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Carla-Michelle Adams, Esq.

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THROWING DIVERSITY AGAINST STARK BACKDROP OF WHITE ISOLATIONISM IN AMERICAN PUBLIC SCHOOLS

Carla-Michelle Adams, Esq.[*]

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 a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.[1]

INTRODUCTION

In *Brown v. Board of Education of Topeka*, the Supreme Court ruled that the public school system, charged with the complex undertaking of educating the youth of the United States of America, could not segregate on the basis of racial identification.[2] This monumental decision by the Supreme Court marked the onset of judicial awareness that the concept of separate but equal could no longer function as a justification for racial separation in the context of public school education.[3] The decision of the Court in *Brown* embodied the idea that racial consciousness and diversity function as the cornerstones of integration.[4] Upon the introduction of remedial measures to ensure that integration was incorporated into public schools across the United States, the Court began the process of eradicating the remnants of racial

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[*] Carla-Michelle Adams, Esq.; Admitted to the Florida Bar in 2011. Graduated with a LL.M from Western New England University School of Law in May 2014. Received Juris Doctor from Florida Coastal School of Law in May 2010. Graduated Magna Cum Laude with a Bachelor of Arts in Political Science from College of New Rochelle in 2007.

[1] Brown v. Bd. of Educ. of Topeka, 347 U.S. 483, 494 (1954).

[2] *Id.* at 493.

[3] *Id. at 495.*

[4] *See id.* at 494.

isolationism.[5] In subsequent cases, the Court was forced to clarify its demand for integration by making determinations as to how diversity should be incorporated into primary and secondary education.[6]

The holding in *Brown* functioned as an explicit call to action for school districts across the country, yet the striking down of racial segregation was met with intense opposition.[7] The Court was forced to provide additional instruction in terms of the implementation of acceptable policies, including diversity initiatives, to be utilized in facilitating integration.[8] In June 2007, the decision of the Supreme Court created a shift in jurisprudence from the implementation and enforcement of integration through racial diversity.[9] The Court's decision in *Parents Involved in Community Schools v. Seattle School District No.1* was a retroactive holding that tore down the foundation of racial integration and diversity that the *Brown* Court asserted decades beforehand.[10] In *Parents Involved in Community Schools*, the Court rejected the notion that diversity in education was a necessary and essential component for the development of cross-cultural awareness and tolerance, thereby striking diversity down as a compelling governmental interest as set forth in *Brown*.[11]

The decision of the Court in *Parents Involved in Community Schools* resulted in the determination that diversity is not a compelling governmental interest in the educational environment.[12] Furthermore, the decision of the Court marked the inability of the judiciary to consider the importance of diversity in maintaining integration, and ensuring racial consciousness in the context of public school demographics.[13] Although the school districts in *Parents Involved in Community Schools* offered the Court evidence of numerous educational and social benefits that are rooted in the concept of racially diverse educational institutions, the

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[5] *See, e.g.*, Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 701 (2007).
[6] *See generally* Grutter v. Bollinger, 539 U.S. 306 (2003) (holding that student body diversity is a compelling state interest which justifies the use of race in university admissions); *but see* Gratz v. Bollinger, 539 U.S. 244 (2003) (holding that the university's use of race in its freshman admission policy was not narrowly tailored to achieve a compelling interest in diversity thereby violating the Equal Protection Clause).
[7] *See* Brown v. Bd. of Educ. of Topeka, 671 F. Supp. 1290, 1291 (D. Kan. 1987); *see also* Green v. Cnty. Sch. Bd. of New Kent Cnty., 391 U.S. 430, 430 (1968).
[8] *See* Bd. of Educ. of Topeka v. Brown, 978 F. Supp. 585 (1992); *see* Freeman v. Pitts, 503 U.S. 467 (1992); *see also* Green v. Cnty. Sch. Bd. of New Keny Cnty., 391 U.S. 430 (1968).
[9] *See Parents Involved in Cmty. Sch.*, 551 U.S. at 701.
[10] *Id.*
[11] Girardeau A. Spann, *Disintegration*, 46 U. LOUISVILLE L. REV. 565, 575 (2008).
[12] *Parents Involved in Cmty. Sch.*, 551 U.S. at 759-60.
[13] *See id.* at 782-83.

