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The Future is Now: Legal and Policy Options for Racially Integrated Education

Erica Frankenberg

Leah C. Aden

Charles E. Daye

THE FUTURE IS NOW: LEGAL AND POLICY OPTIONS FOR RACIALLY INTEGRATED EDUCATION*

ERICA FRANKENBERG, LEAH C. ADEN & CHARLES E. DAYE**

The founding of the United States as a constitutional republic was nation-building. Restoring unity in the aftermath of the Civil War was nation-building. Achieving Brown v. Board of Education *and the goal of equal educational opportunity for all children was nation-building. The articles in this Issue, inspired by the April 2009 conference,* Looking to the Future: Legal and Policy Options for Racially Integrated Education in the South and the Nation, *hosted by the University of North Carolina School of Law, discuss the ongoing nation-building task of implementing* Brown*'s goal of high-quality, integrated public schools.*

In the late 1960s, federal courts—aided by federal legislation that increased funding to compliant school districts—finally began vigorously to enforce the 1954 landmark desegregation decision in *Brown v. Board of Education*.[1] As a result of this judicial commitment, particularly in areas of the South where Jim Crow left devastating educational effects, Southern public schools became the most integrated in the country and they held that distinction for more than thirty years.[2] However, in the last twenty years, the expiration of

** Erica Frankenberg is the Research and Policy Director of the Initiative on School Integration at The Civil Rights Project/*Proyecto Derechos Civiles* at UCLA. Leah C. Aden was formerly a Post-doctoral Fellow at the UNC Center for Civil Rights from 2007–2009. Charles E. Daye is Henry P. Brandis Professor of Law at the UNC School of Law and Deputy Director of the UNC Center for Civil Rights. The authors appreciate the helpful suggestions from Ashley Osment and Benita N. Jones from the UNC Center for Civil Rights. We also thank Stephanie Horton for her assistance with citations.

1. 347 U.S. 483 (1954).

2. *See* Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1 (*Parents Involved*), 551 U.S. 701, 805 (2007) (Breyer, J., dissenting) ("Between 1968 and 1980, the number of black children attending a school where minority children constituted more than half of the school fell from 77% to 63% in the Nation (from 81% to 57% in the South) but then reversed direction by the year 2000, rising from 63% to 72% in the Nation (from 57% to 69% in the South). Similarly, between 1968 and 1980, the number of black children attending schools that were more than 90% minority fell from 64% to 33% in the Nation

judicial mandates and the erosion of overt political support for integration have resulted in the rapid resegregation of schools throughout the United States, particularly in the South.[3] As they did decades ago and as they still do today, segregated schools deny equal educational opportunities to the black and Latino/a students that attend them.[4] Furthermore, when white students lose contact with black or Latino/a students, they are denied the well-documented benefits of learning in a diverse educational setting.[5] Thus, the United States enters the twenty-first century when its public schools enroll the most diverse group of students in its history but many—perhaps most—of its students attend a public school that is anything but integrated. This prompts the question: what happened to the ruling of separate is unequal in *Brown v. Board of Education*?

Some school districts have voluntarily tried to prevent the resegregation of their schools, improve the racial diversity of their schools, eliminate minority isolation between schools, *and* address the profound inequities found in segregated schools. But in 2007, the United States Supreme Court issued a divided decision, *Parents Involved in Community Schools v. Seattle School District No. 1* (*Parents Involved*),[6] that limits the ability of a school district to pursue these educational goals through race-conscious student assignment policies. To be clear, the Court's decision in *Parents Involved* applies

(from 78% to 23% in the South), but that too reversed direction, rising by the year 2000 from 33% to 37% in the Nation (from 23% to 31% in the South).").

3. *Id.*

4. *See, e.g.*, Brief of 553 Social Scientists as Amici Curiae in Support of Respondents, *Parents Involved*, 551 U.S. 701 (Nos. 05-908 & 05-915), *available at* http://www.civilrightsproject.ucla.edu/research/deseg/amicus_parents_v_seatle.pdf.

5. *See Parents Involved*, 551 U.S. at 805–06 (Breyer, J., dissenting) ("As of 2002, almost 2.4 million students, or over 5% of all public school enrollment, attended schools with a white population of less than 1%. Of these, 2.3 million were black and Latino students, and only 72,000 were white. Today, more than one in six black children attend a school that is 99%–100% minority."); *see also* GARY ORFIELD, THE CIVIL RIGHTS PROJECT/*PROYECTO DERECHOS CIVILES* (UCLA), REVIVING THE GOAL OF AN INTEGRATED SOCIETY: A 21ST CENTURY CHALLENGE 3 (2009), http://www.civilrightsproject.ucla.edu/research/deseg/reviving_the_goal_mlk_2009.pdf ("Fifty-five years after the *Brown* decision, blacks and Latinos in American schools are more segregated than they have been in more than four decades."); GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT (HARVARD), WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY 12 (2005), http://www.civilrightsproject.ucla.edu/research/deseg/Why_Segreg_Matters.pdf ("Whites are most isolated within their own racial group—attending schools where almost four-fifths of the students are white."). *See generally* SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? (John Charles Boger & Gary Orfield eds., 2005) (discussing the causes and effects of school resegregation in the American South).

