THE FUTURE OF SCHOOL INTEGRATION AND THE PROMISE OF EQUAL EDUCATION FOR ALL

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ABSTRACT

On June 28, 2007 the Supreme Court issued a sharply divided decision in Parents Involved in Community Schools v. Seattle School District No. 1, and its companion case Meredith v. Jefferson County Board of Education, which invalidated race-conscious student assignment plans using the strict scrutiny framework under the Equal Protection Clause of the Fourteenth Amendment. The most important development in this case was Justice Kennedy’s decision to decline to join certain portions of the majority opinion. This means that those portions do not carry a majority of the Court, and are not the law of the land; additionally, Kennedy provides a blueprint for communities looking for ways to combat separate and unequal education in their K-12 public schools.

Justice Kennedy recognized that school districts have a compelling interest in promoting diversity and avoiding racial isolation. Kennedy suggests several race-neutral alternatives that would likely pass constitutional muster in the future. One method, socioeconomic integration, seems to be the best way to close the achievement gap and promote greater racial understanding in public education. A host of school districts throughout the United States have integrated their public schools using the socioeconomic status of their students with great success. In addition to profiling two
school districts that use this promising race-neutral alternative, I’ve examined the dramatic change in the Supreme Court’s equal protection jurisprudence beginning with *Plessy v. Ferguson*, culminating in an analysis of the *Parents* and *Meredith* cases. Moreover, I’ve addressed the government’s response to closing the achievement gap between minority students and their white classmates by exploring the success and failure of the No Child Left Behind Act, and how it can be reformed in order to be more effective.

While socioeconomic integration has been proven to work in some communities, it has failed to improve diversity and student achievement across the board. Ultimately, I’ve concluded that socioeconomic integration alone will not effectively close the achievement gap between minority students and their white counterparts, or successfully integrate public schools. Only a concerted effort by federal and local governments to improve early childhood education, coupled with more access to stable and affordable housing outside of urban centers, will provide the means to make education truly equal for all, while keeping *Brown’s* promise alive for future generations.
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INTRODUCTION

On May 17, 1954 the Supreme Court issued a unanimous decision holding that public schools in the United States could no longer be segregated on the basis of race. The decision in Brown v. Board of Education of Topeka expanded the concept of democracy in our country by reviving the Equal Protection Clause of the Fourteenth Amendment as tool to combat the legal separation of the races in public life. The decision drew immediate praise from outside the South, but a number of prominent Southern congressmen and governors were determined to assert the sovereignty of their respective states against, what they believed, was a violation by the federal government upon their right to determine what laws were constitutional or unconstitutional. The interposition movement was successful; by 1960 only .1% of African-American students attended a majority white school and on the tenth anniversary of the Brown decision the percentage crept up slightly to 2.3%.¹

The movement for civil rights, coupled with the power and purse of the federal government, helped to rapidly desegregate the South’s public school system. By 1970 33.1% of the South’s African-American students attended majority white schools.² However, when the Nixon administration decided to argue on behalf of the state of Mississippi in Alexander v. Holmes County Board of Education, it marked the beginning of the conservative ascendancy on the Court in the area of civil rights that has had the


² Ibid., 19.
effect of increasing segregation in the nation’s public schools. Presently 26% of African-American students in the Midwest and 23% of African-American students in the Northeast attend schools that are 99% to 100% minority; nationwide, 38% of African-American students attend schools that are 90% to 100% minority.³

School districts throughout the United States have employed a variety of methods in order to avoid racial isolation in their public schools. In Parents Involved in Community Schools v. Seattle School District Number 1 and Meredith v. Jefferson County Board of Education, the Supreme Court considered the constitutionality of their efforts.⁴ On June 28, 2007 the Court struck down voluntary integration plans using the strict scrutiny standard applied to race-conscious policies under the Equal Protection Clause of the Fourteenth Amendment.⁵

The most significant development in the landmark case is Justice Kennedy’s separate opinion. Kennedy felt that the use of race is acceptable as long as it is one of many factors in a more holistic approach to achieving the goal of student body diversity.⁶ In sweeping language, Kennedy encouraged local school boards to continue the work started in 1954:

This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children. A

³ Ibid., 10.


compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a district may consider it a compelling interest to achieve a diverse student population.7

The issues of race and equality have been at the epicenter of the Supreme Court’s agenda from the inception of the Republic, and undoubtedly will continue to be an intractable problem facing the nation in the next century. Chief Justice Earl Warren, in a civil rights lecture at the University of Notre Dame, acknowledged this when he stated, “If there is one lesson to be learned from our tragic experience in the Civil War and its wake, it is that the question of racial discrimination is never settled until it is settled right. It is not yet rightly settled.”8


CHAPTER 1
THE EQUAL PROTECTION OF THE LAW

The enforcement provisions of the Thirteenth, Fourteenth, and Fifteenth Amendments were legislative safeguards for the federal government to intercede on behalf of newly freed slaves when state action sought to curtail their political rights. Chief Justice Fuller, appointed by President Grover Cleveland in 1888, didn’t believe in, and had no intention of protecting, the political rights of freedmen. Fuller’s court transformed the Fourteenth Amendment from an instrument designed to guarantee the equal protection of the laws into a tool that protected corporations from excessive government regulation.9 In addition to Fuller, Justice Edward D. White was a former Confederate soldier who helped Democrats regain control of the state of Louisiana; Justice David Brewer, in his service on the Kansas Supreme Court, believed that the Fourteenth Amendment did not forbid public schools from segregation, and John Marshall Harlan, a former slave owner, opposed the Civil Rights Acts of 1866, 1875, and ratification of the Thirteenth Amendment.10 When a group of Louisiana blacks, including Homer Plessy, decided to challenge the constitutionality of the state’s Separate Car Act, their prospects looked dim.

9 Ibid., 76.

When Homer Plessy attempted to board the East Louisiana Railroad train traveling from New Orleans to Covington, he was forcibly removed from the passenger car reserved for whites and charged with violating the Louisiana statute that separated African-American passengers from whites. During Plessy’s state court trial, the lead prosecutor claimed that, “The foul odors of blacks in close quarters made the law a reasonable exercise” of Louisiana’s Tenth Amendment police powers. Plessy’s lawyers argued that the Louisiana statute that promoted the separation of passengers imposed a badge of servitude on him and others of African ancestry; moreover, it deprived him of his constitutional rights to enjoy all of the privileges and immunities that were protected by the Fourteenth Amendment. The Louisiana court upheld Plessy’s conviction for violating the statute—the Supreme Court would hear Plessy’s case in April 1896.

Justice Henry Brown would author the majority opinion in *Plessy v. Ferguson* that upheld the Jim Crow law as a, “Reasonable regulation of railroads that were licensed in Louisiana.” Justice Brown and his colleagues believed that the Fourteenth Amendment wasn’t designed to force whites to accept integration of the newly freed slaves:

> The object of the Fourteenth Amendment was undoubtedly to enforce the absolute equality of two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or

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12 Ibid., 25.

commingling of the two races upon terms satisfactory to either.\textsuperscript{14}

Justice Brown’s majority opinion drew from precedent in the \textit{Slaughterhouse} and \textit{Civil Rights} cases; the Court took an especially narrow view of the Privileges and Immunities Clause of the Fourteenth Amendment: Homer Plessy’s citizenship was dual and the Fourteenth Amendment protects only those privileges and immunities on a national level and not within the state.

Only Justice John Marshall Harlan dissented from the majority opinion in Plessy. Harlan believed that the Louisiana statute did place a badge of inferiority on African-Americans; thus, it was a violation of the Fourteenth Amendment. He observed that, “In view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.”\textsuperscript{15} Harlan predicted with stunning accuracy the long-term effects the \textit{Plessy} decision would have on the nation:

The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments to the Constitution.\textsuperscript{16}

\textsuperscript{14} Plessy v. Ferguson, 163 U.S. 537 (1896).
\textsuperscript{15} Plessy v. Ferguson, 163 U.S. 537 (1896).
\textsuperscript{16} Plessy v. Ferguson, 163 U.S. 537 (1896).
The separate-but-equal doctrine legalized Jim Crow segregation throughout the South. *Plessy* represented an almost insurmountable barrier to equality before the law for African-Americans.

**United States v. Carolene Products Co.**

The period between 1868 and 1911 saw 604 decisions handed down by the Court that involved the Fourteenth Amendment: 28 of these cases involved the interests of African-Americans, with 22 decided against the African-American litigant. The Supreme Court, and its restrictive interpretation of the Fourteenth Amendment, proved to be the worst enemy of African-Americans in search of equality. However, the New Deal justices appointed by President Franklin Delano Roosevelt would begin a judicial revolution that would lay the foundation for desegregation in public life throughout the United States.

Justices Robert Jackson and Felix Frankfurter led a majority of the Court sworn to restraining the judiciary from striking down state or federal legislation passed by democratically elected legislatures. Their colleagues, Justices Hugo Black and William Douglas followed a similar judicial philosophy with regard to the socioeconomic legislation of the New Deal. A plurality of the Court all agreed that the *Lochner* era was a tremendous blow to the Court’s credibility: in *Lochner v. New York*, the Court struck

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17 Davis, *The Supreme Court, Race, and Civil Rights*, 60.

18 Ibid., 60.

19 Ibid.

down a New York state law regulating maximum hours of work as a violation of the Due Process Clause. The decision led to the abrogation of many progressive era and Great Depression laws regulating working conditions. However, Justices Black and Douglas believed that the Supreme Court mustn’t abdicate its responsibility to protect people whose rights were threatened by state or federal laws.\textsuperscript{21} African-Americans in the South were disenfranchised and their chances of improving their dismal plight through electoral politics were unrealistic as a result of the ascendancy of white supremacy.

In \textit{United States v. Carolene Products}, A 1923 act of Congress banned the interstate shipment of filled milk. At issue was whether the law violated the Commerce Power granted to Congress in Article Section 8, and the Due Process Clause of the Fifth Amendment. The Court upheld the Act under Congress’ constitutional authority to regulate interstate commerce. Previous to the ruling, the Supreme Court had applied deferential scrutiny, or the rational basis test, to legislation: if a piece of legislation was reasonably related to the legislature’s purpose, the statute was upheld. Justice Harlan Fiske Stone went further in a footnote to the case by carefully stating that, “Certain types of legislation might not merit deference toward constitutional validity.”\textsuperscript{22} Stone identified three important exceptions to this presumption of judicial restraint:

\begin{quote}
It may be necessary to exercise more exacting judicial scrutiny when reviewing (1) legislation that appears to violate one of the provisions of the Bill of Rights; (2) legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation; (3) and statutes directed at
\end{quote}

\textsuperscript{21} Ibid., 48.

\textsuperscript{22} \textit{United States v. Carolene Products Company}, 304 U.S. 144 (1938).
particular religions, national or racial minorities because prejudice against discrete and insular minorities may be a special condition which tends seriously to curtail the operation of the political processes ordinarily relied upon to protect minorities.\textsuperscript{23}

A double standard emerged from \textit{Carolene Products}; the Court would exercise judicial restraint in reviewing laws in the economic realm and apply a greater degree of scrutiny in the areas of civil liberties and civil rights.

\textbf{The Graduate School Cases}

Charles Hamilton Houston, Thurgood Marshall and the NAACP Legal Defense Fund lawyers sought to establish legal precedent that would erode the separate-but-equal principle in graduate school education beginning in 1936.\textsuperscript{24} Donald Murray, an African-American graduate of Amherst College, sought admission to the University of Maryland School of Law in 1935. He was denied admission to the University of Maryland School of Law because of his race.\textsuperscript{25} Houston and Marshall attacked \textit{Plessy} using a legal strategy devised by a young lawyer named Nathan Margold.\textsuperscript{26} Margold, citing the Supreme Court’s opinion in \textit{Yick Wo v. Hopkins}, believed that the Court would find the discriminatory application of a statue that was intended to be race neutral a violation of

\begin{itemize}
\item \textsuperscript{23} United States v. Carolene Products Company, 304 U.S. 144 (1938).
\item \textsuperscript{25} Pearson v. Murray 82 A. 590, 169 Md. 478, 103 A.L.R. 706.
\item \textsuperscript{26} Peter Irons, \textit{Jim Crow’s Children: The Broken Promise of the Brown Decision} (Boston: Penguin Books, 2004), 53.
\end{itemize}
the Equal Protection Clause.\textsuperscript{27} Houston and Marshall would emerge victorious in \textit{Murray}; however, the decision wasn’t appealed to the Supreme Court by the state of Maryland, so it wasn’t binding to any other states.

Lloyd Gaines was also disqualified for admission to the University of Missouri School of Law because of his race. Instead, the state of Missouri offered to create a law school for Gaines or pay his tuition to a law school that accepted African-Americans.\textsuperscript{28} Gaines, with the assistance of the NAACP lawyers, would file suit to compel the state of Missouri to admit him to its law school. The Supreme Court held in \textit{Gaines} that the scholarship program created by the state of Missouri was unconstitutional on the grounds that states were mandated by the constitution to provide equal services to African-Americans within their boundaries; “It is an obligation the burden of which cannot be cast by one State upon another, and no State can be excused from performance by what another State may do or fail to do.”\textsuperscript{29} Houston, Marshall, and the lawyers at The Fund believed that the expense of maintaining dual school systems across the South would force integration on a much wider scale.\textsuperscript{30}

Ada Lois Sipuel graduated from the State College for Negroes in Langston, Oklahoma and had applied for admission to the University of Oklahoma School of Law in 1946. The University of Oklahoma denied her admission because another facility

\textsuperscript{27} Ibid., 53.
\textsuperscript{28} Patterson, \textit{Brown v Board of Education}, 16.
\textsuperscript{29} Klarman, \textit{From Jim Crow to Civil Rights}, 204.
\textsuperscript{30} Patterson, \textit{Brown v. Board of Education}, 16.
would be opened exclusively for African-American law students.\textsuperscript{31} The Justices, only four days after hearing oral arguments, handed down a unanimous decision stating that:

The petitioner is entitled to secure legal education afforded by a state institution. To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the State. The State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group.\textsuperscript{32}

The Supreme Court gave Oklahoma the options of admitting Lois Sipuel to the University of Oklahoma Law School, opening up a separate law school for her, or suspending the white university until one was created for her.\textsuperscript{33} The Oklahoma Board of Regents opened a law school in the state capitol in Oklahoma City that was cordoned off for African-Americans. When Sipuel challenged Oklahoma for evading the mandate of the Court, she was denied relief: the Court concluded that, “The original Sipuel case did not present the issue of whether a state might satisfy the equal protection clause by establishing a law school for Negroes.”\textsuperscript{34} The Oklahoma courts had not acted in defiance of the Court’s earlier decision nor had the university in creating its separate law school in the state capitol.\textsuperscript{35} The \textit{Sipuel} ruling was an immediate and costly setback for Marshall:


\textsuperscript{32} Sipuel v. Board of Regents of Univ. of Oklahoma, 332 U.S. 631.

\textsuperscript{33} Kluger, \textit{Simple Justice}, 257.

\textsuperscript{34} Ibid., 257.

