), Minor High School (75%), Center Point High School (87%), Erwin Middle School (94%), Bottenfield Middle School (84%), Erwin Intermediate School (94%), Center Point Elementary School (93%), Hillview Elementary School (88%), Minor Community School (86%), Adamsville Elementary School (79%), Crumly Chapel Elementary School (77%), Brookville Elementary School (74%), and Fultondale Elementary School (73%). Of the schools surrounding Gardendale, Mt. Olive Elementary is the only one

separate from Jefferson County, the percentage of FRL-eligible students district-wide will increase from 52% in 2015-16 to 58% post-separation. Yun Report at 14; Veronese Report at 7. Thus, as in *Chambers*, a Gardendale separation would leave a County system with “a substantial number of students who would receive free and reduced lunches,” far exceeding those in the city school system, with the County’s ability to deliver a socioeconomically diverse, high quality education “severely restricted, if not nonexistent.” 849 F. Supp. at 1486, 1498.

Finally, although the most immediate effects of the proposed separation pertain to Jefferson County’s current demographics and student assignment practices, a Gardendale separation would also constrain the County’s future options for student assignment practices designed to further desegregation and enhance educational opportunity. For example, Gardendale High School – the largest high school in the district in terms of capacity – is currently only 78% full and has ample space to accommodate additional students. *See* Pouncey 30(b)(6) Dep. 81:15-17; Cropper Report at 21. If Gardendale is permitted to separate, however, Gardendale High School will not be available to Jefferson County for any purpose, desegregation or otherwise. Accordingly, to the extent Jefferson County’s superintendent and experts in this litigation have proposed plans to use Gardendale High School to address imbalances in utilization across Jefferson County schools and further desegregate those schools, the proposals can only be considered realistic options if Gardendale’s Motion to Separate is denied.¹¹ *See*

without a majority FRL-eligible population (22%). Yun Report at 14-15. Mt. Olive was also the only community outside of Gardendale city limits that Gardendale initially sought to include in its new school system. Lucas 30(b)(6) Dep. 25:18-26:4, 51:10-53:8.

¹¹ The United States’ demographic expert has recommended that students at Fultondale High School – which is operating at 98% utilization in a facility described by Jefferson County’s superintendent as the worst facility in the district – be reassigned to Gardendale High School to relieve overcrowding and balance utilization. Cropper Report at 21-22; Pouncey 30(b)(6) Dep. 48:2-49:4, 88:16-18. This reassignment would provide Fultondale High School students – 37% of whom are black – with access to Gardendale High School’s superior facilities and enhanced curricular and extracurricular offerings. Cropper Report at 23; *see infra* pp. 15-21. A similar reassignment proposal has been made by Jefferson County’s superintendent. Pouncey 30(b)(6) Dep. 128:1-129:8; Jefferson County’s Motion for Approval of Initiatives, Doc. 1078 at 20 n.10.

Chambers, 849 F. Supp. at 1488, 1498 (refusing to grant a municipality’s request to separate in part because separation would “promote unnecessary duplication” and disrupt the county system’s plans to build a single consolidated high school capable of furthering desegregation, providing “a wider range of curricular offerings” and extracurricular activities, “eliminat[ing] curriculum disparities,” and replacing outdated facilities).

B. Gardendale’s separation would adversely affect the quality of education available to Jefferson County students.

The Supreme Court has held that a court supervising the process of desegregation fails to “exercise its remedial discretion responsibly where it approves a plan that, in the hope of providing better ‘quality education’ to some children, has a substantial adverse effect upon the quality of education available to others.” *Wright*, 407 U.S. at 463; *see also Ross*, 559 F.2d at 943-44; *Lee v. Chambers*, 849 F. Supp. at 1502. That Gardendale’s separation would leave Jefferson County with schools that are more segregated racially and socioeconomically would – by definition – deprive County students of access to the myriad educational benefits that diverse schools provide. As the Supreme Court has observed, enrolling a diverse student body “promotes cross-racial understanding, helps to break down racial stereotypes, and enables students to better understand persons of different races.” *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (internal quotation marks and alteration omitted); *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198, 2210 (2016). “Equally important, ‘student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society.’” *Fisher*, 136 S. Ct. at 2210 (quoting *Grutter*, 539 U.S. at 330). Consistent with these observations, research shows that exposure to diverse groups of students can also “improve important academic and non-academic outcomes of schooling, such as test scores, probability of

graduation, comfort working with peers of different ethnic groups, and the number of cross-racial friendships.” Yun Report at 6 (citing various studies).

In addition to depriving Jefferson County students of this critical aspect of a quality education, Gardendale’s proposed separation would adversely affect Jefferson County students’ quality of education in numerous other areas, including educational programming, faculty and staff, facilities, and student achievement.

1. Educational Programming

As its superintendent has made clear, Jefferson County built Gardendale High School to serve as a regional education center with advanced academic and career tech programs “intended to serve multiple schools throughout the district.”¹² Pouncey 30(b)(6) Dep. 25:8-26:23. For this reason, removing Gardendale High School from Jefferson County would have negative repercussions not only for those students who live in the transition zone but also for out-of-zone students who take advantage of Gardendale High School’s regional course offerings. Acknowledging Gardendale High School’s key role in providing career and technical education to students throughout the County, Gardendale’s Separation Plan proposes to allow County students currently enrolled in these programs to remain until graduation (provided there is space in the course after Gardendale students enroll and Jefferson County pays a per-pupil sum for their attendance). *See* Doc. 1040-1 at 7. Nonetheless, all other interested Jefferson County students – both current and future – would lose access under Gardendale’s Plan. *Id.*

¹² Indeed, when the district constructed the new Gardendale High School facility, it expanded the previously existing career tech program. Pouncey 30(b)(6) Dep. 95:6-16.

In the 2015-16 school year, 175 high school students from five of the district's other 12 feeder patterns participated in Gardendale High School's career tech programs.¹³ Pouncey 30(b)(6) Dep. 30:5-31:24, 54:3-17, 108:5-22 & Ex. 5. By any measure, these career tech programs are outstanding. Not only does Gardendale High School offer state-of-the-art facilities tailored to such programs, but it is the only high school in the County to offer programs in auto engine repair, automotive services technology, drafting, studio portfolio, 3D solid design, and NCCER welding, and one of just two high schools to offer programs in digital design, graphic illustration, sports nutrition, introductory welding, paint and refinish, and transportation distribution. *Id.* at 97:16-98:1, 102:3-9, 104:2-8 & Ex. 4.

The quality and uniqueness of Gardendale's career tech programs are underscored by high student demand. Pouncey 30(b)(6) Dep. 99:5-11, 102:10-103:4; *see also* Yun Report at 23 (citing an administrator who stated that Gardendale High's welding program could admit more students if the school had room and that other career tech programs at Gardendale High were growing as well). For example, Gardendale High School's courses in welding, graphic design, and automotive painting and repair enroll over half and, in some cases, 100% of Jefferson County's total enrollment in such courses. Yun Report at 22. Similarly, of the 39 career and technical education courses offered at Gardendale, 20 enroll at least 60% of Jefferson County's total enrollment for the underlying course. *Id.* at 23. County students thus stand to lose access to these popular programs should Gardendale be permitted to separate. Pouncey 30(b)(6) Dep. 99:12-25.