6. 551 U.S. 701 (2007).

only to school districts that are voluntarily seeking to integrate their schools.[7] While a majority of the Justices have affirmed that school districts have a compelling interest in creating diversity and avoiding racial isolation in public schools,[8] the Court struck down the particular student assignment plans implemented in Jefferson County (metropolitan Louisville), Kentucky, and Seattle, Washington, because the Court found that those plans were not narrowly tailored to achieve those interests.[9] Importantly, in *Parents Involved* the Court

7. *Id.* at 711. *Parents Involved* does not apply to the decreasing number of school districts that have the affirmative duty to implement race-conscious measures to remedy past racial discrimination. *Id. But see id.* at 820 (Breyer, J., dissenting) ("The histories [of segregation in Seattle and Louisville] also make clear the futility of looking simply to whether earlier school segregation was *de jure* or *de facto* in order to draw firm lines separating the constitutionally permissible from the constitutionally forbidden use of 'race-conscious' criteria.... But our precedent has recognized that *de jure* discrimination can be present even in the absence of racially explicit laws."); *id.* at 843–44 (Breyer, J., dissenting) ("The plurality tries to draw a distinction by reference to the well-established conceptual difference between *de jure* segregation ('segregation by state action') and *de facto* segregation ('racial imbalance caused by other factors')..... But that distinction concerns what the Constitution *requires* school boards to do, not what it *permits* them to do." (citation omitted)). Practically, all school districts still subject to court-ordered desegregation must desegregate with an objective to emerge from judicial supervision. Given the rapid resegregation in some districts after unitary status and the challenges Louisville has faced to voluntarily maintain school diversity, districts still under order might now, after *Parents Involved*, consider whether their student assignment plans that are aimed at fully dismantling segregation will also be constitutional after they have met their court-ordered obligation.

8. *Id.* at 783 (Kennedy, J., concurring) ("Diversity, depending on its meaning and definition, is a compelling educational goal a school district may pursue."); *id.* at 842–43 (Breyer, J., dissenting) (discussing Supreme Court precedent in agreeing that diversity was a compelling interest); *id.* at 788 (Kennedy, J., concurring) ("To the extent the plurality opinion suggests the Constitution mandates that state and local school authorities must accept the status quo of racial isolation in schools, it is, in my view, profoundly mistaken."). Chief Justice Roberts authored an opinion joined in its entirety by Justices Scalia, Thomas, and Alito. *Id.* at 708–09 (plurality opinion). Justice Kennedy joined Chief Justice Roberts's opinion holding both districts' plans unconstitutional, but wrote separately about several important parts of the Chief Justice's opinion. *Id.* at 782 (Kennedy, J., concurring). Namely, Justice Kennedy split from Roberts's opinion that neither the creation of diversity in schools nor the avoidance of racial isolation is a compelling government interest; Kennedy also believed that the Chief Justice was too strict in forbidding any use of race in student assignment. *Id.* at 783, 787–88 (Kennedy, J., concurring).

9. To survive a challenge under the Equal Protection Clause, racial classifications by the government must be narrowly tailored to further a compelling government interest. *See id.* at 720 (plurality opinion). Although the plurality subjected Louisville's and Seattle's plans to a strict scrutiny analysis, parties argued that this standard of review was not appropriate and a lesser standard of review was more appropriate. In dissent, Justice Breyer, joined by Justices Stevens, Souter, and Ginsburg, actually agreed with this argument, but also argued that Louisville's and Seattle's plans would even pass constitutional muster under a strict scrutiny review. *See id.* at 837 (Breyer, J., dissenting) ("[T]he judge would carefully examine the program's details to determine whether the use

did not eliminate the ability of school districts to consider the race of students in assignment. Rather, a majority explicitly affirmed the authority of school districts to take certain race-conscious[10] or any race-neutral measures to ensure equal educational opportunities, even as they struck down Louisville's and Seattle's use of individually based race-conscious policies—one of the most common voluntary integration methods.