\textsuperscript{35} Klarman, \textit{From Jim Crow to Civil Rights}, 205.
now a state could offer something that passed for graduate education in order to meet the separate-but-equal litmus test established in \textit{Plessy}.\textsuperscript{36}

In 1946 Heman Sweatt applied to the University of Texas School of Law in Austin. Sweatt was similarly rejected on the same grounds as Donald Murray, Lloyd Gaines, and Ada Lois Sipuel. Sweatt filed suit in Travis County for admission to the University of Texas School of Law.\textsuperscript{37} Sweatt had his first hearing in June of 1946 and the judge gave the state six months to establish a law school at Prairie View University; if a law school wasn’t established in the time, the state had to offer Sweatt admission to the University of Texas. The state of Texas, in response to the court order, hired two black lawyers to serve as Sweatt’s professors and rented out several rooms at a location forty miles away from the campus in Prairie View.\textsuperscript{38} The Travis County District Court found that the makeshift law school created by the state would provide equal opportunity for Sweatt to study law; however, the District Court recognized the deficiencies of the makeshift law school including a faculty, a library, books, and most importantly, other students.\textsuperscript{39} The state legislature then appropriated three million dollars to create a new Texas State University for Negroes; of that total, $100,000 was to be used for the creation and upkeep of a law school for African-Americans in Austin.\textsuperscript{40} The new law school consisted of three basement rooms, three part-time faculty at the University of Texas, and

\textsuperscript{36} Kluger, \textit{Simple Justice}, 259.

\textsuperscript{37} Charles J. Ogletree, Jr., \textit{All Deliberate Speed} (New York: W.W. Norton and Company, 2004), 122.

\textsuperscript{38} Kluger, \textit{Simple Justice}, 260.

\textsuperscript{39} Ibid., 260.

\textsuperscript{40} Ogletree, \textit{All Deliberate Speed}, 122.
a library of 10,000 books. Sweatt decided to go back to court with the assistance of Marshall and the Legal Defense Fund.\footnote{Kluger, Simple Justice, 260.}

On June 5, 1950 Chief Justice Fred Vinson would announce the Court’s decision in \emph{Sweatt v. Painter}. The Court was unanimous in both of the opinions but it fell short of overruling \emph{Plessy}. In \emph{Sweatt}, the justices declared:

\begin{quote}
We cannot find substantial equality in the educational opportunities offered white and Negro law students by the State. In terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the University of Texas Law School is superior. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school.\footnote{Sweatt v. Painter, 339 U.S. 629.}
\end{quote}

Heman Sweatt was ordered admitted to the University of Texas Law School immediately. This was the first time the United States Supreme Court had ordered an African-American student admitted to an all-white institution of higher learning.\footnote{Patterson, \emph{Brown v. Board of Education}, 17.} Chief Justice Vinson and the Court refused to consider overruling \emph{Plessy} at this time:

\begin{quote}
Broader issues have been urged for our consideration, but we adhere to the principle of deciding constitutional questions only in the context of the particular case before the Court. We have frequently reiterated that this Court will decide constitutional questions only when necessary to the disposition of the case at hand, and that such decisions will be drawn as narrowly as possible.\footnote{Sweatt v. Painter, 339 U.S. 629.}
\end{quote}
\textit{Plessy} would still be the law but it was crumbling under the pressure being applied by the Legal Defense Fund.

\textbf{Brown v. Board of Education}

America’s victory in World War II over fascism and totalitarianism provided the impetus for a broad based movement for civil rights in the United States. Roughly four hundred thousand African-Americans joined the NAACP during the war, they registered to vote, and demanded admission to Democratic primaries in the South; additionally, unprecedented political power in the North, as a result of the demand for unskilled labor during World War II, allowed registered African-American voters to demand concessions from President Roosevelt and other federally elected officials.\footnote{Michael Klarman, \textit{Unfinished Business: Racial Equality in America’s History} (New York: Oxford University Press, 2007), 132.} America’s national past time was integrated on April 15, 1947 when the Brooklyn Dodgers faced the Boston Braves at Ebbets Field; the rookie from Pasadena, California didn’t manage a hit that day, but Jackie Robinson’s breakthrough had a much deeper meaning: racial reform was on the horizon.\footnote{Jim Newton, \textit{Justice For All: Earl Warren And The Nation He Made} (New York: Riverhead Books, 2006), 299.} Marshall and the NAACP crafted a strategy that would end segregation in public education in the United States almost immediately after the decisions in \textit{Sweatt} and \textit{McLaurin} were handed down.\footnote{Ibid., 300.} Marshall and the lawyers from the LDF would argue
Brown before a Supreme Court that was philosophically divided between its activists and strict constructionists.

In December of 1952, according to Associate Justice Douglas, there were only four justices that were ready to declare school segregation in the United States unconstitutional: two were undecided, and Justice Clark was probably willing to vote along the same lines as Justices Vinson and Reed.48 Five of the Justices-Black, Frankfurter, Jackson, Burton, and Minton-would vote for the case to be reargued. Then, in September 1953, Chief Justice Fred Vinson died of a heart attack. President Dwight Eisenhower would nominate Earl Warren, the Governor of California, to replace Vinson as Chief Justice.

Chief Justice Warren would stand firmly against Plessy and the idea that segregation was constitutional as it deprived African-Americans of equal protection under the law. Furthermore, segregation, if endorsed by the Supreme Court, would confirm the theory that one race was superior to another; Earl Warren was unwilling to compromise his own integrity, and the Court’s, by providing judicial support for white supremacy.49 The former prosecutor, attorney general, and governor’s sense of jurisprudence wasn’t guided by dictates from the past, but from his own sense of what was fair or unfair.50 Warren’s impact was subtle, yet profound; he enticed his colleagues with his courteous and endearing demeanor while deferring to his more senior colleagues

48 Klarman, Unfinished Business, 300.

49 Ibid., 311.

50 Patterson, Brown v. Board of Education, 60.
during conference for *Brown*.

However, as a former executive, Earl Warren was all too familiar with the power that was accorded to him as Chief Justice; he would use that power to influence the outcome of *Brown*.

Warren would now join Black, Minton, Douglas, and Burton to form a majority in declaring segregation in public education unconstitutional. There were still four colleagues that needed to be convinced by Warren that joining the remaining justices was in the best interests of the nation. Frankfurter, one of the remaining holdouts, reasoned that being bound by precedent in this particular case didn’t comport with his lifelong dedication to the eradication of racial injustice; Frankfurter would join the majority.

Justices Jackson, Clark, and Reed remained outside of the majority. Justice Jackson’s concerns were two-fold: he harbored serious concerns about how the public would perceive the Court’s decision to overrule *Plessy*, and how the decision would be implemented. Tom Clark’s position on segregation had undergone a transformation after the death of Fred Vinson: he understood that the Court had not expressively, but implicitly, overruled *Plessy* in the graduate school cases. Clark decided to vote with the majority. Reed believed in segregation as law and a local practice that he supported; ultimately, Reed was more concerned that as the lone Southern justice his dissent would provide the blueprint for intransigence throughout the South. Reed would join the

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51 Ibid., 60.
52 Newton, *Justice For All*, 311.
53 Ibid., 282.
54 Ibid., 284.
majority for the unanimous decision: the awesome weight of being the lone dissenter in the school desegregation case proved too great a cross for Reed to bear.

On May 17, 1954 the Supreme Court would handed down its decision in Brown v. Board of Education. The Brown opinion was only eleven pages in length: easy to digest for the public and reprint in newspapers throughout the country.\(^{55}\) Warren, along with his colleagues, understood the language of the opinion was of the utmost importance; it had to be universally acceptable and devoid of polemic attacks against the South.

The Warren opinion opened with its interpretation of the original understanding of the Fourteenth Amendment as it related to public education in the United States. The opinion stated that, “This discussion and our own investigation convince us that although these sources shed some light, it is not enough to resolve the problem which we are faced.”\(^{56}\) After finding the original intent not to be on the side of the appellants, the Court provided additional reasoning to dispute that the Fourteenth Amendment touched education in the United States:

> Education of Negroes was nonexistent, and practically all of the race was illiterate. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect on the Amendment in northern states was generally ignored in Congressional debates. As a consequence, it is not surprising that there should be so little history of the Fourteenth Amendment relating to its intended effect on public education.\(^{57}\)


The majority opinion in *Brown v. Board* wouldn’t be based upon original understanding of the Fourteenth Amendment or the tangible factors that made black and white schools unequal. Its bedrock would be how a segregated school affected its black students. The Court quoted the findings that were presented in the district court in the Kansas case that coincided with the opinion of Dr. Kenneth Clark:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of children to learn.58

The fortunes of the Legal Defense Fund and its appellants changed rapidly as the Court considered the importance of education in its present light. The Justices acknowledged that they couldn’t turn back the clock to the adoption of the Fourteenth Amendment; however, they could exact change in 1954. The Court concluded that there was a direct correlation between one’s access to equal educational opportunities and a reasonable expectation for success in life. Furthermore, equal access to education allowed local and state governments to produce good citizens:

It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has

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The Supreme Court had decided in unanimity that segregation in public schools based on race, even with all tangible factors being equal, is inherently unequal. The Supreme Court didn’t address Justice Brown’s majority opinion in Plessy. Instead, Warren stated that: “Whatever musings may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.”

Brown II

On May 19, 1954 President Eisenhower responded indifferently to a question regarding the Brown decision: “The Supreme Court has spoken, and I am sworn to uphold the constitutional processes in this country. And I will obey.” Warren had charted a very deliberate plan of action, combined with a majority opinion that didn’t openly antagonize the South for fear of derailing the implementation process. The Court held that racial segregation in public schools was unconstitutional; however, it had not set a date for when school systems had to achieve full compliance. The Court decided on further argument of Brown, and one year later issued Brown II.

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59 Brown v. Board of Education of Topeka, 347 U.S. 483


61 Newton, Justice for All, 328.

62 Ibid., 328.
In conference for *Brown II* Warren was opposed to issuing a decree with a firm date for achieving desegregation in the public schools; he realized that some school districts would be quicker to implement the *Brown* decision than others.\(^63\) Hugo Black was keenly aware of the opposition the Court would encounter in enforcing the decree; Black believed an opinion that did the least would be most effective in exacting change.\(^64\) The remaining justices-Reed, Frankfurter, Douglas, Burton, Minton, Clark, and Harlan, all concluded that the opinion should not include a definitive time frame for segregation to be completed.\(^65\)

The *Brown II* opinion, authored by Warren, was strikingly similar to the majority opinion issued in *Brown* one year earlier: it was brief, and sympathetic to the people that would be affected by such radical changes. The Court, in taking a sympathetic view of the fundamental changes in Southern society, undermined itself in *Brown II*. The Court’s reasons for delay included a host of factors, chief amongst them, an innate fear that the decree would be summarily ignored. The Supreme Court sympathized with Southerners while simultaneously telling African-Americans that inadequate facilities were sufficient for them, but not white students.\(^66\) *Brown II* was a political compromise that encouraged a deliberate and gradual approach to desegregation throughout much of the South.

**Massive Resistance**

\(^{63}\) Cray, *Chief Justice*, 294.

\(^{64}\) Newton, *Justice for All*, 331.

\(^{65}\) Cray, *Chief Justice*, 295.

\(^{66}\) Powe Jr., *The Warren Court and American Politics*, 56.
Senator Harry Flood Byrd, along with 81 Southern Representatives and 18 Senators, signed the Southern Manifesto in 1956. The signers, ever fearful that the racial hierarchy in the South would be permanently altered by the Brown decision, chose to oppose it. Byrd, and his muse James Jackson Kilpatrick of the Richmond News Leader, believed each state could determine for itself what was the supreme law of the land. Beginning in November 1955, Kilpatrick’s paper campaigned actively for an interposition resolution, which was adopted on February 1, 1956.67 A unanimous Supreme Court had declared segregation unconstitutional in 1954; two years later, Virginia said it was not:

And be it finally resolved that until the question here asserted by the State of Virginia be settled by clear constitutional amendment, we pledge our firm intention to take all appropriate measures, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers and to urge upon our sister states, whose authorities over their own most cherished powers may be next imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States.68

The Virginia resolution wasn’t legally binding; however, it did provide a significant thrust to the burgeoning resistance movement in the South. The Deep South states shuttered many of its public schools rather than complying with the Brown mandate;

67 Ibid., 137.
68 Ibid., 138.
additionally, state governments took control of local districts in order to delay implementation of the court order.\textsuperscript{69}

Arkansas was one of the first states in the South to begin preparing for compliance with \textit{Brown}: its medical and law schools desegregated a decade before without a court order, and the city’s transportation system had successfully desegregated.\textsuperscript{70} Governor Orville Faubus, a moderate on racial issues in the past, succumbed to the pressure applied by the more ardent segregationists in Congress and actively opposed \textit{Brown}. The day before Central High School was set to open to its doors to nine African-Americans, Faubus ordered the Arkansas National Guard to prevent them from attending school. When the nine students arrived at Central High School on September 4, 1957 they were forcibly prevented from enrolling by the Arkansas National Guard and an angry mob.

On February 20, 1958, the Little Rock School Board, and its Superintendent of Schools, filed a petition in the District Court seeking to postpone desegregation. The school board suggested that the students admitted to Central be removed and sent to segregated schools. The board would then implement the Court order over the next two and one half years. The case would reach the Supreme Court in the summer of 1958 in a special session called by Chief Justice Warren.

\textsuperscript{69} Kevin Brown, \textit{Race, Law and Education In The Post-Desegregation Era: Four Perspectives on Desegregation and Resegregation} (Durham: Carolina Academic Press, 2006), 168.

\textsuperscript{70} Ibid., 169.
In a unanimous decision, Warren and his colleagues denied Little Rock’s request for postponement. The Court used Chief Justice John Marshall’s language from *Marbury v. Madison* in *Cooper v. Aaron* to reassert its authority in the face of demagoguery:

> Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury v. Madison*, "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."  

The decision in *Cooper* did not end the controversy in Little Rock: Governor Faubus closed all Little Rock high schools during the 1958-1959 academic years. Additionally, $500,000 was withheld from the Little Rock school district, much of it used to pay the tuition for white students at private, and segregated, Raney High School.  

Despite the fact that one of the companion cases to the *Brown* decision originated in Prince Edward County, Virginia, the local Board of Supervisors were determined not to operate integrated public schools. In 1956 the Virginia Constitution was amended to

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72 *Brown, Race, Law, and Education In The Post-Desegregation Era*, 170.

permit the General Assembly, and local governments, to provide funds to assist students that wished to attend nonsectarian, and segregated, private schools.\textsuperscript{74} The General Assembly also drafted and passed legislation to close any public schools where white and African-American children were enrolled in school together.\textsuperscript{75}

From 1959 to 1963, most African-American students in Prince Edward County, Virginia went without any access to public education. White students took advantage of the formation of the Prince Edward School Foundation, which built its own school after the public schools were closed.\textsuperscript{76} In June 1959, the United States Court of Appeals for the Fourth Circuit ordered the Federal District Court to admit students, regardless of their race, to local elementary and high schools.\textsuperscript{77} The Supervisors remained steadfast in their commitment to maintaining a separate school system in Prince Edward County; the schools would remain closed until the Supreme Court addressed another challenge to the Constitution in \textit{Griffin v. County School Board}.

Ten years after \textit{Brown} the Court had to prevent local school districts and state governments throughout the South from delaying compliance with \textit{Brown}. Hugo Black, writing for the majority, stated that:

\begin{quote}
That day has long passed, and the schools are still closed. On remand, therefore, the court may find it necessary to consider further such an order. An order of this kind is within the court's power if required to assure these
\end{quote}

\textsuperscript{74} Griffin v. School Board, 377 U.S. 218.

