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MEETING

Reforming Indiana's 1865 Education Law

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Towards the end of the Civil War, the state of Indiana passed legislation that continued to exclude blacks from various social opportunities. A prominent example of this was the 1865 School Law, passed in March 1865, which excluded black children from the same educational opportunities as their white counterparts. In the years that followed, multiple attempts were made under Oliver Morton's administration to amend the law to allow African American children access to public schools. Change finally occurred during Conrad Baker's administration, 1867 to 1873, as he was a fervent champion of African American rights. Despite support for expanding education to African Americans, progress was delayed by intense racism displayed by various members of the Indiana General Assembly.¹

The 1865 School Law began as House Bill No. 178, presented on by Baskin Rhoads (R) on behalf of the Standing Committee on Education on February 17, 1865.² The goal of the bill was "to provide for a general system of common schools, the officers thereof and their respective powers and duties, and matters properly connected therewith, and for the establishment and regulation of township libraries, and to repeal all laws inconsistent therewith."³ John Coffroth (D) presented an amendment to the bill which introduced racism and segregation into the bill. Section 10 of the bill describes how Township Trustees would administrate education affairs including establishing schools for children and ensuring they are equipped with adequate

¹ Arnold Ernst R Mueller, "Conrad Baker, Former Governor of Indiana" (MA Thesis, Butler University, 1944),135-7.

² *Journal of the House of Representatives of the State of Indiana: During the Forty-Fourth Session of the General Assembly* (Indianapolis, IN: W.B. Holloway, State Printer, 1865), 468; "Pages 326-327, Biographical and Historical Record of Vermillion County, Indiana," accessed September 2, 2019, <http://sites.rootsweb.com/~invermil/history/bhrvc326-27.html>; Republican members of the Indiana General

Assembly will be noted by (R), and Democrats will be noted by (D). Party information retrieved from Rebecca A. Sheperd, Charles W. Calhoun, Elizabeth Shanahan-Shoemaker, and Alan F. January, eds. *A Biographical Directory of the Indiana General Assembly*, vol. 1. (Indianapolis: Indiana Historical Bureau, 1980), 525-6.

³ *Journal of the House of Representatives of the State of Indiana: During the Forty-Fourth Session of the General Assembly*, 468

resources. Coffroth proposed the addition of the word “white” to precede the word “children.”⁴ This change in wording meant that townships and trustees would not be obligated to establish schools for blacks and other non-white children, thus excluding them from educational opportunities. This amendment to the bill passed 62-20.⁵ While the Republican Party was split on this decision, all voting Democrats in the House voted yes on this amendment, exemplifying how they sought to deny rights and privileges to blacks following during Reconstruction. The bill passed in the House 76-10 and in the Senate, 37-9.⁶

The new law, titled “An Act to provide for a general system of Common Schools...” was signed into law on March 6, 1865. Although the law created a system of public schools, legal racism was embedded into the law starting with Section 1, which reads

Be it enacted by the General Assembly of the State of Indiana, That there shall be annually assessed and collected, as State and county revenues are assessed and collected... for the purpose of supporting a general system of Common Schools: Provided, however That the taxes aforesaid shall not be levied and collected from negroes nor mulattoes.⁷

Section 10 of the Act aligned with this by specifying that township and school trustees were in charge of establishing schools for white children.⁸ Democrats argued that because black residents were not being taxed, it was equitable that they did not receive state-funded education. Section 12 of this law, however, gave township trustees the ability to levy taxes in their jurisdiction “for the construction, renting or repairing of school houses, providing furniture, school apparatus and fuel therefor, and for the payment of other necessary expenses of the school.”⁹ While blacks did

⁴ *Journal of the House of Representatives of the State of Indiana: During the Forty-Fourth Session of the General Assembly*, 678.

⁵ *Journal of the House of Representatives of the State of Indiana: During the Forty-Fourth Session of the General Assembly*, 678.

⁶ *Journal of the Indiana State Senate: During the Forty-Fourth Session of the General Assembly*, 553.

⁷ *Laws of the State of Indiana Passed at the Forty-Third Regular Session of the General Assembly* (Indianapolis, IN: W.B. Holloway, State Printer, 1865), 3.

⁸ *Laws of the State of Indiana Passed at the Forty-Third Regular Session of the General Assembly*, 6.