Court denied such benefits as reflective of a compelling government interest.[14] The *Parents Involved in Community Schools* Court questioned the validity of evidence that bolstered the educational and socialization benefits of diversity and "dispute[d] whether racial diversity in school … has a marked impact on test scores and other objective yardsticks or achieves intangible socialization benefits."[15] The Court's rejection of the educational and social benefits that are achieved in maintaining a diverse educational environment has created an insurmountable obstacle in the struggle to maintain integration decades after the holding in *Brown*.[16] Racial isolationism can result in skewed ideas regarding socialization, diversity, and cultural awareness.[17] Despite social studies that identify numerous indispensable benefits in maintaining diversity in public school education, such as improved academic achievement for students, the Court determined that such benefits are outweighed by the use of race as a suspect classification to determine school placement in primary and secondary education.[18]

The background of this paper will discuss the opinion of the court in numerous cases that have attempted to identify the parameters of racial integration of educational institutions. Part I of this analysis will identify the historical background of race and education through a consideration of *Brown v. Board of Education of Topeka Kansas.*[19] Part II will analyze the decision of the court in *Parents Involved in Community Schools v. Seattle District No. 1*, and explain why the plurality was incorrect in its determination that the policies set forth within the school districts to maintain diversity and integration did not serve a compelling governmental interest. Part III will highlight the detriment that is presented to students when diversity is not a compelling government interest, including the lack of development of cross-cultural comprehension and tolerance in a critical stage of development.

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[14] *Id*. at 725-26.
[15] Preston C. Green, III & Joseph O. Oluwole, Commentary, *The Implications of Parents Involved for Charter School Racial Balancing Provisions*, 229 ED. LAW REP. 309, 318 (2008).
[16] *See Parents Involved in Cmty. Sch.*, 551 U.S. at 748 (holding that districts failed to show that the use of racial classifications in their student assignment plans was necessary to achieve their stated goal of racial diversity).
[17] John A. Powell & Stephen Menendian, *Parents Involved: The Mantle of Brown, the Shadow of Plessy*, 46 U. LOUISVILLE L. REV. 631, 701 (2008).
[18] *Parents Involved in Cmty. Sch.*, 551 U.S. at 704-06.
[19] *Brown*, 347 U.S. at 483.

THE HISTORY OF SEGREGATION: SEPARATE & UNEQUAL

When considering the historic root of segregation in America and the implications that state sponsored separation through segregation had on the African American community, the separate but equal doctrine is the starkest display of America's past acceptance and sponsorship of segregation.[20]

> In 1896, the Supreme Court in [*Plessy v. Ferguson]* held that states could exercise their "police power" to require racially segregated public facilities when these facilities were found to be functionally and tangibly equivalent. Applying this "separate but equal" doctrine, the Court in [*Plessy]* upheld a Louisiana statute that required all railway companies to provide equal but separate accommodations for the "white and colored races."[21]

Separate but equal yielded separate and undeniably unequal outcomes. In considering the impact of the judicial determination in *Plessy*, African-Americans were suddenly left with inferior facilities that yielded substandard educational opportunity, which was permissible under the separate but equal doctrine established by the Court.[22] As a result of the separate but equal doctrine, the inferiority in resources and limitations in access to opportunities became an acceptable epidemic in public school education.[23] African-American students were forced to engage in the learning process in dilapidated facilities with extremely limited educational resources or tools: this resulted in a feigned opportunity for academic success.[24] The high privilege of education was not presented as a viable option for African American students.[25] Racial isolationism was perpetuated through policies such as the separate but equal doctrine, which resulted in unequal opportunities for countless African American youth.[26]

The decision in *Brown* in 1954 functioned as an express identification of the critical requirement that public education be a level

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[20] Sharon L. Browne & Elizabeth A. Yi, *The Spirit of Brown in Parents Involved and Beyond*, 63 U. MIAMI L. REV. 657, 663, 665 (2009).
[21] *Id.* at 663-64.
[22] *Brown*, 347 U.S. at 488.
[23] *See id.* at 491-92; *see generally*, *e.g.*, Sweatt v. Painter, 339 U.S. 629 (1950) (exemplifying inferior education resources).
[24] *See generally* Belton v. Gebhart, 87 A.2d 343 (Del. Ch. 1952) (finding African American students subjected to substandard educational opportunities).
[25] *Id.* at 361-62.
[26] *Compare* Plessy v. Ferguson, 163 U.S. 537 (1896) (separate but equal educational segregation instituted), *with Brown*, 347 U.S. at 494-95 (overruled *Plessy* but did so fifty-eight years later).

field of opportunity—irrespective of race.[27] Furthermore, the Supreme Court created critical precedent with the declaration that racial discrimination in public school education was unconstitutional.[28] Thus, the decision of the Court marked a pointed shift from the concept of separate but equal toward the validation of the ideal of integration.[29] While the Court's ruling impacted the education of numerous African American children across the United States, the decision that separate but equal was not in fact reflective of the ability to nurture, facilitate, or produce equal outcome was a momentous decision in the wake of *Plessy*.[30] The Court determined that the classification of individuals on the basis of race as a means to deny access to educational opportunities and the high privilege of education were no longer acceptable under the law.[31] "The [*Brown*] Court discussed the civic role of education in 'awakening the child to cultural values' and acknowledged education as 'the very foundation of good citizenship.'"[32]

The judicial determination, as set forth in *Brown,* resulted in monumental benefits for the African American community. "It also observed the detrimental effects the denial of educational opportunities can have on a child and concluded that the state has the responsibility of providing equal educational opportunities to all students, regardless of race."[33] Suddenly the insignia of inferiority associated with African Americans, perpetuated by the Court in *Plessy*, was removed.[34] However, the integration of African Americans, specifically in the public school system, was not obtained without extreme resistance.[35]