\textsuperscript{75} Griffin v. School Board, 377 U.S. 218.

\textsuperscript{76} Brown, \textit{Race, Law, and Education In The Post-Desegregation Era}, 171.

\textsuperscript{77} Allen v. County School Board of Prince Edward County, 266 F.2d 507, 511.
petitioners that their constitutional rights will no longer be denied them. The time for mere deliberate speed has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia.\textsuperscript{78}

The Supreme Court ordered the Prince Edward County schools to reopen and pay for an integrated school system.

The Elementary and Secondary School Act, passed on April 9, 1965, constituted the most important educational component of President Lyndon Baines Johnson’s legislative program to combat poverty. Through Title I, a special funding program for educationally deprived children, more resources would be provided to create compensatory programs for the poor:

In recognition of the special educational needs of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance to the local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means, including preschool programs which contribute to meeting the special educational needs of educationally deprived children.\textsuperscript{79}

The Act was established to provide greater resources to children from low-income homes: it was believed that in order to make up the gap in achievement between less fortunate and more affluent students, the poor would require more educational services. As part of the Act, Title I Funding allocated 1 billion dollars a year to schools with a high

\textsuperscript{78} Griffin v. School Board, 377 U.S. 218.

\textsuperscript{79} Elementary and Secondary Education Act. Public Law 89-10 (April 11, 1965).
concentration of low-income children. With regard to school integration, the Act provided for the use of federal funds to encourage desegregation or, rather, discourage resistance throughout the South. The threat of losing this significant source of federal funding was initially effective; ultimately, school districts would soon prove to be fairly adept at avoiding being outwardly hostile to Brown by clutching to limited integration through limited freedom of choice plans. In some instances, African-American families were asked to sign up to freely attend formerly segregated schools, and then asked to withdraw their applications.\(^80\) By the end of 1965, only 6\% of Southern students attended a school with children of a different race.\(^81\)

In 1968, the Supreme Court would hear a challenge to a freedom of choice plan in New Kent County, Virginia. New Kent County was a rural school district roughly an hour east of Richmond, Virginia. African-Americans comprised about half of the county’s population; however, the local school board maintained twenty-one separate bus routes in order maintain identifiable white and black schools.\(^82\) The school board adopted a freedom of choice plan in order to remain eligible for federal funding.

In an 8-1 opinion, the Court abolished freedom of choice plans permanently. The Court noted that the racially identifiable schools in New Kent County were established under some affirmative state action; Brown I and Brown II were decided to eradicate this


\(^81\) Ibid., 134.

\(^82\) Perlstein, Nixonland, 283.
type of segregation. New Kent County’s schools racial identification extended not only to its students, but also to its, “Faculty, staff, transportation, extracurricular activities and facilities.” Additionally, the *Griffin* decision charged school boards like New Kent to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated in its entirety. The all-deliberate speed language in *Brown II* was dealt a devastating blow by the decision in *Griffin*; *Green* represented a paradigm shift in the Court’s desegregation jurisprudence: schools can no longer be identified by race, and in order to overcome past acts of discrimination, school districts would have to take account of race. The shift would result in maximum federal involvement in school integration throughout the South.

President Dwight Eisenhower expressed regret in having appointed Chief Justice Earl Warren to the Supreme Court, “The biggest damned fool mistake I’ve ever made.”

Earl Warren’s leadership on the Supreme Court was immediate and profound. By reframing the debate over the constitutionality of segregated education into a moral question from a purely legal one, he would succeed where Fred Vinson failed: unanimity and consistency in the Court’s interpretation of the equal protection jurisprudence in *Brown*. The Warren Court’s support for school integration resulted in a profound change in the struggle for equality.

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83 Green v. County School Board of New Kent County, 391 U.S. 430.
84 Green v. County School Board of New Kent County, 391 U.S. 430.
85 Green v. County School Board of New Kent County, 391 U.S. 430.
86 Patterson, *Brown v. Board of Education*, 60.
Burger, Swann, and the Southern Strategy

The Fifth Circuit Court of Appeals had ordered that the state of Mississippi to completely desegregate its schools by the start of the 1969-70 school year.\textsuperscript{87} For the first time since the historic \textit{Brown} decision, the Department of Justice and the lawyers of the NAACP legal defense fund opposed one another in a federal courtroom.\textsuperscript{88} The Court, in a 7-2 decision, declared that the, “Continued operation of racially segregated schools under the standard of all deliberate speed is no longer constitutionally permissible.”\textsuperscript{89} School districts were ordered to operate as unitary, and the case was remanded to the Fifth Circuit Court. The Circuit Court, in open defiance to the \textit{Alexander}, \textit{Green}, and \textit{Griffin} decisions, allowed Mississippi’s school districts to delay until the following school year.\textsuperscript{90} Without hearing an oral argument, on January 14, 1970, the Supreme Court directed that, “All school districts within the circuit must integrate their student bodies by February 1.”\textsuperscript{91} The Supreme Court’s decision in \textit{Alexander} was a stinging rebuke to the segregationists. The \textit{Alexander} decision resulted in the South becoming the country’s most integrated region. White southerners responded, but this time with their feet. The second surge of massive resistance in the South resulted in the rapid decline of white student enrollment in most of its schools.

\textsuperscript{87} Perlstein, \textit{Nixonland}, 464.

\textsuperscript{88} Wilkinson III, \textit{From Brown to Bakke}, 119.

\textsuperscript{89} Alexander v. Holmes County Bd. of Ed., 396 U.S. 19.

\textsuperscript{90} Irons, \textit{Jim Crow’s Children}, 206.

\textsuperscript{91} Ibid., 207.
The Brown decision, coupled with the legislative and civil rights revolution of the 1960’s, created a political partnership dedicated to ending de jure segregation in the South. The partnership offered considerable promise after having overcome massive resistance, Southern congressional filibustering, and inaction on the part of some federal judges; however, many African-American school children would remain in schools as segregated as they had been before Brown. School districts in urban centers began to resemble the ethnic and socioeconomic makeup of their surrounding neighborhoods. Federal judges, committed to ending the segregation that plagued these schools districts, sought alternative methods. One such remedy would take students from their neighborhood school to another school away from their home.

The Charlotte-Mecklenburg school system encompassed the city of Charlotte and surrounding Mecklenburg County, North Carolina. During the 1968-1969 school year, the system served more than 84,000 pupils in 107 schools: approximately 71% of the pupils were white, and 29% African-American. As of June 1969, there were approximately 24,000 African-American students in the system, of which 21,000 attended schools within the city of Charlotte. Approximately 14,000 African-American students attended 21 schools which were either totally African-American or more than 99% African-American. Julius Chambers, a former lawyer at the NAACP Legal Defense Fund, filed a lawsuit in federal court in January 1965; Chambers believed that the majority-to-minority transfer policy was designed to allow white students who lived closest to formerly all-black schools to escape integration.92

92 Irons, Jim Crow’s Children, 213.
Judge James McMillan held a series of hearings on segregation in Charlotte; he would ultimately declare the Charlotte-Mecklenburg schools had not successfully desegregated:

The system of assigning pupils by neighborhoods, with freedom of choice for both pupils and faculty, superimposed on an urban and population where Negro residents have become almost entirely concentrated in one quadrant of a city of 270,000 is racially discriminatory. The neighborhood school concept never prevented statutory racial segregation; it may not now be validly used to perpetuate segregation.\textsuperscript{93}

The Charlotte school board took drastic measures to maintain its dual school systems: it redrew attendance zones to cutoff African-American students from their white counterparts, and local, state, and federal officials took drastic steps to maintain segregated communities throughout the city and county.\textsuperscript{94} McMillan appointed Dr. Robert Finger to create a plan for integration that would have between 9 percent and 38 percent of African-American students in the Charlotte-Mecklenburg schools.\textsuperscript{95} Using the Supreme Court’s ruling in \textit{Alexander}, McMillan ordered the school board to implement the plan by April 1.

The Supreme Court would hear oral arguments in \textit{Swann v. Charlotte-Mecklenburg Board of Education} during its October 1970 term. Seven of the sitting justices in \textit{Swann} had joined after the Court’s decision in \textit{Brown}; additionally, it was


\textsuperscript{94} Irons, \textit{Jim Crow’s Children}, 214.

\textsuperscript{95} Wilkinson III, \textit{From Brown to Bakke}, 138.
under the leadership of a new Chief Justice-Warren Burger. Burger, who impressed
Nixon with his conservative judicial credentials, believed in a more narrow interpretation
of the individual rights protected by the Constitution. Nixon hoped that Burger would
take an opposing position to the more controversial decisions of his judicial activist
predecessor Earl Warren.

The position of the Justice Department in Swann was staked out by the President
himself: neighborhood schools were not constitutionally suspect, the clustering and
redrawing of attendance zones were permissible under the authority of a local school
board, and racially identifiable schools were a result of de facto segregation. Judge
McMillan, in the eyes of the Nixon administration, had overstepped his role as a federal
judge in proscribing a remedy; particularly when that remedy called for complete
desegregation of Charlotte-Mecklenburg’s public schools. The lawyers of the NAACP
Legal Defense Fund argued that busing was a feasible solution, considering most of the
county’s African-Americans lived in the metropolitan center of the city.

In conference the justices took an initial vote, and the result was a 6-3 decision
against busing. Justice Potter Stewart, after reading Burger’s first draft, was less than
enthusiastic about the prospects of forming a plurality; Stewart felt that Burger’s criticism
of Judge McMillan, combined with his failure to approve the desegregation order for
junior and high school students, would alienate their colleagues Justices Douglas,

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96 Gary Orfield, Must We Bus? Segregated Schools and National Policy (Washington, D.C.: The

97 Greenberg, Crusaders in the Court, 389.
Marshall, and Brennan. 98 Stewart also expressed concern that overturning McMillan would result in litigation throughout the South demanding relief for school districts from desegregation orders. 99 Stewart’s draft to the Court forced Burger to soften his tone and affirm parts of McMillan’s desegregation order. Burger acquiesced and submitted a revised memorandum that empowered federal judges to take affirmative steps to alleviate the effects of segregation. Ultimately, the Court concluded that school districts, and in this case the Charlotte-Mecklenburg Board of Education, should take positive steps to achieve, “The greatest possible degree of actual desegregation.” 100 Burger’s switch left Black alone; Black joined Burger’s unanimous majority opinion allowing, among a host of other methods, court ordered busing.

The Court’s opinion stated that, “If school authorities fail in their affirmative obligations under the rulings in Alexander, Griffin, and Green cases then judicial authority may be invoked.” 101 This left federal district and circuit court judges with broad discretion at fashioning remedies for African-Americans that wanted relief from segregated school systems. Judicial remedies fashioned by federal and district court judges would only pass constitutional muster if school authorities had committed some egregious constitutional violation. “Remedial judicial authority does not put judges

98 Irons, Jim Crow’s Children, 103.
99 Ibid., 103.
100 Ibid., 110.
automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults.”

Burger’s majority opinion failed to address the significant role of local, state, and federal action in creating the residential housing segregation that was a direct result of having to bus students through the city of Charlotte and Mecklenburg County. The majority opinion also acknowledged that, “The existence of some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system that still practices segregations.” Burger added that judges could use their discretion in scrutinizing these schools; however, districts could retain racially identifiable schools if school assignments were truly non-discriminatory.

The justices strictly limited the most controversial section of Burger’s opinion, which permitted busing as one of a host of remedies to desegregate schools. “An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process.” Those willing and able to escape to the outer ring of the suburbs would likely be beyond the reach of the federal courts. The Court suggested that the efforts to implement Brown wouldn’t last forever:

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102 Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1

103 Irons, Jim Crow’s Children, 220.


Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. Absent a showing that either school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect racial composition of the schools, further intervention by a district should not be necessary. ¹⁰⁷

Swann’s judicial mandate for redressing the grievances of Charlotte’s urban African-Americans would end the Supreme Court’s reprieve for northern and western cities. The Constitution’s requirement of equality and evenhandedness in application would expose as virulent a form of discrimination in Detroit and Boston as had been seen in Little Rock, Oxford, and Birmingham.

Desegregation Moves North and West

When the Court decided Brown in 1954 it stated that, “Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it is sanctioned by law.”¹⁰⁸ The Court’s jurisprudence was altered by the addition of Nixon’s four Supreme Court appointees; its interpretation of the Equal Protection Clause ignored past discrimination in housing policy throughout much of the North and West that resulted in segregated school systems. The Burger Court’s decision to differentiate between de jure and de facto segregation would limit the desegregation of public school systems in one important way: it would


become increasingly costly and time consuming for plaintiffs to prove a constitutional violation through de facto segregation.¹⁰⁹

The number of white students enrolled in Denver’s public school system was declining precipitously; roughly 4,000 students began leaving every year beginning in 1970.¹¹⁰ The picture was equally bleak in a number of the Nation’s other large school districts:

By the late 1970’s, roughly half of all nonwhite children in the nation resided in the twenty to thirty largest school districts. The minority children averaged 60 percent of the school population in these districts, only a few of which contained a majority of white students. In the ten largest districts, the minority percentage averaged 68.2 percent.¹¹¹

In November 1974, Colorado adopted a constitutional amendment removing Denver’s power to annex suburban land: a busing panic had taken over the nation, leaving those trapped in city centers beyond the reach of the federal courts. Justice Lewis Powell accurately predicted that student busing could result in the public’s loss of confidence in the school system; this would force them to look elsewhere, particularly private schools or the suburbs, for their own remedy.¹¹² The Court would be forced to determine whether or not suburban pupils could be used to integrate urban school districts.


¹¹² Bell, Silent Covenants, 108.
The Supreme Court decided that in Denver, Colorado there was state action, perpetrated by the local school board that assigned minority employees to majority-minority schools. Additionally, a finding of state action, which perpetuates a dual-school system, automatically compels the state to integrate the Denver school system in order to comply with *Brown*. However, the majority opinion written by Associate Justice Brennan steered clear of equating the segregation of northern and western school districts with that of their southern counterparts. Judicial intervention would be limited to de jure segregation; students that attend racially identifiable schools outside of the South would have to prove past intentional segregation by school boards.

The lawyers from the NAACP filed a class action suit claiming that the Detroit public school system was segregated by race. District Judge Stephen J. Roth initially heard the case known as *Milliken v. Bradley*. Roth ruled that the Detroit Board of Education had, “Created and perpetuated school segregation in Detroit by building new schools inside neighborhood boundaries rather than placing new schools in areas that would draw students of both races.” The school board also allowed white students to transfer from largely black schools in integrated neighborhoods. The ruling went on to state that, “Acts of the Board, as a subordinate entity of the State, were attributable to the State, and ordered the Board to submit Detroit-only desegregation plans.”


justified the inter-district remedy for Detroit’s urban and suburban schools by determining that the boundaries between school districts were a mere construct of the state and could be redrawn, and had been redrawn, at its will. “School district lines are simply matters of political convenience and may not be used to deny constitutional rights.”

Chief Justice Burger would write for the 5-4 majority in *Milliken v. Bradley* that marked the first loss for African-Americans in a school desegregation case. The *Milliken* decision marked the beginning of the conservative ascendancy on the Court in the area of civil rights, particularly school integration, which would assert the virtues of judicial restraint. Two of Nixon’s four Supreme Court appointees, Lewis Powell and William Rehnquist, had been openly hostile to school integration before their appointments. Powell, chairman of the Virginia and Richmond school boards, had not joined the interposition movement of Byrd and Kilpatrick; however, the Richmond school board employed the time-honored tradition of delaying school integration; under Powell’s stewardship little had been done to implement *Brown*. Rehnquist, as a practicing lawyer in Arizona, opposed the integration of the state’s school system and public accommodations.