Students remaining in Jefferson County after a separation would also lose access to Gardendale High School's Advanced Placement (AP) course offerings. Gardendale High School

¹³ These students came from Fultondale, Minor, Mortimer Jordan, Corner, and Pinson Valley. Pouncey 30(b)(6) Dep. 108:5-22 & Ex. 5. To facilitate access to Gardendale High School's distinctive programmatic offerings, Jefferson County provides transportation for these students from their home schools. *Id.* at 35:9-36:5.

offers 12 unique AP courses, more than most other Jefferson County high schools. Yun Report at 25. Moreover, students at Gardendale High School enroll in AP courses at relatively high levels compared to students at many of the district's other high schools. A quarter of all black students and 36% of white students at Gardendale High School are enrolled in at least one AP course. *Id.* Of the high schools in Jefferson County with at least 8% black enrollment, Gardendale High School ranks third in the percentage of black students taking at least one AP course.¹⁴ *Id.* at 26. This indicates that “there is a culture that has been established in the school of encouraging students to enroll in challenging courses.” *Id.* at 25. “Such a culture is not easily replaced,” *id.*, and would be lost following a Gardendale separation.

2. Faculty and Staff

In addition to losing access to high quality educational programming, students remaining in Jefferson County after a Gardendale separation would lose access to valuable personnel. For instance, Gardendale High School has the only instructor in the County qualified to award the professional certification in welding, and the County has invested significant funds in training that instructor. Yun Report at 23; Pouncey 30(b)(6) Dep. 100:1-101:25. There are also a number of specially trained teachers associated with Gardendale High School's 12 AP courses. Yun Report at 25. The departure of these highly-skilled personnel means that Jefferson County would no longer be able to use their specialized knowledge and training to provide professional development to Jefferson County faculty lacking such specialization. *Id.* at 46. This loss of institutional knowledge would be difficult to replace. *Id.* at 25, 46.

A Gardendale separation is also likely to make it more difficult for the County to attract and retain high-performing faculty and staff. Pouncey 30(b)(6) Dep. 69:14-71:18. As Jefferson

¹⁴ This ranking excludes Shades Valley High School, whose high AP course enrollment percentages relative to the rest of the County are likely attributable to its status as the site of the district's IB program. Yun Report at 25 n.12.

County’s superintendent and chief school financial officer (“CSFO”) both noted, past municipal separations have created more competition for quality teachers and administrators and have caused the district to lose talented personnel to city school systems within Jefferson County. *Id.* at 69:14-70:25; Jones 30(b)(6) Dep. 40:1-42:9. There is no reason to conclude that the effect of a Gardendale separation would be any different. Under these circumstances, “the possible loss of teachers to the new system . . . would diminish the chances that transition to unitary schools in the county would prove ‘successful.’” *Wright*, 407 U.S. at 470.

3. Facilities

The loss of the Gardendale High School facility itself would have a “substantial adverse effect upon the quality of education” for students remaining in Jefferson County. *Wright*, 407 U.S. at 470. That facility – one of six new high schools built in the County within the last seven years – cost the district roughly \$55 million, the most of any school in the district’s history. Pouncey 30(b)(6) Dep. 82:22-83:12, 85:4-20, 92:19-93:20. Jefferson County invested this historic sum of money with Gardendale High School’s role as a regional education center in mind. *Id.* at 29:8-30:24, 83:3-24. Accordingly, Gardendale High School was designed to include a range of state-of-the-art career tech facilities to accommodate Jefferson County’s only programs in automotive care, welding, and graphic design. Yun Report at 22-23; Pouncey 30(b)(6) Dep. 83:11-84:4. Its graphics laboratory was designed to include large banks of computers and state-of-the-art printing equipment, and its auto body shop has the only painting bays in the entire County. Yun Report at 23. In light of these unique features, Jefferson County’s superintendent has acknowledged that “there’s nothing that Jefferson County has ever built that is bigger and better than Gardendale High School.” Pouncey 30(b)(6) Dep. 77:18-20; *see also id.*

at 81:2-11. He noted, in particular, that the school’s career tech, athletic, and performing arts facilities are superior to those at any other Jefferson County school. *Id.* at 83:11-84:8, 135:3-13.

It is well-established that high quality facilities like Gardendale High School offer critical educational benefits, including reduced absenteeism, decreased problem student behaviors, increased teacher satisfaction, and decreased teacher mobility. Yun Report at 36. Currently, 35% of black high school students and 48% of white high school students in Jefferson County attend school in one of the district’s six new high school buildings. Yun Report at 36. If Gardendale were to separate, the percentage of County high school students who attend school in one of these new buildings would drop to 31% for black students and 39% for white students. *Id.* A Gardendale separation would therefore result in a 10% loss in access for black students and an 18% loss for white students, meaning that a significantly smaller proportion of students remaining in the County district would be able to access new facilities and the positive educational opportunities associated with these resources. *Id.* These facts bolster the conclusion that Gardendale’s proposed separation would adversely impact the quality of education in Jefferson County and counsel against separation, particularly given the financial challenges the County would encounter in attempting to provide a replacement facility of comparable quality. Pouncey 30(b)(6) Dep. 27:1-21; *see Wright*, 407 U.S. at 465 (upholding district court’s determination that the establishment of a separate city system would adversely impact the quality of education in the county in part because school buildings in the city were “better equipped” and “located on better sites” than those in the county).

4. Student Achievement

A Gardendale separation would also have negative implications for student achievement – both real and perceived – among those students who remain in Jefferson County. In general,

students in the Gardendale schools perform as well as, if not better than, their peers at other County schools on the nationally norm-referenced assessments that the County uses to monitor student achievement. Yun Report at 27-34. As the United States' quality of education expert notes, although performance on standardized assessments provides "a very limited measure of student achievement," it "has important implications for how schools are seen by the public and policymakers given that [it is] an easily observable manifestation of student knowledge." *Id.* at 27. For this reason, Jefferson County's loss of the Gardendale schools – which are solid, and in some cases exceptional, performers on standardized assessments – would leave Jefferson County with a greater proportion of struggling schools and negatively affect public perception of the quality of education it offers.

The consequences of a Gardendale separation for black student achievement at the elementary level are particularly concerning. Black students attending Gardendale Elementary have made great strides on standardized assessments between the third and fifth grades, indicating that the school is "doing an excellent job of advancing the black students it enrolls." *Id.* at 28-30, 33-34 (noting that in 2015, reading scores for black students jumped from 13% of students scoring proficient in third grade to 31% proficient by fifth grade, and math scores for black students rose from 23% proficient in third grade to 34% proficient by fifth grade). *Id.* at 33-34. Jefferson County therefore stands to lose one of its strongest examples of black student achievement as a result of this separation.

For the reasons set forth above, a Gardendale separation would disrupt progress toward eliminating the vestiges of a dual system by cutting off access to diverse educational settings and quality educational opportunities for students remaining in the County system. *See Wright*, 407 U.S. at 463; *Ross*, 559 F.2d at 943-44; *Chambers*, 849 F. Supp. at 1502.

II. Gardendale’s Proposed Separation Would Have a Negative Financial Impact on Jefferson County.

It is axiomatic that in assessing whether a proposed splinter district “hinders or furthers the process of school desegregation,” *Wright*, 407 U.S. at 460, a court should consider the financial impact of the separation on the remaining district. *See Ross*, 583 F. 2d at 715 (finding that “the formation of [a city system] could place [the county district] in such serious financial straits that desegregation would be affected”). Where the creation of a new city district “would be accomplished at the expense of the children remaining in the county,” a court “with [the] responsibility to provide an effective remedy for segregation in the entire city-county system” cannot properly allow the city to withdraw. *Wright*, 407 U.S. at 468.