> In 1954, a unanimous Supreme Court issued [*Brown v. Board of Education*], holding that public schools cannot be segregated on the basis of race. But integration did not suddenly occur. By 1964, only 2.3% of black students in the South attended majority white schools. For several years thereafter, the federal government and the Supreme Court actively enforced a policy of

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[27] Nicole Love, *Parents Involved in Community Schools v. Seattle School District No. 1: The Application of Strict Scrutiny to Race Conscious Student Assignment Policies in K-12 Public Schools*, 29 B.C. THIRD WORLD L.J. 115, 121 (2009).
[28] *Brown*, 347 U.S. at 495.
[29] *Id.* at 494-95.
[30] *Id.*
[31] *See id.* at 495.
[32] Eboni S. Nelson, *Examining the Costs of Diversity*, 63 U. MIAMI L. REV. 577, 596 (2009).
[33] *Id.*
[34] *Id.* at 597.
[35] Case comment, *Parents Involved in Community Schools v. Seattle School District No. 1: Voluntary Racial Integration in Public Schools*, 121 HARV. L. REV. 98, 98 (2007).

desegregation, and by 1970 33.1% of black students in the South attended majority white schools.[36]

The *Brown* Court acknowledged that integration and the prevention of isolationism in education should be a priority on the top of the educational agenda.[37] Further, the Court determined that the eradication of thoughts of white superiority and black inferiority could be obtained only through the imposition of integration.[38] *Brown* served as a representative of the development of a colorblind organizational structure in education in which race alone could not be used to exclude students from attending a particular educational institution.[39] Despite the Court's critical ruling in *Brown*, many public educational institutions failed to see the social and educational benefits in the movement toward integration.[40] There was a continued inability to comprehend the advantages of a cross-cultural learning environment that marked the continuation of segregation, isolationism, and separatism in public schools because the desegregation initiative presented by the Court in *Brown* was met with extreme resistance.[41] "All white schools refused to desegregate, leading to 'more than a decade of defiance and token compliance.'"[42] The relentless refusal to comply with the Court's initiative as mandated in *Brown* became a prevalent stance of resistance in southern schools—where the concept of colorblindness in public school education was nothing short of a fallacy.[43]

Despite the efforts of segregation proponents to ensure that the precedent set forth by the Court in *Brown* remained unimplemented, *Brown* was readdressed by the Court to identify the manner in which relief would be granted based on the previous determination that racial discrimination in public education was both unconstitutional and intolerable.[44] The Court required that there be some good-faith implementation of integration strategies to ensure that determinations regarding admission to public school were made on a nondiscriminatory basis.[45] The task could be achieved only through the elimination of several obstacles reminiscent of the racial discrimination present during the Jim Crow Era, thereby requiring the doctrine of separate but equal to

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[36] *Id.* at 100.
[37] *Brown*, 347 U.S. at 483.
[38] Nelson, *supra* note 32, at 597.
[39] *See* Browne & Yi, *supra* note 20, at 664-65.
[40] *See* Love, *supra* note 27, at 121-22.
[41] Love, *supra* note 27, at 123.
[42] Browne & Yi, *supra* note 20, at 669-70.
[43] *See* Love, *supra* note 27, at 124.
[44] Brown v. Bd. of Educ. of Topeka, 349 U.S. 294, 298 (1955).
[45] *Id.* at 299.

be eliminated.[46] The Court required that there be an immediate implementation of policies aimed at ensuring full compliance with the previous ruling in *Brown*.[47] Furthermore, the Court indicated that the burden would rest on the defendants to establish the requisite time frame for the incorporation of transition while the Court retained jurisdiction and judicial oversight.[48]

The Court in *Brown* reconvened in the years after the initial ruling to determine whether the school districts at issue met their stated objective to become a unitary school system in which discrimination was being tackled by desegregation policies.[49] The Court communicated that while the school districts have been charged with the affirmative duty to take necessary steps to convert to a unitary school system, in which the remnants of racial discrimination were dissolved, there continued to be ambiguity in terms of what was required to meet the criteria for a unitary school system.[50] While the failure to achieve unitary status would be deemed a violation of the Fourteenth Amendment, the Court attempted to identify to what end unitariness must be achieved in order for school districts to comply with the order of the Court in *Brown*.[51]

The Court determined that while the judiciary had yet to communicate the exact characteristics, procedures, and policies of a unitary school district, it was clear that in order for a school district to be deemed unitary, the district must have reversed segregation perpetuated by the dual system of separate but equal.[52] The Court then stated the integration of students from different racial backgrounds is a critical factor in the determination of unitariness, as failure to have an integrated school population is the most obvious indicator of failure to abide by the previous order of the Court requiring desegregation.[53] The Court further explained that the existence of either a minority or majority of one racial background is not, in and of itself, indicative of a school district that practices segregation by law.[54] Rather, there are a host of factors that should be considered such as faculty, staff, transportation, extracurricular activities, facilities, school site location, school size, student attendance