In rejecting the inclusion of suburban schools in the plan to desegregate Detroit’s school system, the Burger majority used *Swann* as a bulwark against requiring racial

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balance in schools.\textsuperscript{119} The majority did acquiesce to Roth in allowing for inter-district relief in de jure segregation cases; however, without state or local action that is racially discriminatory, there is no constitutional wrong.\textsuperscript{120} The Burger majority ignored the breadth and depth of local zoning ordinances, the location of affordable housing for ethnic minorities, and restrictive covenants; desegregation remedies would stop at the now sacrosanct boundary between the offending district and those in search of judicial intervention.

Justice Marshall, joined in dissent by justices Douglas, Brennan, and White, stood before the Supreme Court twenty years after the \textit{Brown} decision to read his dissent. Marshall, supported by the Court’s decisions in \textit{Brown} and \textit{Swann}, was critical of the new majority’s abdication of its role to remedy what he believed was a violation of the Equal Protection Clause by Detroit’s Board of Education. Marshall likened school boards in Detroit, and throughout the nation as agencies of the state; thus, it was the responsibility of the state under the \textit{Brown} decision to provide non-discriminatory education.\textsuperscript{121} Marshall and his colleagues believed that states might choose to educate their students in any manner they choose, but decentralization, or greater local control, will not allow it to deny racial minorities the equal protection of the laws.\textsuperscript{122}

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\begin{itemize}
\item \textsuperscript{119} Milliken v. Bradley, 418 U.S. 717 (1974).
\item \textsuperscript{120} Milliken v. Bradley, 418 U.S. 717 (1974).
\item \textsuperscript{121} Milliken v. Bradley, 418 U.S. 717 (1974).
\item \textsuperscript{122} Milliken v. Bradley, 418 U.S. 717 (1974).
\end{itemize}
The Marshall dissent was equally critical of the majority opinion that provided for a Detroit-only desegregation plan. The majority recognized the pervasive and persistent acts of discrimination by the school board; however, the desegregation order to be implemented in the city would quicken the pace of white flight to Detroit’s suburbs which would make integrating the African-American students in the city that much more difficult.\(^\text{123}\) The dissenters would be correct; the \textit{Milliken} decision precipitated the flight of white students and their families to the suburbs:

Between 1970 and 1980, the number of white school-age children in Detroit dropped by more than half, from 194,000 to 80,00, while the number of black children increased to 230,000, three-quarters of the school age population. By 1999, black children made up 91 percent of the city’s public school students, with whites just 4 percent of the total enrollment. Schools in Detroit’s white suburbs remained virtually all white.\(^\text{124}\)

The cumulative effect of school desegregation case law provided states that practiced de jure and de facto segregation guidelines as how to proceed to remedy its constitutional violations: state imposed segregation must be eliminated root and branch, whereas de facto segregation must be remedied using every effort possible.\(^\text{125}\) The condition established by the Burger court in \textit{Milliken} and \textit{Keyes} that required plaintiffs to produce evidence of intentional acts of segregation was wholly inconsistent with previous decisions but politically expedient for the masses that had grown weary of desegregation.


\(^{124}\text{Irons, \textit{From Jim Crow to Civil Rights}, 246.}\)

The artificial boundaries between Detroit and its surrounding suburbs weren’t intended to protect those that haven’t suffered from the purpose and method of segregation from those that have. The Court, Marshall stated, “Took a giant step backwards,” after almost twenty years of smaller and very difficult steps towards meeting the guarantee of the equal protection of the laws. Efforts at school desegregation suffered as a result of the decisions in *Milliken* and *Keyes*: the percentage of black students nationwide attending majority-minority schools increased to its all time high of 37.1% in the 1980-1981 school year.\(^{126}\)

**The Reagan Revolution**

In May of 1986, after 17 years of service on the Supreme Court, Chief Justice Warren Burger would inform the Reagan White House of his intention to resign. On June 20, 1986, President Reagan nominated Associate Justice William H. Rehnquist to replace Burger; Antonin Scalia, a D.C. Circuit Court of Appeals judge was then nominated to fill Rehnquist’s vacant seat. Rehnquist and Scalia opposed the expansive view of the Equal Protection Clause embraced by the Warren court. Just one year later, after the resignation of Justice Lewis Powell, Reagan nominated conservative judge Robert Bork. Justice Powell, the crucial fifth vote in 80 percent of decided cases, had reaffirmed Roe v. Wade, and supported the use of racial classifications in college and graduate school admissions.\(^{127}\) Bork, if confirmed by the Senate Judiciary Committee, would provide the

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\(^{126}\) Brown, *Race, Law, and Education In the Post-Desegregation Era*, 213.

fifth vote in a conservative majority.\textsuperscript{128} Bork’s jurisprudence, and his indifference to individual liberties and civil rights, mobilized key factions of the Democratic Party against his nomination.\textsuperscript{129} The Senate rejected Bork’s nomination by a 52-48 vote in October of 1987. In February of 1988, the Senate would unanimously approve Anthony M. Kennedy of the Court of Appeals for the 9th Circuit—a considerably less controversial choice than Bork.

In 1990 and 1991 Justices William Brennan and Thurgood Marshall announced their retirement from the Supreme Court. President George H.W. Bush nominated David H. Souter, a justice on the Supreme Court of New Hampshire to replace Brennan, and Clarence Thomas, a judge on the United States Court of Appeals for the District of Columbia Circuit, to replace Marshall. The replacement of two of the most liberal justices on the Court, with two conservative jurists, accelerated the Court’s ideological shift to the right.\textsuperscript{130} Brennan and Marshall made a lasting contribution to the Court’s jurisprudence by protecting individual liberties, and by extending the equal protection of the laws to all. Neither Brennan nor Marshall voted to curtail the authority of federal judges to issue desegregation orders in school cases.\textsuperscript{131} The Rehnquist Court would now determine whether or not there were limits to the federal court’s supervision of said orders.

\textsuperscript{128} Ibid., 225.

\textsuperscript{129} Davis, \textit{The Supreme Court, Race, and Civil Rights}, 356.

\textsuperscript{130} Irons, \textit{From Jim Crow to Civil Rights}, 259.

\textsuperscript{131} Ibid., 259.
The first school desegregation case to reach the Court following the retirement of justice Brennan was *Board of Education of Oklahoma City Public Schools v. Dowell*. Law had segregated Oklahoma City’s public schools since 1907; the desegregation effort began in earnest in 1961 with a lawsuit filed by African-American students and their parents. District Judge Luther Bohanon held in 1963 that Oklahoma City had segregated both its schools and housing; additionally, the city was operating racially identifiable schools. Two years later, Judge Bohanon issued another order to desegregate because the neighborhood-zoning plan implemented by the board failed to produce any tangible results. The school board and the petitioners failed to formulate a segregation plan that successfully integrated the city’s public schools; in 1972, Judge Bohanon would elicit the help of Dr. John Finger. Finger’s plan would send kindergarteners to their neighborhood schools; children in grades 1-4 would attend formerly all-white schools and children in grade 5 would attend formerly all-black schools. Students in middle and high school would be bused to different neighborhoods in order to integrate schools; and in integrated neighborhoods there would be stand-alone schools for all grades. In 1977 the school board filed a motion to end federal oversight of the Oklahoma City public school system; Judge Bohanon complied:

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132 Ibid., 260.
135 *Brown, Race, Law, and Education In The Post-Desegregation Era*, 215.
The Court has concluded that the Finger Plan worked and that substantial compliance with the constitutional requirements has been achieved. The court believes that the present members and their successors on the Board will now and in the future continue to follow the constitutional desegregation requirements. The Board is entitled to pursue in good faith its legitimate policies without the continuing constitutional supervision of this Court.\textsuperscript{138}

The decision to declare Oklahoma City’s public schools unitary wasn’t contested. However, in 1984 the school board adopted a student reassignment plan that relied on neighborhood schooling for students in grades K-4 beginning in the 1985 school year and would continue for students in grades 5-12. Under the student reassignment plan, 11 of 64 elementary schools would be greater than 90% black, 22 would be greater than 90% white plus other minorities, and 31 would be racially mixed; a request to reopen the case was made in 1985.\textsuperscript{139} The District Court found that the School Board, administration, faculty, support staff, and student body were integrated, and transportation, extracurricular activities and facilities within the district were equal and nondiscriminatory; additionally, the District Court held that the school board did not promote residential segregation, which it determined was the result of private decision making and economics.\textsuperscript{140} The Tenth Circuit Court of Appeals reversed the District Court on the grounds that a significant number of schools would return to being racially identifiable under the student reassignment plans; moreover, circumstances in Oklahoma


\textsuperscript{139} Irons, \textit{From Jim Crow to Civil Rights}, 261.

\textsuperscript{140} Dowell v. Board of Education of Oklahoma City Public Schools, 606 F. Supp. 1548 (WD Okla. 1985).
City had not changed enough to justify modification of the court order. The school board would appeal to the Supreme Court; the case would be heard during the January term in 1991.

The majority opinion, written by Rehnquist, and joined by Kennedy appointee Byron White, held that the Tenth Circuit Court of Appeals had decided the Dowell case incorrectly. Rehnquist, using language from Milliken v. Bradley II, wrote that, “Federal-court decrees must directly address and relate to the constitutional violation itself. Because of this inherent limitation upon federal judicial authority, federal court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation.” The majority was unwilling to subject the Oklahoma School District to federal judicial supervision indefinitely. The Court referred the case back to Judge Bohanon instructing him to determine, “Whether or not the Board had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated had been eliminated to the extent practicable.”

Justice Thurgood Marshall, joined in dissent by justices Stevens and Blackmun, remained steadfast in his commitment to the eradication of racially identifiable schools. Marshall supported his dissent by tracing the history of de jure segregation in the state of Oklahoma. He reminded his colleagues that Oklahoma had mandated the separation of

the races in its public schools; additionally, racially restrictive covenants separated the African-American community from all other races.\textsuperscript{144} Using the crux of his argument from \textit{Brown}, Marshall associated the indignity that attending a racially identifiable school places on its students: “The stigmatic injury caused by segregated schools explains our unflagging insistence that formerly de jure segregated school districts extinguish all vestiges of segregation.” Marshall believed that the federal courts had an affirmative duty to eliminate all vestiges of racially segregated schools; Chief Justice Rehnquist’s jurisprudence in school desegregation cases would be guided by his unwavering commitment to “color-blindness” in the Constitution and “strict proof of government involvement in the creation of inequity in society.”\textsuperscript{145}

The next school desegregation case, \textit{Freeman v. Pitts}, involved the DeKalb County School System. The DeKalb County schools were subject to federal jurisdiction of the United States District Court for the Northern District of Georgia since 1969. In 1986, school officials petitioned the District Court for a declaration of unitary status and a release from further judicial scrutiny. However, 50\% of the county’s African-American students attended schools that were more than 90\% black—the system was roughly 47\% black.\textsuperscript{146} Additionally, 27\% of white students were in schools that were 90\% or more white, and 59\% of those students attended schools where the white student population

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\textsuperscript{145} Herman Schwartz, \textit{The Rehnquist Court: Judicial Activism on the Right} (New York: Hill and Wang, 2002), 49.
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\textsuperscript{146} Ibid., 307.
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exceeded the county average of white students by 20% or more.\textsuperscript{147} The District Court ruling held that the school system had achieved unitary status in some, but not all, of the conditions set forth in \textit{Green}. The District Court determined that the school system was unitary with regard to student assignments, transportation, physical facilities, and extracurricular activities. The District Court Judge William C. O’Kelley relinquished control as to those aspects of the system in which unitary status had been achieved, and retained supervisory authority only for those aspects of the school system in which the district was not in full compliance. O’Kelley did find that the teachers in white schools had considerably more experience and higher levels of education than African-American teachers; additionally, white schools received higher funding per pupil.\textsuperscript{148} Both the DeKalb County School Board and the petitioners appealed to the Eleventh Circuit Court.

The Eleventh Circuit Court’s opinion, authored by former NAACP lawyer Joseph Hatchett, reversed the declaration of unitary status by District judge O’Kelley.\textsuperscript{149} The Court held that, “We hold that a school system does not achieve unitary status until it maintains at least three years of racial equality in six categories: student assignment, faculty, staff, transportation, extracurricular activities, and facilities.”\textsuperscript{150} The Supreme

\textsuperscript{147} Davis, \textit{The Supreme Court, Race, and Civil Rights}, 217.

\textsuperscript{148} Ibid., 218.

\textsuperscript{149} Ibid, 218.

\textsuperscript{150} Freeman v. Pitts, 755 F.2d. 1423 (11\textsuperscript{th} Circuit 1985) 887 F.2.d 1438.
Court granted the DeKalb County board’s petition for review; the case was set for argument on October 15, 1991.\footnote{Freeman v. Pitts, 755 F.2d. 1423 (11th Circuit 1985) 887 F.2.d 1438.}

Justice Kennedy, writing for the majority, agreed with the conclusion of Judge O’Kelley: “Federal courts have the authority to relinquish supervision and control of school districts in incremental stages, before full compliance has been achieved in every area of school operations.”\footnote{Freeman v. Pitts, 755 F.2d. 1423 (11th Circuit 1985) 887 F.2.d 1438.} Kennedy’s opinion included three factors that should be considered when determining whether partial withdrawal by the federal courts is warranted: first, whether there has been “full and satisfactory compliance” with the desegregation order in those aspects where court supervision has been requested to be removed, second, whether “retention or of judicial control is necessary or practicable” to meet compliance with the desegregation order in other facets of the school system, and lastly, “whether the school district has demonstrated a good faith-commitment” to the court’s desegregation order that forced the initial intervention by the courts.\footnote{Freeman v. Pitts, 755 F.2d. 1423 (11th Circuit 1985) 887 F.2.d 1438.}

The core of the Kennedy opinion focused on the fact that school segregation and housing segregation are inextricably linked; when resegregation took place in the DeKalb County school system as a result of private choices, and not state action, there was no constitutional remedy.

It is beyond the authority and beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts. To attempt such results would require ongoing and never-ending
supervision by the courts of school districts simply because they were once de jure segregated. Residential housing choices, and their attendant effects on the racial composition of schools, present an ever-changing pattern, one difficult to address through judicial remedies.\textsuperscript{154}

In 199, black children made up 77\% of the county’s public school students, while only 14\% were white; only six of the nation’s fifty largest public school districts had a greater percentage of African-American students.\textsuperscript{155}

The Rehnquist Court heard its final school desegregation termination case in 1995. The case originated in 1977; in 1985, the District Court determined that segregation had caused a system wide reduction in student achievement in the Kansas City Metropolitan School District (KCMSD). The District Court established as its goal the elimination of all vestiges of state-imposed segregation. The District Court, consistent with the plans submitted by the KCMSD and the state of Missouri, ordered a wide variety of educational programs designed to remedy the past effects of segregated education. The program included reduction of the student-teacher ratio, implementation of an effective schools program, comprehensive magnet school and capital improvement plan and salary assistance for all but three employees in the school system.\textsuperscript{156} The school district and the state, per the District Court’s order, also improved its physical plant: high schools in which every classroom was provided with air-conditioning, 15 microcomputers, a Model United Nations facility wired for language translation, broadcast capable of radio and

\textsuperscript{154} Freeman v. Pitts, 755 F.2d. 1423 (11\textsuperscript{th} Circuit 1985) 887 F.2.d 1438.