⁹ *Laws of the State of Indiana Passed at the Forty-Third Regular Session of the General Assembly*, 6.

not have to pay state taxes for schools they could not attend, they were subject to local taxes for a service they were legally not able to utilize.

Following the passage of the school law in spring 1865, attempts were made over the next few years to expand the common school system to black children. The Indiana State Convention of Colored Men met in October, and called for access to the common school fund, mentioning that education was key to securing “intellectual and moral worth necessary to sustain a Republican form of Government” and that they would petition the General Assembly to amend the law.¹⁰ Before the law was amended, some African American communities resorted to private schooling, including those operated by churches.¹¹ A.C. Shortridge, the Superintendent of Indianapolis schools at the time, reported that these schools relied on charities and gifts. They had school buildings not conducive to learning, limited school furniture, insufficient textbooks, and teachers with inadequate training. After seeing these schools, Shortridge made a case that African American children should benefit from the common school fund.¹²

Following Shortridge’s report, schools for African Americans opened in urban areas such as Indianapolis and Evansville. In Indianapolis, the first was on the West Side, led by a local reverend as principal although maintained by tuition fees paid by parents.¹³ The African Methodist Episcopal (AME) church and the Society of Friends opened a school together on the East Side of Indianapolis.¹⁴ The Evansville AME church and the American Missionary Association began operating schools in the late 1850s. In 1865 a wealthy group of Evansville citizens petitioned to open a school for African Americans. The City Council approved a small

¹⁰ “The Colored Convention,” *Indianapolis Daily Journal*, October 25, 1865.

¹¹ Emma Lou Thornbrough, *The Negro In Indiana before 1900: A Study of a Minority* (Bloomington: Indiana University Press, 1993), 317.

¹² Thornbrough, *The Negro in Indiana before 1900*, 318.

¹³ “Colored School in the Fourth Ward,” *Indianapolis Daily Journal*, May 24, 1867.

¹⁴ Thornbrough, *The Negro in Indiana before 1900*, 319.

budget to construct the building.¹⁵ Despite this support, the citizens of Evansville were still divided on the idea of African American education. The Democratic-leaning *Evansville Courier* claimed that the school for African American children was nicer than that provided for whites, stating "...that the gushing philanthropy of Evansville outcropped in a finer school-house for little nigger babies than the wealthy citizens have."¹⁶ This claim was later proven false by the *Evansville Daily Journal*.¹⁷ The *Courier* article exemplified racism in Indiana, though this type of rhetoric helped fuel the efforts of those in urban areas to amend the school law.

In an address to the Indiana General Assembly during a special session on November 14, 1865, Governor Oliver Morton recommended that the General Assembly amend the law to extend the common school tax to African Americans, providing schools for black children. The next day, Representative Gregory (R) of Warren introduced House Bill No. 208 which would amend the law to enumerate black children and construct schools under the same rules and regulations of schools established for white children.¹⁸ In the Education Committee minority report, Stephen Burton (D) declared "We believe that our Government was established by white men, for white men and women, and children, and their posterity forever."¹⁹ Burton continued by stating how black people should be subordinate to whites, justifying the exclusionary components of the 1865 school law. "We desire to rid our State of this degraded, inferior race, rather than invite it hither, which we believe would be the effect of breaking down the barriers

¹⁵Darrel E. Bigham, *We Ask Only a Fair Trial: A History of the Black Community of Evansville, Indiana* (Bloomington: Indiana University Press, 1987), 40-1.

¹⁶"Overgushing and Over-reaching Philanthropy," *Evansville Courier*, December 9, 1865; reprinted in *Evansville Daily Journal*, December 12, 1865.

¹⁷"The Meaner a White Man Becomes, the Worse he Hates a Nigger," *Evansville Daily Journal*, December 12, 1865.

¹⁸*Journal of the House of Representatives of the State of Indiana: During the Called Session of the General Assembly* (Indianapolis, IN: W.B. Holloway, State Printer, 1865), 53-4, 116.