Here, Gardendale has failed to demonstrate – either through documentation, fact witnesses, or expert testimony – that its proposed separation would not have a negative financial impact on Jefferson County. Indeed, the only credible record evidence indicates that the separation will have a significant and long-lasting negative financial impact on the County such that its desegregation efforts will be affected. Under these circumstances, Gardendale has not carried its evidentiary burden and its Motion to Separate should be denied. *See Ross*, 583 F.2d. at 714 (noting that a proposed splinter district bears a “heavy burden to show the lack of deleterious effects on desegregation”).

A. Gardendale has only assessed the financial viability of its own system and not the negative financial impact of its separation on Jefferson County.

As detailed in its Supplemental Report filed March 12, 2015, Jefferson County recently invested roughly \$55 million to build a state-of-the-art high school in Gardendale City designed to serve as an educational hub for County students throughout the region. Doc. 1001 at 18-20. Faced with losing this multi-million dollar facility and having to absorb the many other costs that

attend a municipal separation,¹⁵ Jefferson County spent months negotiating with the newly-formed Gardendale City Board of Education to identify a settlement that would afford the County sufficient resources to provide equivalent facilities and educational opportunities to its students. *Id.* at 2-13, 21. However, Gardendale and Jefferson County were unable to reach agreement on an appropriate settlement figure or otherwise resolve the matter before the State Superintendent, and Gardendale's Separation Plan does not propose any payment to Jefferson County for lost facilities. *Id.*

Notwithstanding its familiarity with Jefferson County's view of the negative financial impact that would attend a Gardendale separation, Gardendale has failed to conduct any meaningful analysis of the asserted impact. Indeed, although Gardendale hired professionals to assess the financial viability of the Gardendale City School System, none of the professionals performed any analysis showing the full financial impact that development of such a system would have on Jefferson County.¹⁶

Gardendale's CFSO, Randy Dunlap, and its expert financial witness, Dr. Dennis Veronese, both testified that they conducted analyses showing that a Gardendale separation would result in a slight increase in Jefferson County's per pupil revenue. Dunlap 30(b)(6) Dep. 100:7-21; Veronese Dep. 162:6-22. However, neither individual conducted an analysis of the corresponding impact the change in County student enrollment would have on expenditures, let alone the impact of other costs Jefferson County might incur as a result of the proposed separation. Dunlap 30(b)(6) Dep. 106:12-21, 112:13-113:2; Veronese Dep. 27:14-28:15, 75:10-

¹⁵ These costs – including the cost to the County of transporting and creating space in current facilities for displaced students, the cost of providing special educational programs and services to Gardendale residents who attend the County's Burkett Center, and the County's loss of the ad valorem tax base and other community resources located in Gardendale City – were also detailed in Jefferson County's Supplemental Report. Doc. 1001 at 5-7, 15-26.

¹⁶ In addition, in assessing Gardendale's financial viability, none of the professionals assumed that Gardendale would remit payment for Gardendale High School or any other County educational facility within the Gardendale city limits. Dunlap 30(b)(6) Dep. 45:7-46:9; Veronese Dep. 118:19-119:7.

77:23, 162:23-25; Veronese Report at 48, 62 (devoting less than 2 pages of 67-page report to assessing the impact of separation on County revenues with no corresponding assessment of the impact of separation on County expenditures). As Gardendale's own financial expert admits, one cannot understand the full financial impact of separation on the County without such an analysis. Veronese Dep. 76:9-77:23 (testifying that he did not evaluate expenditures or other costs to Jefferson County, even though that is what would be required to assess the full financial impact of the separation on the County; that he never requested information to perform that analysis; that he was never asked to perform that analysis; and that he does not know why).

While Gardendale appears to have relied on several third-party financial analyses in determining whether to move to separate, those financial analyses provide no more information regarding the impact of separation on the County. Nor do they contemplate the County receiving any remuneration for the multi-million dollar facility it would lose as a result of separation. A "financial feasibility report" commissioned by proponents of the separation prior to the formation of the Gardendale City Board of Education and drafted by Dr. Ira Harvey concluded that a Gardendale City school system would be financially feasible, in large part because it was in an "unprecedented" position to receive a state-of-the-art high school and other educational facilities in "very good condition" for little to no money. *See* Dunlap 30(b)(6) Dep. 41:2-43:10 & Ex. 2 (Creating a Gardendale City School System FAQ's) ("Nobody else I've ever worked with has ever been in that kind of situation. It's totally remarkable," said Dr. Ira Harvey regarding the amount of debt to be assumed."). In addition, although proponents of a Gardendale municipal school system also evaluated the system's potential viability by procuring a pro forma budget from Carr, Riggs, & Ingram, and an economic analysis of the impact of separation on housing prices from Dr. M. Keivan Deravi, neither the budget nor the economic analysis assessed the

impact of separation on Jefferson County. *See* Dunlap 30(b)(6) Dep. 37:14-42:9 & Ex. 2; Segroves Dep. 64:10-20, 67:6-15.

B. Record evidence demonstrates that Gardendale’s proposed separation would have a negative financial impact on Jefferson County.

Although Gardendale failed to conduct a meaningful analysis of the financial impact of separation on Jefferson County, Jefferson County’s CSFO, Sheila Jones, and its financial expert, Kim McPherson, have conducted such analyses. These analyses – which assess the likely impact of the proposed separation on the County’s revenues, expenditures, and other related costs – indicate that a Gardendale separation would have an immediate and ongoing negative financial impact on the County.

Like Veronese, McPherson concluded that if Gardendale were to assume responsibility for educating students currently attending Gardendale schools, Jefferson County would receive more revenue per pupil in the first year after separation.¹⁷ After assessing the impact to expenditures, however, McPherson concluded that “the revenue increase per pupil is disproportionate to the expenditure increase per pupil” and that Jefferson County would suffer a net *deficit* of \$61 per pupil and “a net operational loss of \$2,040,558 directly related to the proposed separation.” McPherson Report at 33 (emphasis in original). This net deficit and operational loss stems, in part, from the fact that fixed costs, or “overhead,” do not decrease with the loss of students to Gardendale. *Id.*; Jones 30(b)(6) Dep. 34:11-22; *see also* Veronese Dep. 162:23-163:11 (acknowledging that Jefferson County’s expenditures would not decrease one-to-one with a decrease in student population, in part because fixed costs would remain constant). Other relevant factors include (1) the cost of continuing to provide special education services to

¹⁷ Although the experts’ student counts differ slightly, both agree that Jefferson County would be poised to lose between 8.45% and 8.6% of its student population in the first year of operation if separation occurred pursuant to Gardendale’s Plan. *See* McPherson Report at 13; Veronese Report at 8.

Gardendale students at the Burkett Center under a proposal that does not account for the County's "maintenance of effort" obligations under federal law,¹⁸ and (2) the often unforeseeable panoply of costs associated with providing such special education services that must be paid for through local funds. *See* McPherson Dep. 103:6-108:22; 131:9-132:18, 58:6-59:20; Jones 30(b)(6) Dep. 62:23-63:18. In light of these considerations, McPherson concluded that a Gardendale separation would require Jefferson County to allocate a larger portion of its local funds to maintaining special programs and services and make cutbacks in other areas of the system to prevent an operational deficit. McPherson Report at 33-34; McPherson Dep. 219:8-223:18.