\textsuperscript{155} Irons, From Jim Crow to Civil Rights, 278.

television studios, a temperature controlled art gallery, and a number of swimming pools. Kansas City spent as much as $11,700 per pupil-more money per pupil, on a cost of living adjusted basis, than any other of the 280 largest school districts in the country. Despite the considerable amount of money spent to keep white students in the public schools, white flight continued, and the achievement gap between white and African-American students did not shrink. The State of Missouri challenged the District Court’s finding requirement under the ruling in *Freeman v. Pitts*; the KCMSD believed it had achieved partial unitary status with regards to the programs already in place.

District Court Judge Russell Clark summarily rejected the state’s arguments. Clark held that the funding for educational programs would prevent white students and their families from fleeing to the suburbs; this would allow for greater school integration while reducing the achievement gap between white and black students. The State of Missouri and the Kansas City Metropolitan School District appealed to the Eighth Circuit Court. The three-judge panel decided, “Equal education outcomes, or some approximation thereof, would justify the termination of the integration plan in the KCMSD.” The Supreme Court would set oral argument in the state’s appeal from the Eighth Circuit Court ruling for January 11, 1995.

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157 Brown, *Race, Law, and Education In The Post-Desegregation Era*, 220.
158 Caldas, *Forced to Fail*, 117.
159 Brown, *Race, Law, and Education In The Post-Desegregation Era*, 221.
Chief Justice Rehnquist, joined by Justices O’Connor, Scalia, Kennedy, and Thomas, wrote the majority opinion in *Missouri v. Jenkins*. The Supreme Court overruled the Eighth Circuit and District Courts on the grounds that the remedy they fashioned was beyond the scope of the violation: “The proper response by the District Court should have been to eliminate to the extent practicable the vestiges of prior de jure segregation within the KCMSD."161 The Court, relying on *Milliken*, reaffirmed its holding that the Constitution isn’t violated by racial imbalance alone. Moreover, the KCMSD’s decision to turn many of its schools into magnet schools also constituted a violation. While the Court has approved intradistrict magnet schools to encourage the voluntary movement of students within a school district, the District Court’s remedial plan to attract non-minority students from outside of the KCMSD was beyond the scope of the intradistrict violation.

The District Court’s remedial plan in this case, however, is not designed solely to redistribute students within the KCMSD in order to eliminate racially identifiable schools within the KCMSD. Instead, its purpose is to attract non-minority students from outside the KCMSD. In effect, the District Court has devised a remedy to accomplish indirectly what it admittedly lacks the authority to mandate directly: the interdistrict transfer of students.162

The quality education program funding, which sought to bridge the gap between white and black students, didn’t pass constitutional muster either. The Rehnquist plurality held that a host of factors contributed to the student achievement gap in the KCMSD; as long

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as these factors were not the result of government conduct, they would not be part of the
District Court’s decision in the remanded case.

With the decision in *Missouri v Jenkins*, the Court’s ideological shift to the right was complete: between 1988 and 1998, the percentage of southern black students in majority-white schools has declined as federal judges have lifted desegregation orders and residential segregation has increased.\(^{163}\) Today, fewer than 33 percent of southern blacks were in majority-white schools, with two-thirds in largely black schools.

In 2003, the Supreme Court decided *Grutter v. Bollinger* and *Gratz v. Bollinger*, two companion cases challenging the consideration of race in college and university admissions. It had been roughly twenty-five years since the Court had last considered affirmative action. The University of Michigan cases began in 1997, when three white students filed lawsuits alleging that Michigan’s dual track admissions systems for whites and selected racial minorities violated the Fourteenth Amendment’s guarantee of equal protection under the law. Jennifer Gratz and Patrick Hamacher had been denied admission to the undergraduate program, which used a system automatically assigning more points to minority applicants. Barbara Grutter had been denied admission to the law school, which, within a more individualized screening system, applied a plus factor for minority applicants. All three students believed that the credentials of black students who had been admitted were weaker than theirs.

Justice O’Connor, relying heavily on Justice Lewis Powell’s opinion in *Bakke v. Regents of the University of California*, endorsed the view that student body diversity is a

\(^{163}\) Ibid., 291.
compelling state interest that can justify the use of race in university admissions.\textsuperscript{164} However, the O’Connor majority, joined by Justices Breyer, Ginsburg, Souter, and Stevens, all concurred that any racial classifications imposed by the government must be analyzed using the strict scrutiny test.\textsuperscript{165} This means that any such classification must be narrowly tailored to further some compelling government interest. The law school’s policy met the Court’s criteria:

To be narrowly tailored, a race-conscious admissions program cannot use a quota system—it cannot insulate each category of applicants with certain desired qualifications from competition with all other applicants. Instead, a university may consider race or ethnicity as a plus in a particular applicant’s file, without insulating the individual from comparison with all other candidates for the available seats. An admissions program must be flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight.

Justice O’Connor’s opinion was nearly a complete victory for the Court’s conservatives and opponents of affirmative action programs. Justice O’Conner also included a sunset provision that advocated some end point for the use of race in graduate, and undergraduate, admissions policies.

In \textit{Gratz v. Bollinger} the Court held that the freshman admissions policy, which distributed points to underrepresented minority applicants solely on the basis of race, was not narrowly tailored to achieve a compelling interest in diversity; thus, it was a violation of the Equal Protection Clause. Chief Justice Rehnquist’s majority opinion cited Justice

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Powell’s opinion in Bakke by reiterating that, “Racial preferences for no reason other than race or ethnic origin is discrimination for its own sake.”\textsuperscript{166} Only affirmative action programs that considered each applicant as an individual, and how that individual would contribute to the university setting, would pass constitutional muster.\textsuperscript{167}

School desegregation cases took up a considerable amount time on the Court’s docket under Chief Justices Warren and Burger; it slowed dramatically during Rehnquist’s tenure as Chief Justice. The Rehnquist Court’s interpretation of the Equal Protection Clause has made it more difficult for discrete and insular minorities to realize the full promise of equality in education. This paradigm shift has brought about a renewal of racial isolation in public schools and universities; moreover, it has prevented the other branches of government and private institutions from helping remedy the past effects of segregation in housing and education.\textsuperscript{168} The conservative revolution, initiated by Nixon’s appointment of four Supreme Court justices, has brought into question the Court’s contemporary role as guarantor of civil rights for minorities; only a shift in Court’s membership may reverse this trend.\textsuperscript{169}

\textsuperscript{166} Regents of the University of California v. Bakke, 438 U.S. 265 (1978).
\textsuperscript{168} Schwartz, The Rehnquist Court, 54.
\textsuperscript{169} Davis, The Supreme Court, Race, and Civil Rights, 407.
CHAPTER 2

PARENTS INVOLVED IN COMMUNITY SCHOOLS v. SEATTLE SCHOOL DISTRICT NO. 1

The Seattle and Jefferson County school districts adopted voluntary school integration plans that considered race, along with a host of other factors, for admission to their most popular public schools.¹ The Seattle School District was never under a court-imposed desegregation order; however, in order to avoid racial isolation in its public high schools, the school district classified prospective students as “white” or “non-white” when determining where they would be assigned.² The Jefferson County school district operated under a court ordered desegregation plan from 1975 until 2000; the District Court declared the school system unitary after finding that it had, “Eliminated all the vestiges of prior segregation to the greatest extent practicable.”³ In 2001, the Jefferson County School board allowed students to indicate their preferences among schools in a “cluster” near their homes; student requests would be denied if their assignment would cause the schools percentage of African-American students to fall below 15% or rise above 50%.⁴

¹ Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2738 (2007).
² Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2738 (2007).
³ Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2738 (2007).
⁴ Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2750 (2007).
Parents Involved in Community Schools, a Washington non-profit corporation whose children were or could be assigned under the Seattle plan, filed suit in the Western District Court of Washington alleging a violation of the Equal Protection Clause of the Fourteenth Amendment. The suit challenged the racial classification of students on several points: first, the school district’s voluntary integration plan didn’t acknowledge diversity amongst nonwhites; second, the high schools in Seattle already had a high percentage of nonwhite students; third, since the schools were diverse, a race-based plan was unnecessary; and finally, the Seattle school district never discussed race-neutral alternatives. The District Court held that Washington state law did not bar the district’s use of the racial tiebreaker; the plan survived strict scrutiny on the federal constitutional claim because it was narrowly tailored to serve a compelling government interest. The Parents decision was appealed to the Ninth Circuit Court; the Circuit Court agreed that diversity was a compelling interest but the plan was not narrowly tailored to achieve those interests. The Supreme Court granted certiorari in 2006.

Crystal Meredith, the parent of a student in the Jefferson County school district, filed suit in the Western District of Kentucky because her son’s transfer request to a

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5 Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2748 (2007)


neighborhood school was denied. Meredith believed that the Jefferson County school board did not demonstrate any compelling interest to justify its use of race in denying her request; the narrow tailoring approved by the Court in *Grutter* wasn’t achieved in this instance since the school district failed to employ a more holistic approach in achieving diversity. Meredith and her lawyers also argued that the racial balancing desired by Jefferson County’s schools had repeatedly been admonished by the Court, absent the need to remedy a prior constitutional violation. The District Court and Sixth Circuit Courts both held that the Jefferson County plan was narrowly tailored to its compelling interest in maintaining racially diverse schools. The Supreme Court would grant certiorari in 2006 as well.

The opinion issued by a sharply divided Court struck down both the Seattle and Jefferson County School district’s race-conscious integration plans. Chief Justice Roberts was joined by Justices Kennedy, Alito, Thomas, and Scalia in parts I, II, III-A and III-C in the four part opinion. The majority concluded in part III-C that the use of race was unnecessary in Seattle’s student assignment plan since so few students were actually affected by its use: in the Seattle school district only 307 students were affected by the racial tiebreaker during the 2000-2001 school year; the use of race made no difference in almost one-third of assignments affected by the racial tie-breaker; only 52 students were adversely affected by the tiebreaker, in that they were assigned to a school that had not

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been listed as a preference and to which they would not have otherwise been assigned.\textsuperscript{12} The Roberts majority found that the elementary school students in the Jefferson County school system had been assigned to their first, or second, choice school 95 percent of the time.\textsuperscript{13} Moreover, student transfer requests, which constituted 5 percent of placements, were denied only 35 percent of the time; fewer were denied on the grounds of race alone.\textsuperscript{14} The Court reaffirmed its decision in \textit{Grutter v. Bollinger} by stating that, “Racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification.”\textsuperscript{15} Chief Justice Roberts went on to explain the logic behind the majority opinion:

The districts assert, as they must, that the way in which they have employed individual racial classification is necessary to achieve their stated ends. The minimal effect these classifications have on student assignments, however, suggests that other means would be effective. Seattle’s racial tiebreaker results, in the end, only in shifting a small number of students between schools. The districts have also failed to show that they have considered other methods other than explicit racial classifications to achieve their stated goals.\textsuperscript{16}

\begin{itemize}
\item \textsuperscript{12} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2759-60 (2007).
\item \textsuperscript{13} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2760 (2007).
\item \textsuperscript{14} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2760 (2007).
\item \textsuperscript{16} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2752 (2007).
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The Court did acknowledge that there were two interests that would qualify as compelling in the context of school desegregation. The first interest is remedying the effects of past intentional discrimination and the second is diversity in higher education. Grutter passed constitutional muster because diversity was not focused solely on the race of the applicant. The law school’s policy made clear that diversity had many possible sources, such as, “Living or traveling abroad, fluency in several languages, having overcome personal adversity and family hardship, or success in other fields.” Additionally, Chief Justice Roberts classifies the desire for diversity in Louisville and Seattle as “racial balancing.” His opinion explains that: “In design and operation, the plans are directed only to racial balance, pure and simple, an objective this Court has repeatedly condemned as illegitimate...The plans are tied to each district’s specific racial demographics, rather than to any pedagogic concept of the level of diversity needed to obtain the asserted educational benefits.”

Justice Kennedy voted with Justices Roberts, Scalia, Thomas, and Alito to invalidate the Seattle and Louisville voluntary integration plans. Kennedy’s concurrence emphasized that, “The inquiry into less restrictive alternatives demanded by the narrow tailoring analysis requires in many cases a thorough understanding of how a plan works...As a part of the government’s burden it must establish, in detail, how decisions

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based on an individual student’s race are made in a challenged program.\textsuperscript{20} The proscribed remedy to racial isolation in Jefferson County’s public schools was in the opinion of Justice Kennedy, “Too broad and imprecise that they cannot withstand strict scrutiny.”\textsuperscript{21} Kennedy concluded that that Louisville plan failed to, “Make clear, for example, who makes the decisions; what if any oversight is employed; the precise circumstances in which an assignment decision will or will not be made on the basis of race; or how it is determined which of two similarly situated children will be subjected to a given race based decision.”\textsuperscript{22} Kennedy’s criticism of Seattle’s voluntary integration plan focused on the school district’s classification of students as “white” and “non-white”; according to Justice Kennedy, these distinctions didn’t advance diversity or reduce racial isolation.\textsuperscript{23}

While Kennedy voted with the majority in concluding that the Seattle and Louisville plans failed the strict scrutiny test, Kennedy did acknowledge that our nation’s strength come from its diversity and that is was still a compelling government interest to pursue integrated schools:

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The Nation’s schools strive to teach that our strength comes from people of different races, creeds, and cultures uniting in commitment to the freedom of all. In these cases two
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\textsuperscript{20} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2789 (2007).

\textsuperscript{21} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2790 (2007).

\textsuperscript{22} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2790 (2007).

\textsuperscript{23} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2791 (2007).
school districts in different parts of the country seek to teach that principle by having classrooms that reflect the racial makeup of the surrounding community. That the school districts consider these plans to be necessary should remind us our highest aspirations are yet unfulfilled.24

Kennedy’s jurisprudence in Parents takes into consideration the alarming consequences of resegregation in the United States and our country’s unique history with regard to race. Kennedy understood that interpreting the Equal Protection Clause in a colorblind fashion would be insufficient to bring about an end to racial isolation in public schools. Kennedy’s wants communities to determine for themselves how to proceed with efforts to integrate as long as they are narrowly tailored to meet some compelling government interest.25

Justice Kennedy suggested that several race neutral student assignment methods would be legally permissible under the Parents framework.26 These methods take race into consideration but do not result in different treatment based on racial classification. The first strategy, the redrawing and adjustment of school attendance zones, may help combat racially segregated housing patterns that have isolated minorities. When communities redraw their attendance boundaries, schools can now use student

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24 Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court, at 2791 (Kennedy, J., concurring in part and concurring in the judgment) (2007).


demographics, including race, to promote diversity as one of many goals.\footnote{NAACP Legal Defense Fund, Inc. & The Project for Civil Rights, Still Looking to the Future: Voluntary K-12 School Integration, A Manual for Parents, Educators, & Advocates. www.civilrightsproject.ucla.edu/research/deseg/Still_Looking_to the%20Future_Integration_Manual.pdf., (accessed September 10, 2009), 36.} Second, school districts can strategically place their new schools in neighborhoods that are likely to draw a diverse student population.\footnote{Ibid., 37.} Additionally, school districts may allocate additional funding to implement programs in schools that might attract a racially diverse group of students.\footnote{Ibid.} While Kennedy didn’t specifically mention these programs by name, the best known include magnet schools, International Baccalaureate, Advanced Placement, and dual language or bilingual education programs.\footnote{Ibid.} Schools can also utilize targeted recruitment of underrepresented minority groups in order to encourage diversity amongst the faculty and student body.\footnote{Ibid.} The final race neutral method, the promotion of socioeconomic integration or income based school integration, may be the best hope in helping to close the achievement gap between white and non-white students while keeping the promise of \textit{Brown} alive.