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[46] *Id.* at 300.
[47] *Id.*
[48] *Id.* at 300-01.
[49] *Brown*, 671 F. Supp. at 1291.
[50] *Id.* at 1292.
[51] *Id.*
[52] *Id.* at 1293 (citing Dayton Bd. of Edu. v. Brinkman, 443 U.S. 526, 538 (1979)).
[53] *Brown*, 671 F. Supp. at 1293.
[54] *Id.* at 1293 (citing Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 26 (1971)).

zones, school assignments, and transfer options.[55] In the inquiry as to whether a constitutional violation has occurred on the basis of the Fourteenth Amendment because of racial segregation, evidence of a segregated motive or absence of such intent is relevant, but not a controlling factor in the inquiry as to whether a school district has attained unitary status.[56]

In the years that followed the *Brown* decision, elementary school students who lived in districts comprised of all Caucasian elementary schools were permitted to attend the schools they were previously prohibited from attending on the basis of race.[57] Additionally, in January 1954, there were twelve elementary schools that did not previously enroll African American students that permitted African American enrollment. [58] By the 1956–57 academic year, sixty-seven percent of Caucasian students attended schools with black students.[36] Additionally, several *de jure* African American schools, which had remained all African American or virtually all African American, were closed by the conclusion of 1962.[59] At the close of the 1969 school year, it was clear that substantial progress was being made in the efforts to ensure compliance with the *Brown* decision.[60] In the years that followed, the statistics of school demographics began to shift towards inclusion and reflected the idea that integration was being diligently pursued.[61]

While it appeared as though there was extreme progress in the efforts to ensure that desegregation became a deplorable historical fact of the past, there was still contention that segregation remained in schools in which administrators failed to take full advantage of available opportunities to improve racial balance.[62] Furthermore, it was argued by Plaintiffs seeking to intervene in the *Brown* proceedings, that the racial imbalance that remained in some public elementary schools were a consequence of the students' test scores, faculty and staff assignments, and community attitudes.[63]

The school district argued against such allegations and believed that any racial imbalance was reflective of circumstances that were beyond regulatory control of the school district such as allocation of resources,

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[55] *Brown*, 671 F. Supp. at 1293.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Brown*, 671 F. Supp. at 1294.
[62] *Id.*
[63] *Id.* at 1295.

uniformity of curriculum, and instruction.[64] The Court determined that statistical racial balance throughout the district was the primary concern in determining whether remnants of segregation remained.[65] While there were disparities in the racial composition of various schools' enrollment, the Court determined that racial imbalance is unconstitutional only if it is caused by the defendant's purposeful racial discrimination.[66]

Furthermore, the Court indicated that racial balance is not a constitutional priority even in school districts that were previously segregated.[67] It is critical to note that while racial consciousness in student assignment was approved as a remedy in desegregation litigation to ensure racial balance, the determination as to whether such measure was required was based on whether the school system was previously segregated.[68] As a result, the Court clearly communicated that the determination as to whether such a remedial measure was required is dependent on whether the imbalance is the result of the previously segregated school system or intentional discrimination by school district administrators.[69]

Additionally, it was deemed unconstitutional and inappropriate to utilize racial balancing placement plans when racial balance is not the constitutional measure for desegregation.[70] There must be consideration of numerous factors that could have contributed to the statistical data reflecting racial imbalance such as: student transfer policies, school openings, school closings, optional attendance zones, school locations, and school boundary locations.[71] In concluding an extensive opinion in regard to the aforementioned factors for the inquiry in determining whether school districts were continuing to place students with discriminatory intent, the Court determined that the students at issue were admitted to the school and educated on a nondiscriminatory basis, thereby determining that there was no illegal or intentional systematic and residual separation of races.[72] Furthermore, the Court communicated that the racial demographic of the student population alone was not indicative of whether a school district reached unitary status; rather, it is

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[64] *Id.*
[65] *Id.* at 1295.
[66] *Id.* at 1295-96.
[67] *Brown*, 671 F. Supp. at 1296 (citing *Swann*, 402 U.S. at 24).
[68] *Brown*, 671 F. Supp. at 1296 (citing *Swann*, 402 U.S. at 25).
[69] *Brown*, 671 F. Supp. at 1296.
[70] *Id.* at 1297.
[71] *Id.* at 1298-1301.
[72] *Id.* at 1309.

a consideration of numerous factors—including whether there was discriminatory intent in the development of the student population.[73]