Not only does McPherson conclude that Jefferson County would suffer an operating loss should Gardendale be permitted to separate, but she also concludes that Jefferson County "would incur significant costs to replace facilities, provide transportation and reestablish lost programs." McPherson Report at 42. In particular, she estimates that Jefferson County would have to spend no less than \$45 million to build a replacement facility comparable to Gardendale High School and nearly \$2 million more to duplicate that high school's state-of-the-art career tech center. *Id.* at 38-39. These amounts do not include additional funds the County would likely spend making other capital improvements to ensure it has adequate space for students who are no longer able to attend the Gardendale schools. *Id.* at 38. Nor do they include the more than \$2 million

¹⁸ "Maintenance-of-effort" refers to a requirement under many federal education statutes that, as a condition of receiving federal funds, school districts maintain local funding efforts from year-to-year. *See generally* 31 C.F.R. § 205.2. In the special education context, school districts seeking federal financial assistance under the Individuals with Disabilities Education Act ("IDEA") must provide local funds for the education of children with disabilities in an amount equal to or greater than the amount it spent for that purpose in the most recent fiscal year. *See* 34 C.F.R. § 300.203. This concept applies as a condition of receiving funds under other federal financial assistance programs as well, including Title I. *See* 34 C.F.R. § 299.5.

McPherson anticipates the County would spend on expanded transportation for affected students over the course of the proposed transition period. *Id.*

The testimony of Jefferson County's long-time CSFO, Sheila Jones, supports McPherson's conclusions that Jefferson County would operate at a deficit in the first year after separation, and that the County would likely see an increase in transportation costs and capital expenditures as a direct result of separation. Jones 30(b)(6) Dep. 42:16-48:11, 59:12-60:21, 72:12-75:12. Jones noted specifically that in the aftermath of the Trussville separation, Jefferson County encountered costly challenges related to the transportation and placement of transitioning students and new "move-ins" to that separation's transition zone area. *Id.* at 30:10-35:7. To address these challenges, the County has had to spend an additional half-million dollars on several buses and new personnel to transport students farther distances than required prior to the Trussville separation. *Id.* at 33:8-12, 44:5-19. In addition, several of the County schools have experienced overcrowding as a result of absorbing transitioning students, thus requiring the County to expend many millions of dollars for capital improvements designed to increase classroom sizes and build out existing facilities. *Id.* at 32:24-33:7, 44:20-45:20.

The financial implications of municipal separations have not been limited to increased transportation costs and capital outlays but also include financial strains from changes in the demographics of Jefferson County's student body and tax base. According to Jones, recent municipal separations, including Trussville, have not only contributed to an increase in the County's district-wide percentages of student poverty but have also compromised the County's ability to derive funding from property taxes and other local sources. *Id.* at 25:23-26:4, 27:6-10, 37:25-38:23, 53:19-56:17. Jones explained that while any loss of County revenue as a result of a separation is detrimental, those losses are "compounded with the fact that typically in those

municipal areas, the property values are higher,” and “community support in relation to taxes” is greater. *Id.* at 55:21-56:17. She also expressed concern that the increase in poverty rates in the County would have an impact on the upcoming tax renewal vote, which would allow the County to continue collecting taxes from families in the district, and, critically, to pledge bond money so it may borrow funds to build a new high school should Gardendale separate. *Id.* at 56:18-61:16.

Jones’s view of the link between the demographic and financial implications of municipal separations is consistent with Gardendale’s own financial expert’s conclusion that a Gardendale separation would lead to an increase in the proportion of County students eligible for free and reduced lunch. *See Veronese Report* at 7 (showing an increase in the proportion of FRL-eligible students in Jefferson County as a result of the separation, and that the resulting County system will have nearly twice the proportion of FRL-eligible students as a Gardendale City system (28.47% in Gardendale compared to 50.19% in Jefferson County)). While Gardendale’s expert took no steps to assess the financial implications of this increased poverty rate, the United States’ quality of education expert concluded that without Gardendale – which has far fewer households falling below the poverty line than the County as a whole and an average annual household income that is more than \$10,000 higher than that in the County – “the district will . . . be losing the potential local fundraising to support additional activities and resources for the Gardendale schools and ultimately, the district as a whole.” *Yun Report* at 42, 44.¹⁹ The loss of County schools capable of raising local funds would inevitably place greater financial strain on the County’s central office.

¹⁹ In reaching this conclusion, the United States’ expert explains that a higher median household income in a city is suggestive of an enhanced ability to support local schools, and “[s]chool fundraising from the community is an important supplemental income stream that can make the difference between improved infrastructure (Chromebooks, playground equipment) and doing without.” *Yun Report* at 42. The privately funded Gardendale City Schools Foundation, for example, has provided substantial support to local schools in the form of grants to teachers and other donations. *Dunlap* 30(b)(6) Dep. 34:12-18, 39:4-16; *Salter* Dep. 25:22-27:3, 28:8-31:15.

C. Under these circumstances, the Court should find that Gardendale has not carried its burden to demonstrate that its separation will not have a material adverse financial effect on Jefferson County’s desegregation efforts.

Gardendale’s failure to conduct a full financial impact analysis is similar to that of Valley City, the municipality denied the right to separate in *Chambers*. Like Valley City officials, Gardendale City “officials did no comprehensive study of the financial impact on the [larger] County system of operating a separate district,” and witnesses “admitted that they did not examine the impact of separation on the surviving County system.” 849 F. Supp. at 1489-90. Gardendale officials evaluated only the revenues Jefferson County would receive after a separation, wholly ignoring any impact on expenditures and leaving the Court with “only a part of the picture.” *Id.* at 1491. Like Valley, Gardendale also based its budget estimates on the proportion of current Jefferson County students who would be assigned to the new Gardendale system, multiplying each budget item by that ratio rather than using actual student counts. *Id.* at 1490 (“proportional approach does not furnish an accurate projection of the actual costs to each system of maintaining the status quo; *i.e.*, the level of educational offering currently available in the single county district”). Gardendale “did not, for example, analyze the distribution in the two proposed school systems of children having special educational needs,” or “the proportion of students from families below the poverty line,” even though it had access to this information, and even though local costs for providing special programs and services to these students “can be a substantial burden.” *Id.* at 1490; McPherson Dep. 93:14-96:9, 218:7-220:6; Jones 30(b)(6) Dep. 63:1-18 (special education is a “major financial issue for us” and “a very real financial concern for Jefferson County”).

Just as the *Chambers* court rejected Valley City’s unsupported assertion that the county district would not be affected adversely by the establishment and operation of a separate

municipal school system, so too should this Court reject such an assertion by Gardendale. 849 F. Supp. at 1499. The record evidence demonstrates that Gardendale’s proposed separation is likely to “increase the overall costs of providing even a minimal level of educational services to the children of [the] County,” “promote unnecessary duplication and prevent educationally sound and fiscally prudent consolidation of programs and schools,” and restrict the ability of the county district “to raise adequate local revenues to address . . . problems” and “deliver a high-quality education” for its students. *Id.* at 1498. Moreover, central to Gardendale’s proposed separation is the expectation that it will receive – at no cost – a multi-million dollar high school facility that has served as a regional educational center in the County and drawn a racially diverse group of students into its classrooms. Finally, Gardendale has not provided any indication – through its numerous budgets, financial analyses, witness testimony, or otherwise – that it contemplates contributing resources toward the final dismantling of the dual school system in Jefferson County. Indeed, it has expressed clearly a desire *not* to be a part of the work required to achieve unitary status. *See e.g.*, Martin 30(b)(6) Dep. Vol. II & Ex. 8 (Superintendent Weekly) (“Our team’s takeaways from the week are that (1) if Jefferson County really does aim to gain Unitary Status there is going to be an excessive amount of work to be done across the entirety of the county and (2) we need to do everything to make sure we are not lumped into that process.”); Gardendale Answer in Intervention, Doc. 1090 (averring that federal desegregation mandates should not and do not apply to Gardendale’s proposed school system or to the Jefferson County school system); *see also* discussion *infra* Section III.