Justice Kennedy didn’t explicitly rule out taking race into consideration with regard to student assignment plans: however, when school districts do use race as a factor in their student assignment plans it has to be, “Thoroughly tested against race-neutral alternatives, be sufficiently precise, have their implementation process fully explained,
and they must take into account a more nuanced racial and ethnic composition of the school district. Finally, Kennedy states that it is also possible to employ, “If necessary, a more nuanced, individual evaluation of school needs and student characteristics that might include race as a component. This approach would be informed by Grutter, though of course the criteria relevant to student placement would differ based on the age of students, the needs of parents, and the role of schools.”

Permissible programs might include, a competitive admissions policy that uses race as a “plus” factor among a host of other factors designed to promote educational diversity within an entering class of students.

Justice Breyer, joined by Justices Stevens, Souter, and Ginsburg, was the author of the primary dissenting opinion in Parents. The Breyer dissent was critical of the plurality’s narrow interpretation of the Equal Protection Clause and its dismissal of established case law that encouraged school boards to undertake efforts to achieve integrated schools. Breyer and the Court’s minority believe that the Roberts majority has supplanted its decision-making ability for that of local school boards:

School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do

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33 Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2800 (2007).
this as an educational policy is within the broad discretionary powers of school authorities.\textsuperscript{34}

Justice Breyer’s deferment to the judgment of school districts, with regard to voluntary integration plans, was based on the premise that school integration was a complex task and local school boards were more familiar with their own circumstances than the federal courts. Moreover, these voluntary integration plans were less harmful forms of discrimination since they sought to include students, and not exclude them; thus, the strict scrutiny standard was misapplied.\textsuperscript{35}

Justice Breyer also found that a compelling interest did exist in Seattle and Louisville under the standard articulated by the Court in \textit{Grutter}, regardless of the level of scrutiny applied by the plurality. Breyer identified three essential interests asserted by the Seattle and Louisville school boards that justified their student assignment plans. The first is an interest in combating the adverse impact of segregated education in academic achievement, which may be directly correlated to housing segregation, employment discrimination, and earnings inequality between whites and non-whites.\textsuperscript{36} The second is an educational interest: school districts that desire to close the achievement gap between whites and non-whites should be free to do so.\textsuperscript{37} Breyer notes that there is conflicting

\textsuperscript{34} Swann v. Charlotte-Mecklenburg Bd. Of Education 402 U.S. 1, 16 (1971).

\textsuperscript{35} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2800-01 (2007).

\textsuperscript{36} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2801(2007).

\textsuperscript{37} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court 2801 (2007).
evidence as to the effectiveness of taking children from highly segregated schools and placing them in integrated settings; however, the studies that suggested children placed in integrated schools make significant gains in academic achievement proved compelling enough to the dissenters to warrant local school boards the authority to design, and implement, voluntary integration plans.\textsuperscript{38} The democratic element, or the impact that desegregated schools have on producing good citizens in a “pluralistic society”, is the final compelling interest.\textsuperscript{39} The sociological evidence supporting the significance of desegregation pointed to “less racially prejudiced schools, increased interracial sociability, and a reduction in desegregated housing.”\textsuperscript{40}

The dissent then turned its attention to what it believed was the narrow tailoring of the voluntary integration plans in Seattle and Louisville. The boards’ use of race created boundaries of relatively broad ranges of races within the schools.\textsuperscript{41} Additionally, students could decide to transfer to the school of their choice after the ninth grade; choice, the dissenters believed, was a more important factor than the use of race in Seattle’s student assignment policy.\textsuperscript{42} Breyer noted that, “The broad ranges were less like

\begin{itemize}
  \item \textsuperscript{38} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2801 (2007).
  \item \textsuperscript{39} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2801 (2007).
  \item \textsuperscript{40} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2802 (2007).
  \item \textsuperscript{41} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2803 (2007).
  \item \textsuperscript{42} Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2803 (2007).
\end{itemize}
a quota and more like the kinds of useful starting points that the Court had consistently found permissible.  

Second, the race-conscious plans’ broad range limits were less restrictive than the *Grutter* framework approved by the Court; in *Parents*, race became the deciding factor in a small number of students’ non-merit based assignments while in Grutter race had a profound impact on a large number of students’ merit based applications. Moreover, the impact of being denied a spot at a public school of one’s choice in Seattle or Louisville, particularly in Seattle where the schools were considered relatively equal, was less severe than being denied a spot at one of the nation’s best graduate schools. Third, the Seattle and Louisville plans were developed and implemented to address the history of racial segregation in these respective communities; plans that didn’t take race into account failed to achieve the school boards’ compelling interests:

The history of each school system reveals highly segregated schools, followed by remedial plans that involved forced busing, followed by efforts to attract or retain students through the use of plans that abandoned busing and replaced it with greater student choice. Both cities once tried to achieve more integrated schools by relying solely upon measures such as redrawn district boundaries, new school building construction, and unrestricted voluntary transfers. In neither city did these

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43 Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2803 (2007).

44 Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2803 (2007).

45 Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2803 (2007).
prior attempts prove sufficient to achieve the city’s integration goals.\(^{46}\)

Justice Breyer agrees with Justice Kennedy that race-conscious measures that promote diversity and integration are still compelling. Breyer’s interpretation of the Equal Protection Clause takes into consideration the history of slavery and our nation’s struggle to overcome segregation; he urges the Court to take a more expansive view of the Constitution that recognizes the need to remedy inequities in education, housing, and employment that have resulted in our nation’s shameful history with regard to race. In closing, Breyer ponders the consequences of the plurality’s decision by invoking the promise set forth in \textit{Brown}:

For what of the hope and promise of \textit{Brown}? For much of this Nation’s history, the races remained divided. It was not long ago that people of different races drank from separate fountains, rode on separate buses, and studied in separate schools. In this Court’s finest hour, \textit{Brown v. Board of Education} challenged this history and helped to change it...The last half-century has witnessed great strides toward racial equality, but we have not yet realized the promise of \textit{Brown}. To invalidate the plans under review is to threaten the promise of \textit{Brown}.\(^{47}\)

As a nation, we honor the \textit{Brown} decision and the men and women who fought valiantly against segregation at the local, state, and federal level. The resegregation of K-12 schools prevents students from deriving the benefits that result from a diverse student body. The voluntary integration plans used in Seattle and Louisville reflect the desire of

\(^{46}\) Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2803 (2007).

\(^{47}\) Parents Involved in Community Schools v. Seattle School District No. 1, 127 Supreme Court at 2803 (2007).
these two communities, and a host of others throughout the United States, who believe that the sharing of ideas between children of different races may lead to the dismantling of racial stereotypes, good citizenship, the development of critical thought, and improved academic performance by non-white students. Most importantly, voluntary integration plans advance the commitment set by the Court in Brown. The resegregation of children in our public schools encourages adversarial relations amongst groups based on race, ethnicity, and income.

The Rehnquist and Roberts Court’s equal protection jurisprudence has become increasingly hostile to race-conscious policy-making, even those policies that advance integrated education.\(^48\) Chief Justice Roberts and several of his colleagues have also called into question the interpretation of Brown; members of the plurality have argued for an entirely color-blind interpretation of the Equal Protection Clause by proposing that, “The way to stop discriminating on the basis of race is to stop discriminating on the basis of race.”\(^49\) The rulings in Seattle and Louisville will have broader implications for school integration and equal protection jurisprudence for the near future.


\(^{49}\) Ibid., 24.
CHAPTER 3
NO CHILD LEFT BEHIND

Children that live in segregated and low-income urban school districts have been underserved by a system that seemingly fails them at every level: “The reading level of the average, low-income twelfth grader is the same as that of the average, middle-class eighth grader.”¹ The No Child Left Behind Act has initiated sweeping changes in the nation’s schools and school districts with a dramatic expansion of oversight by the federal government in exchange for greater funding. NCLB was crafted in order to improve the education and achievement of public school students through four clearly defined ways: greater accountability for results, an emphasis on results based scientific research, expanded parental options, and greater local control and flexibility.² NCLB was also a critical step in fulfilling the promise of Brown; in passing the bill, Congress included the disaggregation of student performance based on race in order to ensure that the disparities in achievement between minority students and their white counterparts were addressed.³ While overall academic improvement is the bill’s primary goal, “The failure of any major racial or ethnic group, of students with disabilities, of socioeconomically disadvantaged students, or of students with limited English language proficiency, at the school or district level, can trigger intervention or government

¹ National Center for Education Statistics, National Assessment of Educational Progress (NAEP), Data Explorer, 2005 Reading Assessment.

² Frederick M. Hess and Michael J. Petrelli, No Child Left Behind (New York: Peter and Lang, 2006), 2.

sanctions.” Despite parent and teacher dissatisfaction for the bill’s test-driven results, the race conscious accountability provision of Title I may have a profound impact on closing the white/non-white achievement gap.

In January 2001, the Bush administration sought bipartisan support for education reform from the New Democrats and the liberal wing of their party. The bill signed by President Bush in January 2002 was celebrated as the most important piece of federal education legislation since the original Elementary and Secondary Education Act of 1965. The federal government deferred to the states regarding standards and student performance; its traditional role was limited to providing funding for schools that lacked the resources to improve their facilities or hire more qualified teachers. Under NCLB, the federal government has shifted its focus to monitor the performance of students, schools, and school districts; additionally, the government has set federal guidelines for student expectations and academic outcomes. States that receive Title I funding must develop challenging standards for their students and create assessments that reflect the content; moreover, statistics must annually test students to determine whether each school and school district is making adequate yearly progress. These test results have to be reported collectively and amongst individual subgroups: ethnic and racial, low-income students, students with disabilities, and students with limited English proficiency. All students must be proficient by 2013-2014 in both reading and math, with at least 95

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5 Hess, No Child Left Behind, 14.
6 Ibid., 27.
7 Ibid., 29.
percent of all students being tested. Schools and districts whose students persistently fail to fulfill AYP’s progress benchmarks are labeled as needing improvement; if a school or district consistently fails to make adequate yearly progress, and cannot improve by taking advantage of technical assistance offered by the states and federal government, the state education agency must intervene.\textsuperscript{8} NCLB would force schools that fail to meet AYP to close, fire their staff, or suffer the loss of federal funds.\textsuperscript{9}

The universal proficiency bar established by NCLB for 2012-2014 in reading in math is going to be a significant challenge for schools and districts that serve racial and ethnic minorities, and lower-income students. The mandates established by the new law ask schools and their respective districts to make the greatest gains without taking into consideration that these schools are less well-funded than many schools serving wealthier and higher scoring students.\textsuperscript{10} High-poverty schools suffer the indignity of having to hire the least qualified and least-experienced teachers to educate the students with the greatest need.\textsuperscript{11} States that have not provided appropriate incentives for experienced educators have a disproportionate number of teachers that are not qualified to teach their subject matter. In schools that are described as mostly minority, students have less than a 50% chance of getting a mathematics or science teacher with a license and a degree in the field.


\textsuperscript{10} Deborah Meier, et. al, \textit{Many Children Left Behind: How the No Child Left Behind Act is Damaging Our Children and Our Schools} (Boston: Beacon Press, 2004), XV.

\textsuperscript{11} Meier, \textit{Many Children Left Behind}, 26.
they teach.\textsuperscript{12} The Department of Education reported in 1997 that 75% of teachers hired in urban areas lacked the requisite qualifications.\textsuperscript{13} NCLB calls for highly qualified teachers instructing core subjects by the end of 2005-2006 academic year; in order to be a highly qualified teacher, one must possess a bachelors degree, state certification, and have a demonstrable knowledge of the subject one teaches. While this move was critical, it is by no means sufficient to close the achievement gap. NCLB, on its surface, believes increased accountability and funding will pressure states to fix their schools with the most need; unfortunately, the increased federal funding only represents a small percentage of spending on schools and Title I would not bring schools to the levels of extra funding that many experts believe is necessary.\textsuperscript{14}

Currently, African-American students are the most segregated in their public schools than at any time since 1968.\textsuperscript{15} Through NCLB, children are able to transfer from a school that has failed to meet its adequate yearly progress goals for two years into a better-performing school within their district. The transfer provision has sought to pressure underperforming schools to improve, help provide immediate relief for students stuck in those schools; and to provide an opportunity for low-income students to escape high poverty schools.\textsuperscript{16} However less than three percent of eligible children have been

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\textsuperscript{12} Ibid., 27.
\textsuperscript{13} Hess, \textit{No Child Left Behind}, 64.
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able to transfer, in part because of the lack of space in high-performing schools within most urban school districts.\textsuperscript{17} The U.S. Department of Education found that, in a survey of nine urban districts, participation in Title I school choice was about 0.05\%, even lower than the national average of 1 percent.\textsuperscript{18} NCLB encourages urban and suburban districts to set up “cooperative agreements” to allow student transfers; however, virtually none of the country’s suburban districts has voluntary agreed to do this.\textsuperscript{19} This provision may help move the nation closer to achieving greater economic integration of its schools; however, administrators have at times discouraged intradistrict transfers.\textsuperscript{20} Schools that receive transfers have been provided an incentive in NCLB to minimize the number of poor and African-American students:

Low income students, on average, score lower than middle-class children, an influx of low-income transfer students initially is likely to depress aggregate school scores, increasing the chances that the receiving school will itself fail to make AYP. Homogenous schools with few poor or minority students are exempt from this requirement, because a critical mass of students is required to make disaggregation valid statistically. But an influx of poor and/or minority students might push a school over the threshold number triggering disaggregation, thus increasing

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\textsuperscript{17} Kozol, Transferring Up.
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the number of targets the school must hit in order to reach AYP and thereby increasing the risk of failing.  

The school choice provision in NCLB offers an empty promise to parents and students in search of a quality education. The *Parents* decision offers out hope in fashioning interdistrict remedies that may use race as one of many factors in closing the achievement gap between white and minority students.

In exchange for federal oversight by way of increased accountability for student achievement, states would receive additional funding and more flexibility to implement NCLB’s goals. The final bill did provide increased flexibility for schools, and increased funding, but not at the level of expectations set by the administration.  

The funds appropriated between 2001 and 2004 rose to nearly $8.9 billion dollars with Title I schools receiving over $4 billion; nonetheless, the National Education Association has calculated that NCLB is under funded by close to $70.91 billion through the fiscal year 2008 Bush budget.  

The actual cost of NCLB has become increasingly difficult to assess since the legislation requires states and local school districts to “develop additional tests, invest in technology and data management systems to keep track of AYP, help improve their most needy schools, and recruit and train highly qualified teachers.”  

One estimate

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22 Hess, *No Child Left Behind*, 103.