¹⁹*Journal of the House of Representatives of the State of Indiana: During the Called Session of the General Assembly* (Indianapolis, IN: W.B. Holloway, State Printer, 1865), 145.

and admitting the negroes to our common schools.”²⁰ This statement exemplified the deep-seated racism that was present in Indiana. After a 37-40 vote, the bill died in the House.²¹

At the beginning of the 1867 session of the Indiana General Assembly, Governor Oliver Morton criticized the refusal to amend the school law to allow the establishment of schools for black children. In his address, Morton stated, “An ignorant and degraded element is a burden and injury to society, whatever may be its color... [Whatever] colored population we may have, should be educated and enabled to become intelligent, industrious, and useful members of the community.”²² By January 24, however, Morton would take his place in Congress as a United States Senator from Indiana. Therefore, Lt. Governor Conrad Baker transitioned into the role of Governor of Indiana.²³

Prior to the start of the 1867 session, the General Assembly received the Biennial Report from George W. Hoss, the Superintendent of Public Instruction for the State of Indiana. The report included Hoss’s own findings, in addition to decisions made at the state convention of school examiners held in March 1866. The state convention proposed amendments to the 1865 school law, including one aimed at extending benefits of the common school system to African Americans.²⁴ Later in the report, Hoss presented the expansion of educational opportunities as a logical extension of previous legislation, such as the Thirteenth Amendment, the Civil Rights Act of 1866, and the judicial nullification of Article Thirteen of the Indiana State Constitution

²⁰ *Journal of the House of Representatives of the State of Indiana: During the Called Session of the General Assembly* (Indianapolis, IN: W.B. Holloway, State Printer, 1865), 145.

²¹ *Journal of the House of Representatives of the State of Indiana: During the Called Session of the General Assembly* (Indianapolis, IN: W.B. Holloway, State Printer, 1865), 510.

²² *Journal of the Indiana State Senate: During the Forty-Fifth Session of the General Assembly*, (Indianapolis, Alexander H. Conner, State Printer, 1867), 35-6.

²³ *Journal of the Indiana State Senate: During the Forty-Fifth Session of the General Assembly*, 155.

²⁴ “Fourteenth Report of the Superintendent of Public Instruction for the State of Indiana: Being the Third Biennial Report, and for the years ending August 31, 1865, and August 31, 1866,” *Documentary Journal of the General Assembly of the State of Indiana, 1865* (Indianapolis: Samuel M. Douglass, State Printer, 1866) 325.

which barred African Americans from entering the state.²⁵ Hoss also made a connection between the fact that the 1851 Indiana Constitution guaranteed equal access to state citizens and recent developments would define most African Americans in the state as such.

Members of the 1867 session of the General Assembly sought to honor Morton's request and amend the school law. Senate Bill No. 117 was entitled, "an act to amend sections first and tenth of an act entitled an act to provide for a general system of common schools..." which targeted the two sections which specifically denied public education for blacks.²⁶ In the Senate, the bill passed 26-16 on party lines.²⁷ When the bill went to the House of Representatives, however, it failed 30-44. Like previous votes, no Democratic voted in favor for the bill.²⁸

On December 31st 1868, Governor Baker and the General Assembly received the next biennial report of the Superintendent of Public Instruction. In this report, the new Superintendent Barnabas C. Hobbs discussed the denial of public education to African Americans in Indiana, describing it as "a dark chapter in our history."²⁹ Hobbs believed that one of the foundations of the education system was that it be accessible to all, therefore African Americans in Indiana were being unconstitutionally denied their right to education. He explained that the Public School Funds were designed for Indiana citizens without regard to color, and the Fourteenth Amendment to the United States Constitution overrode any exclusionary laws that had been passed by the General Assembly. Hobbs specifically criticized the implementation of special

²⁵ "Fourteenth Report of the Superintendent of Public Instruction for the State of Indiana: Being the Third Biennial Report, and for the years ending August 31, 1865, and August 31, 1866," 337.

²⁶ *Journal of the House of Representatives of the State of Indiana: During the Forty-Fifth Session of the General Assembly* (Indianapolis, Alexander H. Conner, State Printer, 1867), 888.