Under these circumstances, Gardendale has not carried its evidentiary burden to demonstrate that its proposed separation would not deplete Jefferson County’s financial resources and impede Jefferson County’s desegregation efforts. *See Ross*, 583 F.2d at 715

(finding that the city system had not borne its evidentiary burden, and that record evidence showed the departure of the city from the county system “would have a material adverse financial [e]ffect on future desegregation efforts”); *Chambers*, 849 F. Supp. at 1498 (finding that, in light of the financial implications of the proposed separation, “formation and operation of a separate system at this time will disrupt and impede progress toward the complete eradication of the lingering vestiges of the dual system”); *Wright*, 407 U.S. at 468 (finding that “any increased quality of education provided to city students would, under the circumstances . . . have been purchased only at the price of a substantial adverse effect upon the viability of the county system”).

III. Gardendale Has Not Demonstrated That it is Able and Intends to Comply with This Court’s 1971 Order.

Not only has Gardendale failed to demonstrate that its proposed separation will not impede Jefferson County’s efforts to become a unitary school system, but it has also failed to establish its good faith commitment to implementing the specific provisions of the 1971 *Stout* Order and attaining that Order’s ultimate objectives. Indeed, in an Answer in Intervention filed on August 19, 2016, Gardendale suggests that this Court’s desegregation orders do not bind it at all. Doc. 1090 at 2-3, 5-7. As Gardendale cannot demonstrate to the Court “‘by clear and convincing evidence’ that it is able and intends to comply with the court’s orders concerning its role in desegregation of the county school district,” *Chambers*, 849 F. Supp. at 1501 (quoting *Stout*, 466 F.2d at 1215), its Motion to Separate should be denied.

In addition to desegregation provisions applicable to the County as a whole, the 1971 *Stout* Order contains specific provisions applicable to separating municipal school systems. Doc. 226 V (a)-(d). Those provisions require any new school system formed in Jefferson County after the date of the Order and prior to Jefferson County’s attainment of unitary status to:

(c) ... make sufficient space available for black students from the county system in such number that, added to the number of black students included in the annexation or new school zone, equals one-third of the white students included in the annexation or new school zone ... [and]

(d) ... attain the percentage of black faculty and black staff members that exists in the county system at the time of the formation of the new system, and shall offer to retain all teachers and staff assigned to schools at such time which are to be within the area of the new system.

Prior to its intervention in this litigation, Gardendale expressed no intention of complying with these or other applicable provisions of the *Stout* Order. Nor has Gardendale since identified any specific plan for ensuring full compliance with the terms of the Order.

Although Gardendale's separation proposal technically satisfies the "one-third" requirement of Section (V)(c) of the *Stout* Order, Gardendale met this requirement by including North Smithfield – a non-contiguous area south of Gardendale with a nearly all-black population – in its proposed system on an "indefinite" basis. *See* Doc. 1040 at 5; Martin 30(b)(6) Dep. Vol. I 90:2-10. The inclusion of students in this area came only after Plaintiffs expressed concerns regarding the demographic makeup of Gardendale's proposed system and the segregative impact it would have on Jefferson County students, particularly those in North Smithfield who, in the aftermath of a separation, would likely be reassigned from Gardendale High School to Minor High School – a predominantly black high school with inferior facilities and fewer course offerings. Martin 30(b)(6) Dep. Vol. I 92:4-18, 97:10-100:14; Martin 30(b)(6) Dep. Vol. II 163:7-167:8; Segroves Dep. 57:17-58:8. Notwithstanding their inclusion, North Smithfield students will not attend Gardendale schools on equal footing with all other Gardendale students, as they do not live within the Gardendale City limits and cannot have representation on the Board of Education or other municipal decision-making bodies. Martin 30(b)(6) Dep. Vol. I 36:18-37:14, 107:24-108:20, 111:10-114:25; Lucas 30(b)(6) Dep. 82:22-83:5; *see* discussion

infra Section IV(B)(2). The vulnerabilities inherent in the grounds on which North Smithfield students are included are further compounded by the fact that the students can be excluded at any time should unitary status be granted to Gardendale or Jefferson County. Martin 30(b)(6) Dep. Vol. I 90:2-91:19, 103:11-15; Martin 30(b)(6) Dep. Vol. II 241:10-244:13, 249:25-253:4 & Ex. 10; Segroves Dep. 117:13-119:2.

In other words, Gardendale has accomplished technical compliance with the student assignment requirements of Section V(c) of the Order without ensuring that North Smithfield students will have equitable representation or access to its school system. Gardendale thus lacks the kind of “specific” and “future-oriented” policies, decisions, and courses of action vis-à-vis the North Smithfield community that courts look to as evidence of a good-faith commitment to an enduring desegregation remedy. *See Dowell*, 8 F.3d at 1513; *see also Chambers*, 849 F. Supp. at 1485, 1500 (finding that where a separating district has taken no position on important questions such as those concerning voting rights of parents outside the city limits, there is an increased potential for an unnecessarily detailed level of supervision from the court which “ultimately will impede the County’s progress toward a unitary system from which all vestiges of past discrimination have been eliminated”).

Gardendale’s failure to comply with the faculty and staff requirements of Section V(d) of the *Stout* Order is plain. Gardendale’s superintendent, Dr. Patrick Martin, admitted that he was not familiar with these requirements or the demographics of the faculty and staff in Gardendale schools and Jefferson County as a whole. Martin 30(b)(6) Vol. II at 169:6-178:24. He also admitted that he has had no experience recruiting, hiring, or working with black faculty or staff, Martin Dep. 86:23-95:15, and that Gardendale has no specific plan for how it would increase black faculty and staff representation in a Gardendale City school system from the current level

of 4% to the 18% level required under the Order, Martin 30(b)(6) Dep. Vol. II 180:10-182:20. Moreover, as Jefferson County's superintendent and CSFO have acknowledged, separating systems' efforts to recruit black faculty and staff often have the effect of undermining Jefferson County's ability to satisfy its own faculty and staff obligations under the Order.²⁰ See Pouncey 30(b)(6) Dep. 69:14-71:14; Jones 30(b)(6) Dep. 40:1-42:9; see also Martin 30(b)(6) Dep. Vol. II 182:21-186:11 (acknowledging that both Gardendale and Jefferson County would be drawing from the same competitive pool of minority candidates).

Not only has Gardendale failed to develop a plan for ensuring compliance with the *Stout* Order's requirements for separating systems, but it has also failed to develop a plan for ensuring compliance with the broader desegregation obligations it will inherit as a stand-alone system. While Gardendale's superintendent was hired in July of 2014 to "get through the separation process," "set[] up the new system," and "provide vision for the Gardendale Board of Education," he could not recall Gardendale mentioning desegregation at any point during the interview process, or otherwise charging him with any desegregation-related tasks. Martin Dep. 21:5-23:18, 30:20-31:18; Lucas 30(b)(6) Dep. 80:2-17. In fact, Dr. Martin did not even review the *Stout* Order until six months after he was hired. Martin 30(b)(6) Dep. Vol. II 159:15-160:7. Even then, his review was performed in anticipation of discovery, not for purposes of ensuring Gardendale's ability to effectively discharge its desegregation obligations. *Id.* Months after filing its Motion to Separate, Gardendale still had not conducted any due diligence to identify racial inequities or other desegregation concerns within the Gardendale schools, Martin 30(b)(6)

²⁰ Indeed, in the Parties' February 6, 2015 Joint Report to the Court, Jefferson County acknowledged that it had "more work to do in the area of faculty and staff, particularly to address employee composition at the different schools in the system, consistent with *Singleton* ... The Board understands that it needs to employ a more structured employment process, focused on recruitment, selection, hiring, training and retention, designed to achieve the objective of desegregation." Doc. 998 at 10-11.