REVISITING *BROWN*: PARENTS INVOLVED IN CHILDREN'S COMMUNITY SCHOOLS

In the years that followed *Brown*, school districts across the United States, which previously segregated, began to actively incorporate integration into their educational agenda; thereby creating an educational environment that appeared to be both inclusive and mutually beneficial for students, irrespective of race. The Seattle school district at issue in *Parents Involved in Children's Community Schools,* in an effort to remain conscious of the racial demographic of the student population, voluntarily adopted a student assignment plan that considered race as a factor in the determination of student placement.[74] The school district implemented what can be identified as a remedial measure to combat remnants of discrimination rooted in segregation as set forth in *Brown*, despite the fact that the school district did not previously operate segregated schools and was not subject to a court decree requiring integration.[75]

As a result of the placement policy, an organization of parents whose children were subjected to the racially based placement plan filed suit with the contention that placement of children in schools on the basis of race constituted a violation of the Fourteenth Amendment Equal Protection Clause.[76] The Court granted summary judgment to the school district determining that the plan with race-based placement survived strict scrutiny analysis because it was narrowly tailored to serve a compelling government interest of maintaining a racially diverse student population.[77] Upon the initiation of appellate proceedings, the Supreme Court made a judicial determination regarding the constitutionality of the placement plan.[78] The opinion of the Supreme Court was that the placement plan at issue was in fact unconstitutional because diversity is not identifiable as a compelling government interest.[79]

In 2006, arguments began in *Parents Involved in Community Schools,* which presented the issue of "whether a public school that had not operated legally segregated schools or has been found to be unitary

[73] *See id.* at 1295, 1309.
[74] *Parents Involved in Cmty. Sch.*, 551 U.S. at 829.
[75] *Id.* at 754.
[76] *Id.* at 714.
[77] *Id.*
[78] *Id.* at 811.
[79] *Id.* at 748.

may choose to classify students by race and rely upon that classification in making school assignments."[80] The parents of students who were denied admission to their preferential school on the basis of race filed suit against the school district alleging a violation of the Equal Protection Clause.[81] *Parents Involved in Community Schools* reflects the extreme desire of an educational institution to maintain racial diversity in an effort to ensure that racial isolationism is a concern of the past, as hoped for in *Brown*.[82] While commitment to maintaining diversity, and ensuring that segregation, isolationism, and the rich benefits of diversity are a constant objective of school administrators, the Court in *Parents Involved in Community Schools* identified strict parameters of the constitutionality of such efforts; it thereby narrowed the scope of *Brown* and clearly communicated that diversity plans and strategies must meet constitutional muster.[83]

In *Parents Involved in Community Schools*, Chief Justice Roberts acknowledged that the *Brown* opinion was representative of the provision of equal privileges and access to all Americans irrespective of their race.[84] Thereby, it prohibited the states from treating minorities with less preferential treatment in comparison to their counterparts of other racial backgrounds.[85] The position of the Court in *Parents Involved in Community Schools* in the years preceding the monumental judicial decision in *Brown* reflected a shift in judicial awareness of the critical nature of diversity, integration, and equal opportunity in public schools around the country.[86]

The *Parents Involved in Community Schools* case originated in Seattle School District Number One, which was comprised of ten public high schools in 1988.[87] After the precedent set forth in *Brown*, the school district implemented a placement plan in an effort to ensure diversity and integration of race within the schools of the district.[88] The primary goal of the placement plan was to create and maintain a culturally diverse educational environment.[89] The placement plan allowed rising high school freshman to rank their choice of high school, with their number

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[80] *Parents Involved in Cmty. Sch.*, 551 U.S. at 711.
[81] *Id.* at 714.
[82] Browne & Yi, *supra* note 20, at 659.
[83] *See generally Parents Involved in Cmty. Sch.*, 551 U.S. 701.
[84] *Parents Involved in Cmty. Sch.,* 551 U.S. at 808.
[85] *Id.* at 834.
[86] *Parents Involved in Cmty. Sch.*, 551 U.S. at 864.
[87] *Id.* at 711.
[88] *Id.* at 839.
[89] *Id.* at 710.

one choice being the most desirable.[90] In circumstances in which several students had the same preference, tiebreakers were utilized to assist in the determination of which students would be assigned to the school.[91] There were three tiebreakers to determine admission.[92] The first tiebreaker provided preferential treatment to rising freshman that had a sibling who was already enrolled in the high school.[93] The second tiebreaker considered the racial composition of the high school and determined whether the potential student could contribute to diversifying the student body at that particular high school.[94] The third tiebreaker was the location of the school in relation to the student's place of primary residence.[95] It was the implementation of the second tiebreaker, identified by the consideration of race, which was implicated in the case and argued before the Supreme Court.[96]

The use of racial classification to determine admission to the high school raised numerous constitutional inquiries as the school never previously operated a segregated school system; therefore, the school system was not attempting to eradicate any vestiges of past segregation as prescribed in *Brown*.[97] In considering the use of the placement plan, in light of segregation not having been an issue present in the school district implicated in *Parents Involved in Community Schools*, the school district indicated that the use of race in determining the placement of high school students was reflective of their desire to address housing patterns within the city which would result in racially-isolated high schools.[98] However, contrary to the stance of the school district, the parents of the children denied entry based on the racial consideration tiebreaker argued that such considerations in the determination of school placement effectively functioned as a denial of children's equal protection rights under the law.[99]