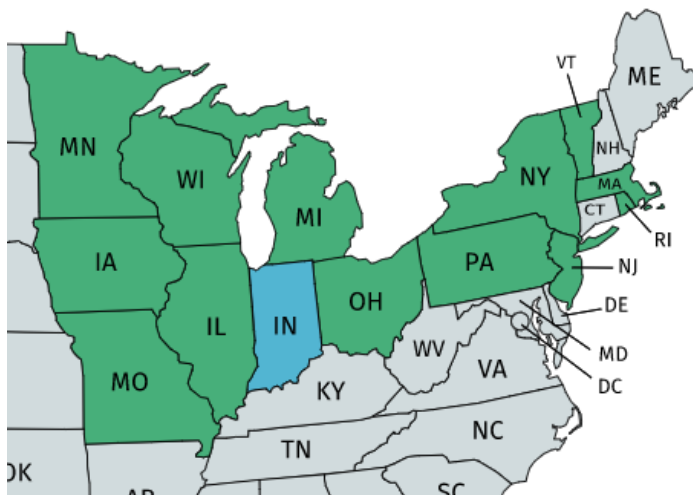
²⁷ *Journal of the Indiana State Senate: During the Forty-Fifth Session of the General Assembly*, 704.

²⁸ *Journal of the House of Representatives of the State of Indiana: During the Forty-Fifth Session of the General Assembly*, 1184.

²⁹ "Sixteenth Report of the Superintendent of Public Instruction for the State of Indiana: Being the Fourth Biennial Report, and for the years ending August 31, 1867, and August 31, 1868," *Documentary Journal of the General Assembly of the State of Indiana, Part I, for 1867-1868* (Indianapolis: Alexander H. Conner, State Printer, 1869), 9-11.

school taxes, which African American citizens had to pay for the construction of school buildings for white children.³⁰

To gather evidence to support his views, Hobbs had reached out to Superintendents of Public Instruction in other states to learn what educational privileges African Americans received in other parts of the country. He focused the study on “free states,” which included Vermont, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Ohio, Michigan, Illinois, Wisconsin, Minnesota, and Iowa, as well as Missouri, a former slave state. Out of these thirteen states, only in Illinois were African Americans not entitled to the privileges of the public school fund, though any taxes they paid towards the fund were refunded.³¹ Indiana was alone in denying African Americans educational opportunities, while still requiring them to pay for resources meant only for white children. Perhaps being one of the only Northern states to deny education to African Americans motivated Indiana lawmakers to amend the school law.



States in green were surveyed by Barnabas C. Hobbs as part of his 1868 Biennial Report.

³⁰ “Sixteenth Report of the Superintendent of Public Instruction for the State of Indiana: Being the Fourth Biennial Report, and for the years ending August 31, 1867, and August 31, 1868,” 22-3.

³¹ “Sixteenth Report of the Superintendent of Public Instruction for the State of Indiana: Being the Fourth Biennial Report, and for the years ending August 31, 1867, and August 31, 1868,” 24-8.

In his first address to the General Assembly as Governor, Baker provided three reasons why parts of the school law were unconstitutional and why the General Assembly must change the law to provide education for black children. He began by stating that the 1865 school law was unconstitutional, as Article Eight of the 1851 Indiana State Constitution stated, "...it should be the duty of the General Assembly to... provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."³² The Forty-Forth session of the General Assembly had violated the State Constitution when creating a system of common schools that served only white children. Baker expanded on this racial inequality in his second point, regarding the special taxes townships assessed on its citizens, including African Americans. He stated that exempting African Americans from the common school tax, but taxing them for the building of schools for white children "is as clearly in contravention of the Constitution as is the exclusion of colored persons from the educational advantages intended for all."³³ Baker cited Article Ten of the State Constitution, arguing that the General Assembly had no power to exempt a group of citizens from a uniform tax such as for common schools.³⁴ This section of the State Constitution undermines the argument made by Democrats that excluding African Americans from common schools was fair because they were not taxed for the common school fund.

³² *Journal of the Indiana State Senate: During the Forty-Sixth Session of the General Assembly*, (Indianapolis, Alexander H. Conner, State Printer, 1869), 57; "IHB: Article 8 - Education," accessed September 11, 2019, <https://www.in.gov/history/2863.htm>.

³³ *Journal of the Indiana State Senate: During the Forty-Sixth Session of the General Assembly* (Indianapolis, Alexander H. Conner, 1869), 57.

³⁴ "IHB: Article 10 - Finance," accessed September 11, 2019, <https://www.in.gov/history/2861.htm>.; *Journal of the Indiana State Senate: During the Forty-Sixth Session of the General Assembly*, (Indianapolis, Alexander H. Conner, State Printer, 1869), 58; On November 4, 1968, The Religious Society of Friends (Quakers) decided at their yearly meeting to endorse the amendment of the school law. This report can be found in *Journal of the House of Representatives of the State of Indiana: During the Forty-Sixth Session of the General Assembly*, 184.