Dep. Vol. II 187:1-194:20, 216:2-219:11, nor had it developed or approved a plan to address them, *id.* at 160:8-162:21, 180:10-184:18, 187:1-188:16; Lucas 30(b)(6) Dep. 79:2-80:1.

As the court made clear in *Lee v. Chambers*, “it is not sufficient for a splinter district merely to agree to accept a desegregation goal.” 849 F. Supp.at 1502. Instead, the separating district must “establish what its operations will be,” and “must express its precise policy positions on each significant facet of school district operation.” *Id.* (quoting *Ross*, 559 F.2d at 945). Here, Gardendale can point to no evidence indicating that it has specific plans for complying with the provisions of the *Stout* Order and discharging its broader desegregation obligations. Indeed, it has recently disavowed any desegregation obligations. Doc. 1090 at 2-3, 5-7. For this reason, Gardendale has failed to demonstrate “a good-faith commitment to the future operation of the school system through ‘specific policies, decisions, and courses of action that extend into the future.’” *Lee*, 2004 WL 2359667 at *4 (quoting *Dowell*, 8 F.3d at 1513). Its motion should therefore be denied at this time.

IV. Gardendale’s Proposed Separation Plan Does Not Accomplish any of its Stated Objectives, Save for Its Generalized Desire for Local Control.

Not only would Gardendale’s proposed separation impede desegregation of Jefferson County and run afoul of the specific obligations set forth in the *Stout* Order, but it would also fail to accomplish all of the objectives given by Gardendale for separation, save a generalized desire for local control. Gardendale asserts that its proposal to separate from Jefferson County and create its own municipal school system is motivated by a desire to provide an “excellent educational experience,” decrease classroom sizes, and exert “local control” over the operation of Gardendale schools. While testimony given by Gardendale’s Board members, Advisory Board members, and employees is replete with references to these objectives, that testimony fails to explain how the proposed separation will accomplish most of the objectives. The testimony

shows only that separation will provide Gardendale with control over the composition of its schools, thus insulating it from Jefferson County's past practice of including Gardendale schools in its efforts to further desegregation.

A. Gardendale has no plan to provide improved or different educational opportunities from those provided by Jefferson County.

When a municipal system seeking to separate has “no specific plans for the operation of [its] schools,” the argument that “a separate system is necessary to achieve ‘quality education’ for city residents” is “open to question.” *Wright*, 407 U.S. at 467-68. Here, Gardendale asserts that one of its objectives in creating a separate municipal school system is “to provide an excellent educational experience for [its] students.”²¹ *Martin* 30(b)(6) Dep. Vol. I 32:25-33:4. This desire to improve educational opportunities is rooted in the idea that “smaller, locally-controlled systems perform higher than larger systems.” *Salters* Dep. 51:2-6; *see also* *Lucas* 30(b)(6) Dep. 17:8-12.²² However, when pressed to identify the specific steps it will take as a locally-controlled system to improve education, Gardendale offers little more than circular explanations devoid of tangible details. *See Segroves* Dep. 28:18-24 (Q: “[C]an you think of any specific things that the Jefferson County system was doing that you would do differently as a smaller system?” A: “I haven’t developed . . . a list of specifics.” Q: “Any ideas?” A: “No, ma’am.”); *Salters* Dep. 91:11-92:6 (Q: “. . . I just wanted to make sure – can you tell me any specific changes that you would make if you were allowed to separate?” A: “Just overall

²¹ *See also Segroves* Dep. 78:23-79:2 (Gardendale is “[s]imply seeking an improved level of student achievement”); *Salters* Dep. 46:11-19 (efforts to form a separate school system and secede from Jefferson County . . . began with a discussion of the “possibility of a high-performing school system within . . . our area”); *Lucas* 30(b)(6) Dep. 16:7-17:7 (when “you look at any kind of ranking of school systems within the state of Alabama . . . Jefferson County is always . . . towards the bottom, certainly not at the top or even in the top 25 percent. So . . . it’s just this idea that there’s a better education out there . . . for our children”).

²² According to Gardendale, these claims are based on school district rankings gathered from online websites, *Salters* Dep. 51:7-22; *Segroves* Dep. 83:15-21; *Lucas* 30(b)(6) Dep. 33:14-24, and on anecdotal “history,” which demonstrates that “smaller municipal locally-led public education systems perform better,” *Segroves* Dep. 28:6-17.

improvements, general improvements of education which are reflected in the size of the school system.” Q: “General improvements but nothing specific; correct?” A: “Test scores, things like that.” Q: “[S]o the changes would be the output. Do you have any changes in input in terms of how you would do things differently?” A: “Not specifically.” Q: “So other than general improvements, nothing specific other than that? I just want to make sure I’ve got it all.” A: “General improvements.”); Segroves Dep. 26:16-27:14 (A: “[W]e could perhaps serve our children better and provide a better quality of education.” Q: “How?” A: “Through the formation of a municipal system district.” Q: “Well, specifically, how? How would a new school system do things better?” A: “. . . locally-led municipal school systems perform better than larger school districts.” Q: “So that’s sort of the by-product. But how would you create an environment where students perform better?” A: “Through local leadership.” Q: “And what would local leadership do differently than Jefferson County leadership?” A: “I can’t speak to that in our case because we haven’t had access to faculty and staff²³ in order to determine yet what our steps would be for improvement and thus haven’t begun the strategic planning process.”).²⁴

²³ Throughout depositions, Gardendale’s Board members, Advisory Board members, and employees cited their inability to gain unfettered access to Gardendale school facilities and faculty as a reason for their incomplete plan for operation. However, this explanation is without merit. Gardendale has not provided evidence suggesting that Jefferson County or anyone else has prohibited it from gathering sufficient information to develop an educational plan for its school system, much of which is publicly available. *See, e.g.*, Martin Dep. at 63:2-22 (testifying that he could have requested information related to Gardendale schools’ career tech programs from Jefferson County but has not); Martin 30(b)(6) Dep. Vol II 193:25-194:7 (testifying that Gardendale never sought information regarding to desegregation-related issues at Gardendale schools); Segroves Dep. 38:1-22 (testifying that he never sought information about what caused the increase in classroom sizes at Gardendale Elementary). Moreover, to the extent Gardendale has expressed dissatisfaction with the education provided by Jefferson County at Gardendale schools, its development of a new educational plan should not hinge entirely on the involvement of the very County personnel with whom it is dissatisfied.

²⁴ *See also* Salters Dep. 54:1-18 (Q: “So you don’t have any . . . specific things that you are anticipating that the Gardendale City Schools will be able to provide?” A: “Generally, better education.” Q: “[Y]ou don’t have any specific things that Gardendale City Schools will provide? You said general . . .” A: “[S]pecifically a better education.” Q: “In what way specifically?” A: “In . . . every way.”); Lucas 30(b)(6) Dep. 35:23-36:8 (Q: “Anything that you might do differently in Gardendale School System that isn’t being done in Gardendale schools today to your knowledge.” A: “I think it just comes back to the fact that we’re going to have more funds per student. When you look at it on a per-student or per-classroom basis, we’re going to have more funds.”).