Disgruntled parents, whose children were implicated in a similar placement plan in the Jefferson County school district, expressed similar contentions.[100] The second school district implicated in *Parents Involved in Community Schools* was in Jefferson County, Louisville, Kentucky.[101]

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[90] *Id.* at 711.
[91] *Id.*
[92] *Parents Involved in Cmty. Sch.*, 551 U.S at 711-12.
[93] *Id.*
[94] *Id.* at 712.
[95] *Id.*
[96] *Id.*
[97] *Id.* at 747-48.
[98] *Parents Involved in Cmty. Sch.*, 551 U.S. at 786-87.
[99] *Id.* at 714.
[100] *Id.* at 717.
[101] *Id.* at 715.

The school district in Jefferson County was, in fact, subjected to a previous decree of the court, mandating the integration of schools within the district; similar to the orders directed to the school district in *Brown*.[102] The district was segregated prior to the landmark ruling in *Brown*. [103] There was consideration of the good faith efforts as implemented by the Jefferson County school district, and as a result, the court decree requiring removal of the remnants of discrimination was resolved, thereby effectively removing the jurisdiction of the court.[104] The dissolution of the court decree embodied judicial recognition that the concept of racial segregation of the past, as explored in both *Plessy* and *Brown*, had been remedied and there was no longer a need for remedial measures to achieve integration.[105] Despite the judicial oversight being completed, as the Court determined that the remnants of discrimination were no longer at issue, the school district implemented a placement plan.[106] The goals of the placement plan crafted by the school district was to promote and maintain racial diversity by requiring non-magnet schools to maintain a minimum African American enrollment of fifteen percent and a maximum African American enrollment of fifty percent.[107] Therefore, students were assigned to non-magnet schools through the submission of applications that identified the first and second choice for elementary school placement, or in the alternative, the placement of students was based on the racial guidelines and racial composition of the respective magnet schools.[108] After the placement was made, parents of students had the option of utilizing a transfer request system in order to change the placement of their child, but transfer requests could be denied for various reasons, including the racial composition of the school and desire to comply with racial guidelines.[109]

The Court considered the alleged "remedial measures," implemented by the school districts, in the form of plans that consider race and racial composition in school placement.[110] The Court further identified dual circumstances in which racial classifications relate to a compelling government interest sufficient for such classifications to be deemed constitutional.[111] The initial factual scenario was one in which

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[102] *Id.*
[103] *Id.*
[104] *Parents Involved in Cmty. Sch.*, 551 U.S. at 715-16.
[105] *Id.* at 716.
[106] *Id.*
[107] *Id.* at 716.
[108] *Id.*
[109] *Id.* at 716-17.
[110] *Parents Involved in Cmty. Sch*., 551 U.S. at 720-21.
[111] *Id.* at 721.

the school district was acting in a fashion to remedy the effects of past intentional discrimination; while the second instance of constitutional use of racial classifications in placement plans was identified as a circumstance in which there is an interest in diversity requiring consideration of a variety of factors including race.[112] It was the contention of the Court that neither of the aforementioned compelling interests were implicated in the factual background furnished to the Court in *Parents Involved in Community Schools*, as the Jefferson County Public School System did have a past history of discrimination, but the dissolution of the court decree was representative of the lack of continued need for racial classifications in placement.[113] Additionally, the Seattle School District did not have a history of segregation or discrimination that would warrant the compelling interest of remedying the effects of past discrimination applicable.[114] In the Court's opinion, there was extensive discussion regarding the promotion of diversity as a sufficient compelling government interest.[115] It was determined that there are numerous factors that contribute to diversity including race; however, reliance on race alone as the sole determinative factor to ensure diversity is inconsistent with the promotion and maintenance of diversity as a compelling government interest.[116] The Court distinguished the use of race as a factor to promote diversity in this case from *Grutter*, where the interest in diversity was not focused solely on race, but rather reflective of a consideration of various factors that contribute to a diverse student body.[117] The Court alleged that in the placement plans at issue "race is not considered as part of a broader effort to achieve 'exposure to widely diverse people, cultures, ideas and viewpoints;' race, for some students, is determinative standing alone."[118]

The policies presented by the school systems in *Parents Involved in Community Schools* were aimed at continuing the legacy of *Brown* through the constant consideration of racial composition in public school systems.[119] This consideration is representative of a compelling interest and should have been acknowledged as such by the Court. The school systems were merely utilizing a plan to prevent racial isolationism in primary and secondary schools. The creation of racially isolated housing

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[112] *Id.* at 721-22.
[113] *See Parents Involved in Cmty. Sch.*, 551 U.S. at 720-21.
[114] *Id.* at 720.
[115] *Id.* at 722.
[116] *Id.*
[117] *Id.* at 723.
[118] *Id.*
[119] *Parents Involved in Cmty. Sch.*, 551 U.S. at 726.