23 National Education Association, Funding Gap: No Child Left Behind: Funding Promised in law vs. Funding Actually Received, FY 2002-2008, 1 August 2007.

suggests that Title I funding would have to be increased by 129 percent in New York and 547 percent in California to meet NCLB’s 100% student proficiency goal.\textsuperscript{25}

\textsuperscript{25} William Duncombe, Anna Lukemeyer, and John Yinger, “Dollars without Sense: The Mismatch between the No Child Left Behind Act Accountability System and Title I Funding,” draft of a forthcoming paper from the Century Foundation, 13.
CHAPTER 4

SOCIOECONOMIC INTEGRATION

The Supreme Court’s decision to limit the use of race in voluntary integration programs has shifted attention to an alternative form of school integration based on the socioeconomic status of students. Socioeconomic disadvantage is often measured using these key factors: parents’ education, family income, parents’ occupation, and family assets.¹ This race-neutral alternative may provide important benefits to minority students and school districts including the reduction of poverty concentrations, and greater racial integration. In light of the testing requirements required by No Child Left Behind, socioeconomic integration can help school districts meet their adequate yearly progress goals. “Research has shown that concentrated poverty, more so than a concentration of minority students, has impeded academic achievement.”² Richard Kahlenberg, the guru of socioeconomic integration, has predicted, “Economic integration will increase in all but six states between 2000 and 2025.”³ I will profile two school districts that have successfully implemented integrating students by socioeconomic status: Wake County, North Carolina, and La Crosse, Wisconsin.

The 1964 Civil Rights Act called for a study of the disproportionate achievement in education between racial and ethnic minorities and their white classmates. Many


educators, sociologists, and policymakers assumed that the disparity in funding between white and black schools would be significant; this funding gap would also explain for the differences in achievement between black and white students. In 1966 James Coleman and his colleagues issued *Equality of Educational Opportunity*: the report involved 600,000 children in 4,000 schools across the United States. Coleman found that the spending gap between schools attended by blacks and whites was relatively small; second, there was no direct correlation between funding and achievement; the socioeconomic status of a student’s family was the most accurate statistic that could be used to predict a student’s future. In closing, Coleman concluded that the social capital provided by a student’s classmates are more important for his achievement than the funding provided by the state or the federal government; Coleman knew in 1966 that all children improve in schools with a critical mass of middle class students. The importance of socioeconomic status becomes even more apparent when considering the impact of students, parents, and teachers:

- Research suggests that students learn a great deal from their peers, so it is an advantage to have classmates who are academically engaged and aspire to go to college. It is an advantage to have high-achieving peers whose knowledge is shared informally with classmates all day long. Research finds that most of these factors— including cutting class, missing school, failing to do homework, dropping out, achieving at low levels, engaging in violent acts, watching television excessively, and failing to go on to college—track much more closely by class than race. These behaviors are

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5 Ibid.

6 Ibid.
not part of any particular racial culture; they are patterns more likely to be found among the poor of all races and ethnicities.\(^7\)

- Parents also are an important part of the school community and research finds that it is an advantage to attend a school where parents are actively involved, volunteer in the classroom, and hold school officials accountable. Parents can also push the political process to ensure that schools are well funded. As with peer behaviors, research shows that parental involvement also tracks more closely by class than race.\(^8\)

- Finally, research finds that it is an advantage to have the best teachers. Students of color and low-income students both generally have been shortchanged, but again, the bias is somewhat stronger against low-income students. According to the Education Trust, students in high-minority secondary schools are eight percentage points more likely to be taught by out-of-field teachers than students in low-minority schools. But the gap between students in high-poverty schools and low-poverty schools is even greater—fifteen percentage points.\(^9\)

If schools can be successfully integrated by economic status, school districts can take positive steps towards Brown’s mandate by providing equality of opportunity to resources that have traditionally been beyond the reach of our poor and minority students. As Justice Thurgood Marshall stated, “Unless our children begin to learn together, then there is little hope that our people will ever learn to live together.”\(^10\)

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\(^7\) Richard Kahlenberg, “A New Way on School Integration,” The Century Foundation (November 2006), 5.


\(^9\) Education Trust, *Teaching Inequality*, June 2006, 2, Figure 1.

Concentrated poverty, combined with racial isolation in public schools, has been associated with lower scores on standardized testing. In the Jefferson County School District, 75 percent or more of the students came from low-income homes: poor students in Louisville, both black and white, performed worse when they attended schools with other poor kids. In elementary school, 61 percent of poor students at mostly low-income schools scored proficient in reading, compared with 71 percent of poor students at majority-middle class schools. For math, the comparative proficiency rates were 52 percent to 63 percent; because black students were disproportionately poor, they were more likely to attend high-poverty schools. When school districts pursue socioeconomic integration, and create strong middle class schools, all students perform better on standardized testing; “On the 2005 National Assessment Of Educational Progress (NAEP) given to fourth graders in math, for example, low-income students attending more-affluent schools scored substantially higher than low-income students in high-poverty schools.” Research also suggests that socioeconomic integration has had a more profound impact on raising student achievement that racial integration: “Racial desegregation raised black achievement in certain areas such as Charlotte, North Carolina, where middle-class whites and low-income blacks were integrated. However, in northern cities where low-income whites and low-income blacks were integrated,


academic achievement didn’t improve. When poor students of any race have the opportunity to attend middle-class schools with involved parents and highly qualified teachers, the academic benefits are pronounced. Judge John Heyburn, who presided over the 2004 lawsuit filed against Jefferson County, stated: “Concentrations of poverty which may arise in neighborhood schools are much more likely to adversely affect black students.”

In the early 1990’s the school district in La Crosse, Wisconsin decided to rebuild one of its two high schools. The town’s population in the 1990’s was predominantly white but divided by class: the northern side of the town is mostly blue collar while the southern side of the town is predominantly white-collar. The high schools that served the southern and northern sides of town were markedly different: Logan High School was considered a vocational school; it offered a less-challenging curriculum and had lower test scores. The decision to shift the boundaries was a success; presently, the high schools in La Crosse are somewhat similar with regard to their socioeconomic makeup and academic achievement: “In 2005-2006, the free and reduced lunch rate was 26.9 percent at Central and 37.2 percent at Logan. Additionally, in the 2005-2006 academic year, the percentage of students proficient or advanced in tenth grade reading, math, and

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16 Ibid., 4.


18 Kahlenberg, All Together Now, 229.

19 Ibid., 229.
science was slightly higher at Logan, while Central performed slightly better in tenth grade language arts and social studies.”

The school board, at the behest of teachers and administrators, was asked to use socioeconomic status in determining where to redraw the new school boundaries for elementary education in the second phase of socioeconomic integration in La Crosse. The community was initially divided when it came to supporting the plan; much of the controversy revolved around a busing plan that would be required. In January 1992, the school board voted 8-1 to redraw boundaries in the La Crosse school district to more evenly distribute students that participated in the free lunch program. “Under the socioeconomic integration plan, 54 percent of elementary school students would remain in their old school, 23 percent would attend different schools in order to fill the new schools, and 23 percent would attend different schools to improve the socioeconomic imbalance.”

Opponents of the plan, led by the school district’s Superintendent, criticized the school board for spending an additional $150,000 to bus students throughout the

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20 Ibid., 14.


district. In April 1992, three challengers replaced three incumbents who supported the integration plan; in a special election held in the summer of 1992, four more opponents of the integration plan replaced four incumbents. The new majority voted to repeal the socioeconomic integration plan; however, it did keep the boundaries in place that allowed for the 15-45 percent goal of students receiving free or reduced lunch and it maintained the busing plan.

Only nine months later, a slate of candidates running in support of the socioeconomic integration plan won back three of the seven lost seats; the fears of many voters failed to materialize and the plan remains politically viable for a number of important reasons. One, the advantages of busing students outweighed the disadvantages; the health and safety concerns of parents were met as a result of increased busing. Second, people who both supported and opposed the integration plan came to recognize that the district’s less affluent and more fortunate students were learning valuable lessons from each other about their values and mores. “In 1993, the La Crosse Tribune noted that a survey of 1,265 elementary school parents attending parent-teacher conferences found that 65 percent believed the district should continue to work toward

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25 Ibid., 14.


28 Kahlenberg, All Together Now, 238.

29 Ibid., 240.

30 Ibid.
socioeconomic balance in the schools and 69 percent were satisfied with the new boundaries.\textsuperscript{31} Third, parents and students became better acclimated to the new boundaries and ultimately accepted the change.\textsuperscript{32} Fourth, the school district’s effort to prevent the debate from becoming explicitly about race allowed for a majority of people in the community to provide stronger support.\textsuperscript{33} Fifth, poor residents, whom many believed wouldn’t support the socioeconomic integration plan, became politically organized and backed candidates that supported efforts at achieving a better distribution of students that were eligible for free or reduced lunch.\textsuperscript{34} Polling data in La Crosse bear out this fact:

In October 1991, north side residents, who were generally less affluent, were somewhat more in favor of socioeconomic than south side residents: the margin of support was 50 percent to 38 percent among north side residents and 43 percent to 38 percent among south side residents. The strongest support for busing socioeconomic balance in the polling came from those earning less than $10,000 a year (53 percent in favor and 34 percent opposed).\textsuperscript{35}

Finally, teachers and administrators argued that teaching students in an environment where a majority of students were eligible for free or reduced lunch wasn’t conducive to learning; after the plan was implemented, the mixed student population became easier to teach than the largely poor student populations.\textsuperscript{36}

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\textsuperscript{31} Joan Kent, “Parents: We Like New Lines,” \textit{La Crosse Tribune}, April 14, 1993
\textsuperscript{32} Kahlenberg, \textit{All Together Now}, 240.
\textsuperscript{33} Ibid.
\textsuperscript{34} Ibid., 241.
\textsuperscript{36} Kahlenberg, \textit{All Together Now}, 242.
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After the socioeconomic integration plan went into effect, support increased; “by 1994, support had grown to 59 percent with 29 percent opposed.”37 In April 2001, roughly 60 percent of residents favored socioeconomic integration; moreover, La Crosse has created a number of new charter and controlled choice schools with admission based on socioeconomic status.38

The District’s goal that each elementary school should be within a 15-45 percent free lunch range has improved substantially since implementation in 1992:

In 1991-1992, only 44 percent of schools fell within the desired range; but after the plan’s adoption, in 1992-93, 82 percent of schools fell in the range. In the 1997-98 schools year, nine of eleven schools still fell in the 15-45 percent range for free lunch with two outside. However, by the 2006-07 school year, ten of twelve elementary schools fell within a plus or minus fifteen percent point range of the district average. Overall, between 1991-92 and 2006-07, compliance moved from 44 percent to 83 percent.39

Not only has the school district moved closer to accomplishing its stated goal of creating schools with a critical mass of middle-class students, research suggests that significant social mixing has taken place in its schools.40 Researcher Stephen Plank examined socialization among students after La Crosse implemented its socioeconomic integration plan; he studied the “extent to which students from different racial and ethnic

37 Ibid., 243.
38 Ibid.
39 Ibid., 244.
40 Ibid., 245.
backgrounds mixed in La Crosse’s elementary schools and whether or not specific teaching techniques brought about more successful integration of students.”41 Plank found that “most of the workmate cliques were heterogeneous with respect to race/SES classification; similarly, by the spring, most of the playmate cliques were heterogeneous with respect to race/SES classification.”42

The last, and arguably most important, factor in determining whether or not socioeconomic integration has been a success in La Crosse, and if this model would be effective in other communities, is its impact on student achievement. In November 2000, La Crosse associate superintendent Woodrow Wiedenhoeft noted, “overall achievement scores have been better over the last eight years with a trend of improvement.”43 Additionally, low-income students in La Crosse have performed better on statewide-standardized tests than other low-income students throughout the state with these differences growing over time:

In the fourth grade, 64 percent of economically disadvantaged La Crosse students were proficient or advanced in math in 2004-05, compared with 53 percent of economically disadvantaged fourth graders statewide. In the eighth grade, the advantage for low-income La Crosse students was four percentage points, and in tenth grade, the advantage was for low-income La Crosse students was fifteen percentage points. In reading, scores were similar for low-income La Crosse students and low-income Wisconsin students in fourth and eighth grade: in fourth grade, 66 percent of economically disadvantaged La Crosse


42 Ibid., 278.

43 Kahlenberg, All Together Now, 246.
students were proficient or advanced in reading, exactly the same percentage as low-income students statewide. In eighth grade, low-income La Crosse students beat low-income students statewide by one percentage point. And by tenth grade, low-income La Crosse students had a six-percentage point advantage in reading.\textsuperscript{44}

While there have been no studies conducted on the impact of socioeconomic integration on the academic achievement of middle-class students, the redistribution of poverty throughout the school system has led to an increase in parental involvement in schools otherwise noted to have “very low functioning parent groups” and an improvement in student behavior.\textsuperscript{45}

In 1976 the Wake County School District and the Raleigh City Schools merged to become the Wake County Public School System in order to quicken the pace of racial integration. In 1982, the Wake County School System adopted a voluntary desegregation plan in order to avoid court ordered busing; under that plan, each school was required to have a minority enrollment between 15 and 45 percent; additionally, the district created magnet schools to encourage further voluntary integration.\textsuperscript{46} The newly formed district used race in student assignments until the district achieved unitary status in 1982. When court ordered desegregation ended, the district expanded its magnet programs to foster racial integration and to address concerns about declining enrollments in Raleigh by

\textsuperscript{44} School District of La Crosse-Fact Sheet, 2006; State Superintendent Elizabeth Burmaster, State of Education Address, September 21, 2006.

\textsuperscript{45} Kahlenberg, \textit{All Together Now}, 247.

\textsuperscript{46} Kahlenberg, \textit{Divided We Fail}, 145.
attracting white students to city schools.\textsuperscript{47} In 1999, about 14,400 of the county’s students attended magnet schools; additionally, about 10,000 students chose to attend nine year round schools.\textsuperscript{48}

Wake County’s school board decided to change its school system’s race conscious assignment policy in 1999 for two reasons: The Fourth Circuit Court of Appeals, which has jurisdiction over North Carolina, barred the use of race in student assignments in Arlington, Virginia and Montgomery County, Maryland and the school district wanted to improve overall student performance.\textsuperscript{49} According to county data, more than 30 percent of minority students read below grade level, more than 50 percent receive subsidized lunches, and more than 60 percent fall under one criterion, the other, or both; in all, 15 percent of whites, 64 percent of all minority students, and 70 percent of blacks in grades three through eight fall under at least one of the criteria.\textsuperscript{50} In 1997, when school test scores dropped, the district required school improvement plans. District staff focused on the impact of student poverty on school effectiveness and student achievement. In spring 1998, the Board of Education adopted Goal 2003, designed to improve education for all students in all schools. Under Goal 2003, 95 percent of students tested on the state end-of-grade tests in grades three and eight were to be at or above grade level by 2003. After 1998, Goal 2003 drove the district's strategic planning, including heavy emphases

\textsuperscript{47} Ibid., 146.

\textsuperscript{48} Kahlenberg, \textit{All Together Now}, 251.

\textsuperscript{49} Kahlenberg, \textit{Divided We Fail}, 148.

on academics and instructional leadership at the school level and the recognition that every child is able to learn.