To the extent Gardendale provides any detail regarding its operational plans, that detail indicates that Gardendale's operations will not differ from Jefferson County's in any meaningful way. For example, after suggesting that – post-separation – Gardendale might adopt an innovative, technological approach that moves away from a “sit and get” type of educational platform[] to [one] where there's more interaction with students,” Gardendale's superintendent admitted that Jefferson County is already “working in that direction as well.” Martin 30(b)(6) Dep. Vol. I 56:5-57:20, 57:25-58:9. In addition, when asked to explain the educational opportunities Gardendale would offer that Jefferson County does not, Gardendale's superintendent testified that he is “sure there's some best practices that we would look to take from Jefferson County.” *Id.* at 58:25-59:7. As this testimony indicates, Gardendale has no concrete plans for providing an educational experience that is different from, let alone superior to, that provided by Jefferson County. Instead, it plans only to replicate Jefferson County's delivery of services on a smaller scale. Martin 30(b)(6) Dep. Vol. I 63:8-12 (testifying that there is currently no plan to provide students different resources); Segroves Dep. 81:5-13 (Q: “[I]n what way are you going to have higher student achievement?” A: “[T]hose plans, those actions, those areas of improvement, once identified, will serve as a basis for the board to establish a strategic plan, a plan of excellence, to move that needle. At this point the board hasn't had the opportunity to develop those and prioritize those areas of improvement.”).

Gardendale has also cited overcrowding of classrooms, particularly those at Gardendale Elementary School, as a reason for separation. Lucas 30(b)(b) Dep. 28:19-29:11; Segroves Dep. 34:7-19; 36:7-18; Salters Dep. 38:10-17. However, Gardendale has proposed no plan to alleviate such overcrowding. Lucas 30(b)(6) Dep. 37:20-38:11. In fact, Gardendale's own demographic expert admits that the student attendance boundaries proposed under the Plan maintain, if not

increase, overcrowding at Gardendale Elementary by adding North Smithfield students currently enrolled at Fultondale Elementary. Sachs Dep. 131:4-133:12; *see also* Cropper Report at 22 (“Under the proposed separation plan, Gardendale Elementary school is made even more overcrowded, going from 114% utilization to 121%.”); Doc. 1040 at 4-5. Gardendale’s own financial analyses confirm the lack of a plan for addressing overcrowding, as those analyses do not evaluate – much less account for – the costs of adding additional teachers to achieve the small class sizes Gardendale desires. Dunlap 30(b)(6) Dep. 91:5-19 (Q: “Is there any plan to increase teacher units?” A: “Not initially. We haven’t talked about any plans to increase teacher units.” . . . Q: “[Y]ou’ve never been asked to crunch any numbers about what it would cost GBOE to add more teachers?” A: “I have not.”); *see also* McPherson Report at 21, 29 (finding under both Plan I²⁵ and Plan II²⁶ that Gardendale would have no funds to hire more locally funded teachers).

In sum, while Gardendale asserts that its proposed separation is necessary to improve educational outcomes and reduce classroom size, its proposal includes no plans for reaching these objectives. Even municipalities with concrete plans for establishing a high-quality school system have been denied the right to separate where separation would impede desegregation. *See Wright*, 407 U.S. at 470, 479 (denying a request to separate despite the fact that the city provided details of its proposed educational program, including “[a] kindergarten program, ungraded primary levels, health services, adult education, and a low pupil-teacher ratio”). That Gardendale supplies no concrete plan for establishing a high-quality school system only bolsters the conclusion that its Motion should be denied.

²⁵ Only students living within Gardendale city limits.

²⁶ All current students in Gardendale schools, regardless of whether such students live within Gardendale city limits.

B. Gardendale’s proposed separation stems from the Board’s generalized desire for local control, which would allow Gardendale to insulate itself from Jefferson County’s past practice of including Gardendale schools in its efforts to further desegregation.

Given that Gardendale cannot demonstrate how its proposed separation would accomplish its stated objectives of improving educational opportunities and alleviating overcrowding, its motivation for separating reduces to a desire for exclusive (*i.e.*, “local”) control over the makeup and operation of Gardendale schools. Martin 30(b)(6) Dep. Vol. I 63:22-25 (Q: “Can you give me some other reasons for a new school system?” A: “The one thing that . . . I’ve heard a lot about is . . . the idea of local control.”); Dunlap 30(b)(6) Dep. 27:9-15; 32:4-9 (testifying that the Gardendale Board was formed because “[t]hey wanted to exercise their right to local control of their schools,” meaning “they would be more intimately involved being a small school system”); Lucas 30(b)(6) Dep. 27:22-25 (“we feel like [] a locally-controlled, better-funded school system will . . . provide a better education.”); Lucas 30(b)(6) Dep. 28:8-18 (pointing to “local control” as a “major tenet” as to how a new municipal school system will provide a better education for students); Salters Dep. 53:11-19 (“ . . . the larger mega systems become sort of unmanageable. It’s just too big. So local control, more manageable.”). Because Gardendale cannot explain how local control would remedy any genuinely held concern regarding the quality of education in Gardendale schools, and because the effect of such control would be to insulate Gardendale from Jefferson County’s desegregation efforts, the generalized desire for local control is an inadequate basis for separation.

1. Gardendale has failed to explain how local control would remedy any stated concern regarding the quality of education at Gardendale schools.

Although Gardendale seeks local control over schools located within the Gardendale city limits, it identifies no past problems arising from control at the county level nor does it articulate

the specific benefits local control will provide in the future. As members of the Gardendale Board of Education and Gardendale Advisory Board acknowledge, prior to moving to separate they never raised any concerns regarding the quality of education in Gardendale schools with Jefferson County. Bagwell Dep. 25:10-27-1 (Q: “Did you have any issues with Gardendale Elementary School, Bragg Middle School, or Gardendale High School while your children were attending them?” A: “I would say that I was probably not a huge fan of one of the principals at the elementary school. . . I felt like she discouraged some of the arts. But I don’t know that I’d call that a real issue. . .” Q: “. . . Did you share those concerns with the principal?” A: “I don’t recall.” Q: “What about with . . . someone from the Board of Education?” A: “I don’t recall if I did or not.” Q: “Have you ever been to a Jefferson County Board of Education meeting?” . . . A: “[N]o. I don’t recall specifically going to a Board of Education meeting for Jefferson County.” . . . Q: “If you had a concern, could you have gone to the Jefferson County Board of Education?” A: “Yes.”); Salters Dep. 43:5-44:9 (Q: “Did you ever share a complaint or concern with the Jefferson County Board of Education?” A: “Not that I recall.” . . . Q: “[C]ould you have gone to a Jefferson County Board of Education meeting?” A: “. . . I assume if it was a public meeting, I could have attended.”); Lucas 30(b)(6) Dep. 55:8-25 [Q: “[Y]ou mentioned that there were some . . . concerns you had about facilities. . . Did you reach out to Jefferson County about [facility] repairs?” A: “No.”); Segroves Dep. 35:10-36:2 (Q: “[T]hat concern [regarding classroom size] was never taken to Jefferson County . . . [b]y you or anyone that you know?” A: “Not by me.” Q: “Anyone that you know?” A: “No.”). In fact, when asked to identify specific reasons – whether raised with Jefferson County or not – for their dissatisfaction with the education their children have received at Gardendale schools, they could not do so, save a general dissatisfaction with the

rankings of the Jefferson County school system as a whole. *See* Lucas 30(b)(6) Dep. 30:25-31:6; Segroves Dep. 34:3-6, 38:23-39:1; Bagwell Dep. 48:14-49:11.

While Gardendale Board and Advisory Board members note that local control would mean managing fewer schools, having a district office closer to teachers and administrators, and having the power to allocate resources to its own benefit in the future, Lucas 30(b)(6) Dep. 17:13-18; Dunlap 30(b)(6) Dep. 29:17-24; Bagwell Dep. 48:10-13, they admit they have no strategy for translating these attributes into improved education in the Gardendale schools. Dunlap 30(b)(6) Dep. 29:17-30:15 (A: “[A]s a district office at Gardendale Board of Education, we would be right there close to the schools, and we would be able to spend more time with the administration and the staffs and be more involved.” Q: “More involved how?” A: “Assisting them, making sure that we are taking the school system in the right direction.” Q: “What direction would that be taking them? I just want to understand sort of how it would be different than the way it is now.” A: “[I]f we have curriculum changes, then we’re there to ensure that we can make those changes that are for the best of the students and the best of the community.” Q: “And how would you figure out what’s best for students in the community?” A: “Well, we haven’t had that chance to meet with the staffs yet, so that’s kind of still an unknown at this point.” Q: “[H]ow you would make it better is still an unknown?” A: “How and what we would do is still unknown.”).