patterns threatens the ability of school systems to remain desegregated.[120] In several instances, housing patterns promote segregation.[121] Policies that work to maintain the diversity of school composition despite housing patterns continue to contribute to the legacy of *Brown*.[122]

> Since 1954, there has been more "white flight" to the suburbs, with Caucasian students moving out of urban school districts. School districts are "desegregated," but only to the degree permissible by the concentration of minorities within that area. As a result, the average Caucasian student attends school with 81.2 percent Caucasian student[s] . . . and 18.8 percent minority.[123]

General policies that prevent housing patterns from creating racially-isolated schools are critical to the continued desegregation of the public school system. According to Justice Kennedy, "[i]n the administration of public schools by the state and local authorities it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition."[124] The school systems presented the argument that the "educational and broader socialization benefits flow from a racially diverse learning environment;" therefore, the school system's consideration of race was an effort to achieve and maintain diversity.[125] The Court rejected the argument alleging that the school systems failed to offer evidence that there is a correlation between the plans that rely on proportions of racial composition to achieve diversity and the asserted educational benefits.[126] The Court concluded that: "[b]efore *Brown,* schoolchildren were told where they could and could not go to school based on the color of their skin. The school districts in these cases have not carried the heavy burden of demonstrating that we should allow this once again—even for different reasons."[127]

STEREOTYPES & STIGMAS: THE BENEFITS OF DIVERSITY

As the Court previously held in *Grutter*, diversity is a compelling interest, which validates the use of racial classifications as one factor,

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[120] *Id.* at 725.
[121] *See* G. Robb Cooper & James Prescott, *What Did Brown Do For You? Brown v. Board Fifty Years Later*, 14 PUB. INT. L. REP. 231, 235 (2009).
[122] *Id.*
[123] *Id.*
[124] Love, *supra* note 27, at 131.
[125] *Parents Involved in Cmty. Sch.*, 551 U.S. at 725.
[126] *Id.* at 727.
[127] *Id.* at 747.

among others, as constitutional in the context of higher education.[128] The Court ruled that the University of Michigan Law School had a compelling interest in maintaining a diverse student body that would result in broad societal benefits.[129] The Seattle School District presented two interests in support of its plan: "[(1)]the 'affirmative educational and social benefits that flow from racial diversity' and [(2)] avoidance of 'the harms resulting from racially concentrated or isolated schools.'"[130] In contrasting the assertion of the school system in *Parents Involved in Community Schools* to the argument of the University of Michigan Law School administration in *Grutter*, the Court was unwilling to accept the benefits of diversity in primary and secondary education despite its acceptance of diversity as a compelling interest in higher education.[131] In considering this discrepancy in judicial deference, within the context of the *Grutter* analysis as applied to *Parents Involved in Community Schools*, the Court asserted that *Grutter* was applicable in the unique circumstances related to higher education rather than primary and secondary education.[132]

In *Parents Involved in Community Schools*, the Court refused to acknowledge the significance or importance of diversity in the form of racial composition in primary and secondary education; however, the benefits in promoting racial diversity in a school system are countless, including but not limited to encouraging racial tolerance and cross-cultural awareness for children during the critical stages of their development.[133] "Studies show that students who learn in racially diverse environments harbor fewer feelings of intergroup hostility, distrust, and fear."[134] The Court's rationale in making the determination that the commitment to diversity in *Grutter* was a compelling interest in a setting of higher education applies to primary and secondary education as well.[135] The claim that diversity exposes students to a wide array of individuals from different backgrounds applies similarly to race. There are cross-cultural benefits to exposure of students of different races—thereby validating the use of racial composition in making admissions decisions. "From opportunities to interact with members of racial groups

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[128] *Grutter*, 539 U.S. at 328.
[129] Michelle Adams, *Stifling the Potential of Grutter v. Bollinger: Parents Involved in Community Schools v. Seattle School District No. 1*, 88 B.U. L. REV. 937, 948 (2008) (discussing the holding in *Grutter*).
[130] *Id.* at 956.
[131] *Id.* at 979.
[132] *Id.*
[133] Nelson, *supra* note 32, at 587.
[134] Nelson, *supra* note 32, at 587.
[135] Adams, *supra* note 129, at 979-80.

other than their own, these students are more likely to form friendships across racial lines and to develop cross-racial understanding."[136]

The Court fails to recognize the social benefit of racial diversification in integrating children into racially diverse settings during primary and secondary school. This can contribute to their cultural understanding and tolerance as adults. "Educational institutions that use race-based decision-making to assemble a diverse student body embrace their charge of imparting not only knowledge to their students but also the democratic values and ideals that serve as the foundation of our society."[137] As a result of the ruling in *Parents Involved in Community Schools,* children will now be part of a public school system in which racial composition, diversity, and constant consciousness of maintaining integration is no longer considered a compelling government interest.[138] The housing patterns, which result in school systems comprised largely of minority students, will stand and result in the subtle promotion of separate but equal as struck down by the Court in *Brown*. Social tolerance, diversity, and equal access to opportunity will no longer function as the guideposts in maintaining a post *Brown* educational climate in which separate but equal is a doctrine condemned. In the absence of diversity and racial consciousness in school placement, racial isolationism and social intolerance will suddenly re-emerge despite *Plessy* having been struck down decades ago.