When the session opened, several representatives presented on behalf of the Religious Society of Friends who had been advocating on behalf of the African American population.³⁵ The Friends specifically called out Section Twelve of the school law, which gave trustees the ability to levy taxes towards school house expenses other than tuition. They argued that due to the wording of this section, African American residents of the state were taxed for building repairs, furniture, and fuel at public schools they were barred from.³⁶ Following this presentation, various Republican legislators, including William Bowen (R) of Wayne County, presented a memorial seeking to “extend the benefits of the common school fund equally to all classes of our fellow citizens,” echoing statements made previously during this session.³⁷

A memorial from the Friends was sent to each member of the Indiana General Assembly in support of amending the school law.³⁸ The Friends believed that clauses in the State Constitution that were discriminatory against African Americans were contrary to the principles of the United States, such as “all men are created equal,” and asserted that the legislature needed to formally remove such articles. The Friends also pointed out further injustice with the 1865 school law by citing Article One, Section 23 of the State Constitution. This section prohibited the General Assembly from granting special rights or privileges to any citizens or groups.³⁹ By citing directly from government documents and enacted law, the Society of Friends supported their point that the General Assembly ignored its own violation of the law.

³⁵ *Journal of the House of Representatives of the State of Indiana: During the Forty-Sixth Session of the General Assembly*, (Indianapolis, Alexander H. Conner, State Printer, 1869), 184.

³⁶ *Journal of the House of Representatives of the State of Indiana: During the Forty-Sixth Session of the General Assembly* (Indianapolis, Alexander H. Conner, State Printer, 1869), 184.

³⁷ *Journal of the House of Representatives of the State of Indiana: During the Forty-Sixth Session of the General Assembly* (Indianapolis, Alexander H. Conner, State Printer, 1869), 131, 206; “Memorial” historically was defined as a statement of facts as the basis of a petition.

³⁸ “Amendment of School Law,” *Richmond Weekly Palladium*, January 5, 1869.

³⁹ “Amendment of School Law,” *Richmond Weekly Palladium*, January 5, 1869.

The Senate and House of Representatives of Indiana discussed the education of black children concurrently. After multiple proposals, House Bill No.113 was introduced; “A bill to provide for the education of colored children, apply all school laws thereto, and repealing all laws inconsistent herewith.”⁴⁰ After passing 52-35 in the House, the bill was retitled, “An act to render taxation for common school purposes uniform and to provide for the education of colored children of the State.”⁴¹ Jonathan Lamborn (R), who voted “no,” believed that the bill was “calculated to foster and encourage an ignorant prejudice,” specifically with regards to Section Three of the Bill, which states that if there was not a “sufficient number [of black children] within reasonable distance to be thus consolidated, the Trustee or Trustees shall provide such other means of education...”⁴² There is no definition of sufficient number in the bill, which would mean that townships would have the power to interpret the law how they pleased. Lamborn presciently predicts the dangers of “separate but equal” school systems. A mass resignation by Democrats, in protest of voting for the ratification of the Fifteenth Amendment to the United States Constitution, delayed further voting. During a special session of the General Assembly called in April, the Senate acted on House Bill No. 113. It passed 33-9 on May 12. While all nine nay votes were Democrats, six Democrats broke party lines and supported the bill.⁴³ The act was then signed into law by Governor Baker on May 17, 1869.⁴⁴

⁴⁰ *Journal of the House of Representatives of the State of Indiana: During the Forty-Sixth Session of the General Assembly* (Indianapolis, Alexander H. Conner, State Printer, 1869), 273, 346.

⁴¹ *Journal of the House of Representatives of the State of Indiana: During the Forty-Sixth Session of the General Assembly* (Indianapolis, Alexander H. Conner, State Printer, 1869), 789-90.

⁴² Milton B. Hopkins, ed.. *School Laws of Indiana, as amended in 1865, 1867, 1869, and 1873 with opinions, instructions and judicial decisions relating to common schools and the officers thereof*, (Indianapolis, Indiana: Department of Public Instruction, 1873), 68; *Journal of the House of Representatives of the State of Indiana: During the Forty-Sixth Session of the General Assembly* (Indianapolis, Alexander H. Conner, State Printer, 1869), 791.

⁴³ *Journal of the Indiana State Senate: During the special session of the forty-sixth General Assembly* (Indianapolis, Alexander H. Conner, State Printer, 1869), 425.