In January 2000, the Wake County School board voted to end its race conscious student assignment policy and replace it with a new policy that sought no more than 40 percent of a school’s enrollment be comprised of students eligible for free-and-reduced-price lunch; additionally, no more than 25 percent of the school’s enrollment be comprised of students performing below grade level on the state’s end-of-year exams.\textsuperscript{51}

The school system determined that student performance drops in schools with high levels of poverty-more than 35 percent of students receiving subsidized lunch-but so also is their academic performance:

Poverty concentration has an impact on the percentage of students scoring at or above grade level in Wake’s schools, but this is not surprising because of the correlation between the individual student’s socioeconomic status and test scores. In terms of achievement growth school poverty also has a small, statistically significant, negative effect on state test scores in Wake, but the magnitude of the effect varies across grades and subjects. Large differences in poverty levels (e.g. 5 percent vs. 40 percent) can be expected to have a one or two point negative impact on state scale scores. If we consider that just two scale-score points can equal one-third to two-thirds of a year’s growth in some grade levels and subjects, differences of that magnitude are probably not only statistically significant but educationally significant as well.\textsuperscript{52}


\textsuperscript{52} Karen Banks, “The Effect of School Poverty Concentration in WCPSS,” Wake County Public School System, E&R Report No. 01.21, March 2001, Raleigh, N.C.
The next, and most precarious, step was implementing the plan in the second-largest school district in North Carolina. In some schools throughout the Wake County school system, students receiving free or reduced-price lunch ranged from 1 percent to more than 50 percent, and the proportion of schools’ students reading below grade level ranged from 6 to 36 percent.53

In the program’s first year, assignments were shifted for 3,500 students; however, most of these students filled newly created schools rather than shifting the socioeconomic balance of existing schools within the district.54 Public opinion in Wake County shifted rapidly within months of the decision to change the student assignment policy: no more than 36 percent of those questioned in a Gallup poll on school issues in the district said they supported the goal of limiting the number of low-performing students at each school; support dropped to 26 percent when participants were asked whether or not the number of poor students at each school should also be limited.55 While the Wake community has long supported initiatives to make its schools more diverse, approximately 75 percent of the polls participants supported greater access to affordable housing throughout the county, 78 percent said that they wanted students to attend schools closest to their homes.56 The respondent’s opinions are indicative of the problem that socioeconomic balancing may face in the future: the loss of critical public support


54 Kahlenberg, Divided We Fail, 153.

55 Ibid.

56 Ibid.
necessary to promote a bold vision for eradicating educational inequity amongst poor and minority students.

Wake County has experienced dynamic population growth in its suburbs, coupled with a dramatic shift in its demographics, which has had the effect of making socioeconomic balancing an even greater challenge. The northern and western suburbs of the county have seen little, if any, growth in its population of African-Americans; even though the school system doesn’t use race as a factor in its student assignment policies, they will undoubtedly encounter difficulty maintaining countywide averages of students that receive free or reduced-price lunch.57 Nine of fifteen elementary schools in the county where fewer than 10 percent of the students qualified for free or reduced-price lunch were in the county’s fast growing western suburbs; consequently, African-American enrollment in these schools was less than 10 percent.58 The distance of these suburbs from the city’s center prevents, or makes busing, impractical; the county’s suburbs form a formidable challenge to fully implementing socioeconomic integration. Like their counterparts in the suburbs of Detroit in the wake of Milliken v Bradley, families in Wake County’s outer ring can opt out of integration if they choose to move far enough away. The school board acquiesced to residents of the suburbs when magnet schools were built closer to more affluent areas; additionally, the lack of affordable housing has concentrated poverty in Wake County’s urban center.

57 Ibid., 158.
58 Ibid.
A 2004 report by the U.S. Department of Education Office for Civil rights argued that five school districts employing socioeconomic integration could further the goals of racial integration. However, the racial composition of school districts in San Francisco, and Wake County reveals that socioeconomic-based integration provides only a partial solution in the effort to realize Brown’s vision.

In 1983, the San Francisco Unified School District settled a legal case aimed at desegregating the San Francisco schools and entered into a consent decree. Among other things, the consent decree prohibited student enrollment of more than 45 percent of a single racial or ethnic groups to be represented at each school. San Francisco began considering socioeconomic status when it modified a court-ordered desegregation plan as a result of Chinese-American students being denied admission to certain elite schools; however, as a result of the modification of the consent decree, the school district’s 55,000 students are resegregating. In 2005-06, about 50 schools were segregated; that was up from 30 schools in the 2001-02 school year. Students in the San Francisco school district apply to the schools they want to attend; the district uses a “diversity index” for assignments when a school is overpopulated. The diversity index considers extreme poverty, socioeconomic status, the language spoken at home, academic achievement, and academic performance. The ethnic diversity of San Francisco’s schools makes it increasingly difficult to have ethnic diversity because socioeconomic diversity is easier to

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62 Ibid., 2.
achieve. School officials believe the problem is twofold: families want their children to attend schools in their neighborhoods, and the diversity index was a poor substitute for the race-conscious student assignment policy that was modified in 2001.\(^{63}\)

Wake County’s current assignment plan has successfully maintained some racial diversity; however, this is a result of Wake County’s unique characteristics and not a by-product of socioeconomic integration.\(^{64}\) In 2005-2006, the student racial composition was: 55.4% white, 26.9% African American, 9.2% Hispanic, 4.7% Asian, 3.5% multiracial, and .3% American Indian.\(^{65}\) While a fourth of Wake County students live in poverty, African American students are about ten times as likely to be poor as white students; according to Walt Sherlin, the Assistant Superintendent, Wake County maintained relatively high racial diversity under the SES Plan because, “its African-American and Latino students are nearly ten times more likely to be eligible for FRL than white students. Put simply, Wake County has relatively few white students who come from low-income families and relatively few African-American and Latino students who come from more affluent families.”\(^{66}\) Accordingly, because of the significant racial disparity between poor and non-poor families, socio-economic integration in Wake County necessarily promotes racial integration. This fortunate by-product of the SES Plan would vanish if, for example, more low-income white students were to enroll in Wake

\(^{63}\) Ibid., 4.

\(^{64}\) Still Looking to the Future, 49.


\(^{66}\) Still Looking to the Future, 49.
County schools. Most importantly, Wake County’s community has exhibited a strong commitment to achieve diversity and equality of opportunity in its public school system previous to the adoption of this new student assignment plan. Opponents of integration were routinely defeated in county school board elections throughout the 1990’s; moreover, in the most recent elections in 2005, candidates supporting integration maintained a majority on the nine-member school board.

In light of the Supreme Court’s decision in Parents, school boards, communities, and educators must develop a more dynamic approach to integrating our public schools while closing the achievement gap between minority students and their white classmates. Socioeconomic integration has been successfully implemented in a number of school districts throughout the United States, while at the same time fostering racial integration. According to a 2002 Century Foundation study, “integrating poor and non-poor students results in 55.6 percent as much black/white integrating as poor/non-poor integration at the district level. If integration occurs at the metropolitan level, 79.9 percent as much black/white integration occurs as poor/non-poor integration.” In December 2001, the Cambridge School Committee voted to change its school integration plan from exclusively race-conscious to race-neutral; however, race remains a factor in student

67 Ibid.


69 Kahlenberg, Divided We Fail, 98.
assignment policies as a last resort. In Cambridge, no student has been denied admission to a particular school because of their race; additionally, the school district’s population has grown increasingly diverse as a result of the change in the student assignment policy. Socioeconomic integration may offer the last, best hope for fulfilling this nation’s commitment to Brown in K-12 education by raising the academic achievement of all students while promoting racial tolerance.

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CHAPTER 5
CONCLUSION

With the landmark decision in *Brown v. Board of Education* in 1954, the Supreme Court recognized that racial segregation in schools put African-American students at a disadvantage when compared to their white counterparts. The Court’s changing interpretation of the Equal Protection Clause of the Fourteenth Amendment, with regard to de facto segregation, has had the effect of resegregating America’s schools. By 2000, only 31 percent of African-American students in the South attended a majority white school; throughout the nation, seven out of ten African-American and Latino students attend majority-minority schools.\(^1\) The consequences of segregation for African-American and Latino children have been dire: because poor students need greater resources, their schools are costlier to run; additionally, students from lower socioeconomic backgrounds suffer from being in school with peers from similarly impoverished backgrounds.\(^2\) As James Coleman concluded in his landmark study, a student’s socioeconomic background is the greatest determinant of likely success in school; when schools have a large number of poor students, student achievement is adversely affected.\(^3\)

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The achievement gap between white and minority students may not be narrowed significantly without addressing the fundamental inequality between income distribution in the United States. African-Americans had lower income, wages, and employment in 2007 than 2000; “without reductions in poverty, the African-American community can expect to see lower educational achievement, higher rates of teenage pregnancy, and a higher than average rate of crime in their communities.”\textsuperscript{4} The best, and now constitutionally permissible, way to bring about the promise of equal educational opportunity for all students, and fulfill Brown’s promise, is to expand school choice. However, socioeconomic integration is but one component of a comprehensive plan that should seek to eradicate concentrations of poverty, and improve early childhood education. If the nation cannot close the gaps in income, healthcare, and housing, the prospect of narrowing the achievement gap is dim.

In 2004, after a decade of research on the long-term outcomes of desegregated education, Professors Amy Stuart Wells and Robert Crain concluded that, “School desegregation fundamentally changed the people who lived through it. Desegregation made the vast majority of the students who attended these schools less racially prejudiced and more comfortable around people of different backgrounds.”\textsuperscript{5} In addition to promoting positive interactions with students of different races, socioeconomic integration has been proven to help improve the performance of low-income students in middle-class schools:


A study of elementary school students in Madison-Dane County, Wisconsin, found that for each 1 percent increase in middle-class enrollment, low-income students improved .64 percentage points in reading and .72 percentage points in math. For the typical low-income student, this would mean that moving from a school with 45 percent middle-class classmates to one with 85 percent middle class classmates would mean a 20 to 32 percentage point improvement in the low-income student’s test scores. 6

Horace Mann’s idea of a school supported by the community, and attended by children without regard for race, gender, or status, was radical for its time. The decision in Parents/Meredith has created a unique opportunity for socioeconomic integration to thrive.

A 1994 government report found that 30% of the poorest children had attended at least three different schools by third grade, while only 10% of middle-class children did so. 7 When children in low-income families move in and out of schools, it has the effect of disrupting the performance of the student and his classmates. 8 The deconcentration of pockets of extreme poverty is an integral part of closing the achievement gap between black and white students; reforming housing policy on a national scale may have a profound impact on the academic achievement of students. However, the federal government must appropriate significantly more money to these programs if they are to succeed. “The Section 8 voucher program provides roughly $6,700 per family per year;

6 David Rusk, “Classmates Count: A Study of the Interrelationship between Socioeconomic Background and Standardized Test Scores of 4th grade Pupils in the Madison-Dane County Public Schools.”


8 Ibid., 135.
the federal government spends $14 billion annually on Section 8 vouchers and provides these to roughly two million families, only about one-fourth of those who are eligible.\(^9\)

When the Chicago Housing Authority and the Department of Housing and Urban Development were found by a federal court to have had deliberately selected family public housing sites in Chicago to prevent African-Americans from living in white neighborhoods in violation of federal statutes and the Fourteenth Amendment, the plaintiffs in the case were given the option of using vouchers to find affordable housing in mostly white communities.\(^10\) The results of the Gautreaux program, compared to other programs designed to alleviate poverty in America’s urban areas, were promising:

A major finding of Gautreaux research is that most families that moved to Chicago’s suburbs were still living in those suburbs 10 and even 20 years later. Their children's attitudes toward school improved and their grades did not drop, despite some racial discrimination and harassment. Moreover, as children in these Gautreaux families grew up and left home, they too managed to live in neighborhoods that were far safer and more affluent than the inner-city neighborhoods their families had left behind. Gautreaux II is picking up where the original research program left off, providing in-depth qualitative data on the new Gautreaux movers.\(^11\)

The success of the Gautreaux program spawned the Moving to Opportunity demonstration project. Congress appropriated $70 million in Section 8 vouchers to 4,600 public housing residents in Boston, New York, Los Angeles, Chicago, and Baltimore to

\(^9\) Ibid., 135.


accumulate more knowledge about mobility projects. The experimental group was offered housing vouchers that could only be used in neighborhoods where less than 10 percent of the population was poor; the members of the experimental group were also assisted by local agencies to find apartments in neighborhoods that accepted vouchers. The Section 8 group was offered vouchers, but they weren’t restricted as to where they could live and they didn’t receive any assistance. The control group members were not offered vouchers and they continued to live in public housing. HUD commissioned a ten-year evaluation of MTO and the interim report suggests that the demonstration project improved housing conditions and the quality of schools attended by the participants’ children; however, there was no evidence to suggest that MTO improved “educational performance, employment, earnings, household income, food security, or self-sufficiency.” While the results of the experiment are mixed, its long-term effects have yet to be determined. However, any effort towards closing the achievement gap must include programs that facilitate the movement of low-income families to middle-class communities.

Poor and minority children can reap the benefits of a good education as long as they enter schools with strong cognitive and non-cognitive skills. However, early disadvantages often translate into greater disadvantages when the poor reach adulthood. Children who score poorly on intellectual skills tests during their preschool years, “tend


13 Ibid., xv.
do poorly in elementary and high school, are more likely to become teen parents, engage in criminal activity, and suffer from unemployment."\textsuperscript{14} The ability of intensive early childhood education programs to improve the chances of children born in low-income families is born out in two famous experiments in early-childhood development: the Perry Preschool Program in Ypsilanti, Michigan and the Abecedarian Early Childhood Intervention. Perry provided part-time instruction, combined with weekly home visits, to low-IQ African-Americans in Ypsilanti, Michigan.\textsuperscript{15} Of the 123 children enrolled in the program, half were enrolled in the preschool; all of the participants were followed and tested regularly. When the children entered school, the children enrolled in the Perry Preschool scored higher on IQ tests than those who did not; however, these effects disappeared by third grade.\textsuperscript{16} Nevertheless, the program’s impact produced significant advantages for the Perry preschoolers: they were more likely to graduate from high school, less likely to receive public assistance as adults, and more likely to own their own home.\textsuperscript{17} The Abecedarian Early Childhood Intervention enrolled 111 children of low-income, mostly African-American women, from Chapel Hill, N.C. The Abecedarian preschool program included transportation, individualized educational activities, low


\textsuperscript{17} Tough, \textit{Whatever It Takes}, 192.
child-teacher ratios, high-quality healthcare, and nutritional supplements.\textsuperscript{18} The program’s participants were twice as likely to go to college, less likely to become teen parents, and half as likely to smoke marijuana.\textsuperscript{19} The best way to prepare children for success in school and life is for their parents to provide for them everything they need at home, in their earliest years. However, if this isn’t the case, the right kind of early intervention can bridge the gap between the lower and middle classes.

While a majority of the Court has affirmed the use of race in a narrowly tailored way to promote diversity and avoid racial isolation in K-12 education, the responsibility is left to citizens, school boards, and school districts to create, and implement, strategies that fulfill \textit{Brown’s} mandate of equal educational opportunity. Socioeconomic integration has proven to be a success in La Crosse, Wisconsin, Wake County, North Carolina, and a number of other school districts throughout the country. However, socioeconomic integration in and of itself will not remedy the growing achievement gap between black and white students. A comprehensive public policy plan that includes greater housing mobility and access to early childhood education may have as profound an impact on student achievement. While some African-Americans have made tremendous strides in the fifty plus years since \textit{Brown} was decided, many are poor and getting poorer with little access to the means to change one’s life: a good education. If every child is given the tools, and the means, to succeed we’ll move closer to a more equitable society.

\textsuperscript{18} Frances A. Campbell, “Early Childhood Education: Young Adult Outcomes from the Abecedarian Project,” \textit{Applied Developmental Science} 6, no. 1 (2002), 42.

\textsuperscript{19} Ibid., 42.
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