2. Separation and local control over the Gardendale schools results in those schools being insulated from Jefferson County’s desegregation efforts.

By definition, local control is accompanied by the placement of narrow limitations on the groups of children who are eligible to enroll in a school system. As applied to Gardendale, local control would have the effect of insulating the Gardendale schools from Jefferson County’s past practice of including those schools in its efforts to further desegregation. *See* discussion *supra*

Section III.A.1. The desire for such insulation appears to be a driving force in Gardendale's Separation Plan. A weekly update sent by Gardendale's superintendent to the Gardendale Board of Education in September 2015 states clearly, "if Jefferson County really does aim to gain Unitary Status there is going to be an excessive amount of work to be done across the entirety of the county and . . . we need to do everything to make sure we are not lumped into that process." Martin 30(b)(6) Dep. Vol. II & Ex. 8 (Superintendent Weekly); *see also* Ex. 21 at GCS141, (Gardendale City Schools Public Facebook Group Page)²⁷ Chris Lucas (Oct. 2, 2012, 7:08 PM) ("Would Gardendale be required to bring in minorities from outside of the municipal boundaries to achieve some sort of quota? No. The school system is for residents of Gardendale (whatever those boundaries end up being and whatever that racial makeup is)); *id.* at GCS153, Timothy Bagwell (Sept. 12, 2012, 3:03 PM) (discussing benefits of forming a Gardendale school system, including "true local control over our schools," "better control over the geographic composition of the student body," and "protection against the actions of other jurisdictions that might not be in our best interests"); *id.* at GCS101, David Salters (July 19, 2013, 2:59 PM) ("As it stands, Gardendale has no authority nor ability to make decisions about its educational system. Feel free to ask our principals their thoughts about current bussing into and out of Gardendale schools. Ask our principals about double bus routes (where our students have to wait at school until an

²⁷ The Gardendale City Schools Facebook Group Page was created by Timothy Bagwell on September 12, 2012 to discuss the formation of a separate Gardendale City school system. Bagwell Dep. 36:7-37:10, 41:1-43:12, 52:13-54:22; 63:2-66:19; 69:23-72:9; Ex. 21 at GCS156. Chris Lucas and David Salters, both of whom posted frequently on the site, were also among the Page's named administrators. *See* Ex. 21 at GCS126, GCS152. As administrators, they possessed maintenance capabilities, including the right to edit posts, remove members, and manage privacy settings. Bagwell Dep. 57:1-58:5. The Page was made private and inaccessible to the public some time after the start of discovery in this case but has since been made public again. Excerpts of this Page, the full contents of which were preserved by the United States on March 4, 2016, appear at Exhibit 21.

available bus travels to Center Point, drops off those kids, then returns to Gardendale and picks up another load of kids”).²⁸

While Gardendale’s separation proposal does invite North Smithfield residents to attend Gardendale schools on an “indefinite” basis, even this inclusion demonstrates controlled decision-making regarding which children are included in Gardendale schools and on what terms. Gardendale’s superintendent testified that, for the Gardendale community, local control means having the opportunity to elect and give feedback to its own Board of Education members and to have an “amplified voice” that “allows [community members] to be heard.” Martin 30(b)(6) Dep. Vol. I 64:1-10; 65:20-24. The North Smithfield residents included in the new system, however, would not be afforded this opportunity, as they can neither serve on the Gardendale Board of Education nor vote in local school board elections and other municipal decision making processes. *See* Ala. Code § 16-11-2(b) (under Alabama state law, members of a city board of education “shall be residents of the city”); City of Gardendale, Ala., Ordinance 2014-007, § 2 (Mar. 3, 2014), Doc. 1002-3 (establishing a Gardendale City School System whose Board of Education members “shall be residents of the city” to be “elected by the city council”). In short, while Gardendale has crafted a separation proposal that gives *its* residents an “amplified voice” in the proposed municipal school system, black students who live outside of Gardendale but are nevertheless included in the municipal system “will not be on equal footing

²⁸ Starting in 2005 and through the 2012-13 school year, Jefferson County students enrolled in schools in Center Point – a community that is approximately 95% black and 92% FRL-eligible, *see* Yun Report at Table 3 – were given the option under the No Child Left Behind Act (“NCLB”) to transfer to schools in Gardendale. *See, e.g.*, Doc. 906, 976. Comments made on the Gardendale City Schools’ Facebook Page and in other public forums indicate that community members were upset by what was perceived as overcrowding in Gardendale schools caused by NCLB transfers and Jefferson County’s desegregation efforts. *See e.g.*, Ex. 21 at GCS153, Misti Sanderson Boackle (Sept. 13, 2012, 1:41 PM) (“[D]id you know we are sending school buses to Center point and busing kids to OUR schools in Gardendale, as well as from Smithville! This is all due to the "No child left behind act" that if a school doesn't make AYP they can go to another school within their county system. This law had good intentions but has really created a mess for the schools. Smithville kids have been bused here for years due to the desegregation from decades ago and that should have already been changed because we have a very diverse population now in our area. We are busting at the seams and can't continue on this path!”).

with other Gardendale students and their families” because “one group will have an elected representative, and the other will not.” Martin (30(b)(6) Dep. Vol. I 114:8-19; *see also* Lucas 30(b)(6) Dep. 82:22-83:5 (Q: “To be on the Gardendale Board of Education, you have to be a resident of Gardendale; correct?” A: “That’s my understanding.” Q: “[A] person . . . couldn’t live in North Smithfield and be on the Gardendale Board of Education?” A: “To the best of my knowledge, I think the answer would be no.”).

In sum, Gardendale’s Separation Plan fails to address its stated concerns about educational opportunities and classroom overcrowding in any specific way. At bottom, the proposed separation reflects Gardendale’s generalized desire to exert local (*i.e.*, total) control over the composition and operation of Gardendale schools. Because Gardendale cannot explain how local control addresses any genuinely held concern regarding the quality of Gardendale schools, and because such control serves to insulate Gardendale from Jefferson County’s desegregation efforts, the generalized desire for local control is an inadequate basis for granting Gardendale’s Motion to Separate at this time.

CONCLUSION

Gardendale asks this Court to approve a plan that allows it to separate and insulate itself from Jefferson County’s active and purposeful desegregation efforts. This proposed separation threatens to impede the final dismantling of Jefferson County’s dual system by, *inter alia*: depriving the County of its largest, most costly facility, which also has served as one of its most successful vehicles for desegregation to date; exacerbating racial and socioeconomic isolation and segregation throughout the County; compromising the County’s ability to provide quality educational programs to its students; and depleting the County’s financial resources. Should Gardendale be allowed to separate at this time, it would effectively cut the heart out of Jefferson

County's current desegregation efforts and hinder its ability to comply with this Court's directives moving forward. Finally, despite its own affirmative desegregation obligations, Gardendale has provided no indication that it is committed to the desegregation of Jefferson County or of any school system it may operate. Until such time as Gardendale is willing and able to make such a demonstration to this Court, its motion to operate a separate municipal school system should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 26, 2016, I served the parties listed below with a copy of this document by email:

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