⁴⁴ *Journal of the House of Representatives of the state of Indiana, during the special session of the General Assembly* (Indianapolis, Alexander H. Conner, State Printer, 1869), 609.

Between 1869 and 1873 numerous schools for African Americans were opened and saw adequate enrollment. Some of the largest schools were in Indianapolis, Evansville, and Terre Haute where schools had been operated by churches prior to the amendment of the 1865 school law.⁴⁵ One condition of the law, however, was if there were not a sufficient number of African American children “within reasonable distance to be thus consolidated, the Trustee or Trustees shall provide such other means of education for said children.”⁴⁶ The state reported that most counties complied with the new laws. By 1873, it reported that counties with a large enough African American population were provided with schools and elsewhere African American children were admitted to schools with white children.⁴⁷

Despite these positive reports, there were still problems that arose from the law. The law used the term “colored children” and there was much discussion about its meaning. There was a case in 1874 about two children in New Albany who were denied entry to a school for white children on the basis that they had “colored blood.” The County Superintendent upheld the decision of the school as the children were one sixty-fourth African American. Superintendent of Public Instruction M.B. Hopkins ended up reversing this decision by citing law that ruled one-eighth blood as the cutoff for racial classification. He continued by stating that the laws that separate children by race “take their origin in the belief that there is a difference in their intellectual susceptibilities... but surely a law, or a construction of a law, which would prohibit children in whose veins is found only one sixty-fourth part of negro blood, must take its origin in

⁴⁵ Thornbrough, *The Negro in Indiana Before 1900*, 324.

⁴⁶ *New School Laws of Indiana: as amended in 1865, 1867, 1869 and 1873, with opinions, instructions and judicial decisions relation to the common schools and to the officers thereof.* (Indianapolis, Indiana: Department of Public Instruction, 1873), 68.

⁴⁷ Thornbrough, *The Negro in Indiana Before 1900*, 325.

an unwarrantable prejudice.”⁴⁸ Hopkins’s choice of words here was important, as he condemns this specific incident as racist but seems to otherwise support segregation.

There was also the question of what were “other means” of education, as suggested in the 1869 law. While some white schools admitted African American children, others denied them entrance. The state reported that “other means” included sending them to a private school or in some cases giving them books, giving money back to the parents, or just nothing.⁴⁹ The courts did not help in this situation. In *Cory et al. v. Carter* (1874), lawyers argued that Article I of the State Constitution prevented the State Government from granting any special privileges to citizens that are not “equally open to all.”⁵⁰ As the Fourteenth Amendment to the United States Constitution granted citizenship to African Americans, they could no longer be excluded from schools operated via the common school fund. The Supreme Court of Indiana, however, ruled that as long as schools were provided for African American children, there was not a violation of either the State Constitution or the United States Constitution.⁵¹ Subsequently this case would be cited in *Plessy v. Ferguson* (1896), which implemented the “separate but equal doctrine” used to discriminate in the twentieth century.⁵² Racism and prejudice ultimately led to the twisting of legislation that otherwise represented progress.

Focusing on the process to amend the 1865 School Law highlights the problems America faced during the Reconstruction Era. Acts of violence became easy to identify, condemn, and prevent as time went on. This legislation allowed racist whites to continue oppression against African Americans through the suppressing of rights and civil liberties. The pushback against

⁴⁸ M.B. Hopkins “What Constitutes a Colored Child Within the Meaning of the School Law,” *Indiana School Journal* 19 (1874); 26-7.

⁴⁹ Thornbrough, *The Negro in Indiana Before 1900*, 326.

⁵⁰ Thornbrough, *The Negro in Indiana Before 1900*, 327.

⁵¹ *Cory et al v. Carter*, 48 Ind. 329, 364 (IN S. Ct. 1874)

⁵² Thornbrough, *The Negro in Indiana Before 1900*, 328.

equality in Indiana showed how hard proponents of Reconstruction had to fight and how easy it was for institutional racism to take root in the absence of progressive government officials.

While the changes to the school law did not end the problem of institutional racism in Indiana, the political process surrounding the School Law shows that there were Indiana politicians who rejected white supremacy.

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⁵³ The General Assembly erroneously skipped the forty-second session in its numbering. Due to this confusion, some documents from the General Assembly in the late 1860s are mislabeled.