As stated on numerous occasions by the Supreme Court, public school education plays the critical role of instilling and preserving cultural and civic values that define American society.[139] The Court recognizes the magnitude of public education in the promotion of American ideals of culture and civic values but fails to endorse efforts by school systems to maintain the well roundedness and exclusion of the school system.

> Today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities…It is the very foundation of good citizenship.[140]

It is the assertion of the Supreme Court, time and time again, that public school education in the United States facilitates the development

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[136] Nelson*,* *supra* note 32, at 587-88.
[137] Nelson*,* *supra* note 32. at 588.
[138] *See generally Parents Involved in Cmty. Sch.,* 551 U.S. 701.
[139] Nelson*, supra* note 32*,* at 589.
[140] *Brown*, 347 U.S. at 493.

of awareness of public responsibility and creates a fabric of good citizenship.[141] However, in *Parents Involved in Community Schools*, there is no recognition for the foundation gained in public school education, which contributes to good citizenship when children are placed in a learning environment where there is racial diversity.[142] The Court fails to recognize the correlation between public responsibility and racial tolerance achieved through racial diversity in student bodies.[143] Consequently, without recognition of the relationship between public responsibility and racial tolerance achieved through cross-cultural exposure, the Court promotes separate but equal and creates a climate ripe for racial disparity.[144]

CONCLUSION

The holding of the Court in *Grutter* determined that, in the context of higher education, race could be considered amongst other factors that encourage and promote diversity perpetuated by the desire of the *Brown* Court to encourage equality in availability and accessibility to educational opportunity.[145] However, there has been failure to apply the rationale of the Court in *Grutter* to subsequent cases in primary and secondary public school education.[146] The Court was willing to recognize diversity as a compelling interest in the context of higher education as one factor amongst others; however, in primary and secondary education, the consideration of race as a factor was not representative of the compelling interest in diversity.[147] It is on this blurry line of judicial precedent that *Parents Involved in Community Schools* remains.

In *Brown v. Board of Education of Topeka*, the Supreme Court's rejection of the separate but equal doctrine was the initial recognition of the importance of diversity in an educational environment.[148] The benefits of diversity in education are undeniable and continue to shape the experiences of students who attend schools where there is diversity in racial composition. In addition, specifically for African American students, there is a removal of the social stigma that African Americans are inferior when granted access to educational institutions that deem diversity a compelling interest. In *Brown*, "the Court recognized that integrating the school system, thereby allowing students of different

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[141] *See, e.g.*, *Id.*
[142] Love, *supra* note 27, at 148.
[143] Love, *supra* note 27, at 148.
[144] *See* Love, *supra* note 27, at 148.
[145] *Grutter*, 539 U.S. at 341.
[146] *Parents Involved in Cmty. Sch.*, 551 U.S. at 725.
[147] *Id.*
[148] *Brown*, 347 U.S. at 495.

races to learn and play together, would be instrumental in eradicating the feelings of white superiority and black inferiority that state-imposed segregation had previously denoted."[149]

If children are not educated in a learning environment that nurtures, facilities, and embraces diversity, a circumstance is created in which stereotypes relating to race and ethnicity are developed, harbored, and nurtured through lack of exposure. The decision of the Court in *Parents Involved in Community Schools* is reflective of a constructive reversal in the recognition of diversity as a critical element of public school education as indicated in the precedent set forth in *Brown*. While the use of racial classifications requires the application of the strict scrutiny standard, the plans implemented by the school systems should have passed constitutional muster because diversity is a compelling government interest and the placement plan utilized was narrowly tailored to serve that compelling government interest.

The unwillingness of the Court to find a compelling government interest in the continued desegregation of school systems, and the continued dedication to the facilitation of diversity is alarming. Although the vestiges of segregation may be erased, there is still a need for the Court to ensure that desegregation remains intact. In order for integration to remain in existence, there is a need to address issues of racial isolationism, such as housing patterns, which facilitate and result in racially isolated public school systems. The creation and continued establishment of racially isolated public schools, as a consequence of the determination that diversity is not a compelling government interest, is not in compliance with the Court's decision in *Brown*; rather, it is consistent with the operation and promotion of "white flight" in order to maintain segregated and racially-isolated public school systems. The Court should not promote "coincidental" segregation, nor should the Court remain ignorant to the importance of diversity in primary and secondary education. The Court's decision in *Parents Involved in Community Schools* was a retroactive holding, tearing down the foundation of racial integration and diversity that the *Brown* Court asserted decades before.

[149] Nelson, *supra* note 32, at 597.