As a matter of judicial precedent, the *Parents Involved* decision affects only a limited subset of districts. But, an overly pessimistic reading of the decision itself, media reports about the judiciary's skepticism of consideration of individual students' race, as well as a premature perception that our country has entered a "post-racial" era, have together confused school personnel and advocates for racial equity about how to proceed. Deep disagreements within the Court, reflected in the fractured decision, have, in the wake of *Parents Involved*, made it difficult for policy makers to determine what options remain constitutionally permissible for pursuing racial diversity in public schools. Plans that mirror those adopted by Seattle and Louisville are unconstitutional.[11] But the Court did not instruct school districts about what they *can* do beyond those two plans. Without guidance, and facing the threat and expense of litigation in a

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of race-conscious criteria is proportionate to the important ends it serves. In my view, this contextual approach to scrutiny is altogether fitting. I believe that the law requires application here of a standard of review that is not 'strict' in the traditional sense of that word, although it does require the careful review I have just described."); *see also* Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1, 426 F.3d 1162, 1193–94 (9th Cir. 2005) (Kozinski, J., concurring) (arguing against applying strict scrutiny to voluntary racial integration plans); Brief for NAACP Legal Defense and Educational Fund, Inc. as Amicus Curiae Supporting Respondents at 19–29, *Parents Involved*, 551 U.S. 701 (Nos. 05-908 & 05-915), *available at* http://www.naacpldf.org/content/pdf/voluntary/ldf_amicus_briefs/LDF_Supreme_Court_Amicus_Seattle_and_Louisville.pdf (arguing that the Court should apply a rigorous rationale basis standard to voluntary integration plans).

10. According to Justice Kennedy:

> If school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race.

Parents Involved, 551 U.S. at 788–89 (Kennedy, J., concurring). Justice Kennedy's opinion also suggests various strategies to avoid racially isolated schools and to create diverse ones including: "strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race." *Id.* at 789 (Kennedy, J., concurring).

11. The challenged plans used race as one factor in determining which school individual students would attend. *Id.* at 711–12, 716–17 (plurality opinion).

time of deep cuts to K–12 education, districts may follow the path of least resistance and abandon their commitment to integration, directly impacting school populations as well as surrounding neighborhoods and communities. Such an outcome resurrects dual school systems that have many of the very characteristics *Brown* outlawed. North Carolinians can look directly at the rapid return to separate and unequal schooling in the Charlotte-Mecklenburg school system[12] for an illustration of what happens to students' opportunities when school districts retreat from crafting creative, legally permissible integration plans that promote equal educational opportunities for all students.[13]

To ponder this uncertainty about the legal landscape, alongside the increasingly documented harm and injustice of segregated schooling,[14] on April 2, 2009, scholars, practitioners, and policy makers interested in racially integrated education gathered for the conference *Looking to the Future: Legal and Policy Options for*

12. *See, e.g.*, First Amended Intervening Complaint (July 29, 2005), Hoke County Bd. of Educ. v. State of North Carolina, No. 95 CVS 1158 (Wake County Super. Ct.), *remanded by* 358 N.C. 605, 599 S.E.2d 365 (2004), *available at* http://www.law.unc.edu/documents/civilrights/briefs/leandroamendedcomplaint.pdf; *see also* Second Amended Complaint by Plaintiff-Intervenors CMS Students and Charlotte-Mecklenburg NAACP (Sept. 30, 2005), *Hoke*, No. 95 CVS 1158, *available at* http://www.law.unc.edu/documents/civilrights/briefs/2ndamendedcomplaint.pdf (providing a detailed account of the economic resegregation of the Charlotte-Mecklenburg school system and the resulting negative educational impacts).

13. North Carolinians and others also might give pause to Wake County's most recent school board election in which "neighborhood" school assignment proponents gained a majority on the board. *See* Thomas Goldsmith, *'Neighborhood Schools' Issue Tapped Anger*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 8, 2009, http://www.newsobserver.com/politics/story/131521.html. At issue in the election was whether Wake's school board would stand by the district's longstanding socioeconomic diversity policy versus instituting a "neighborhood" school assignment policy. *See id.* Wake County's socioeconomic diversity policy has been nationally heralded as an effective strategy to thwart the concentration of low-income and minority students in "neighborhood" schools and provide all students with equitable, high-quality schools. *See* Susan Leigh Flinspach & Karen E. Banks, *Moving Beyond Race: Socioeconomic Diversity as a Race-Neutral Approach to Desegregation in the Wake County Schools*, *in* SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK?, *supra* note 5, at 261, 270–76 (discussing Wake County's diversity policy). *See generally* GERALD GRANT, HOPE AND DESPAIR IN THE AMERICAN CITY: WHY THERE ARE NO BAD SCHOOLS IN RALEIGH (2009) (discussing Wake County's diversity plan and its success in comparison to other large urban districts across the United States).

14. ROSLYN ARLIN MICKELSON, GOALS, GRADES, FEARS, AND PEERS: INTRODUCTORY ESSAY FOR SPECIAL ISSUES ON THE EFFECTS OF SCHOOL AND CLASSROOM RACIAL AND SES COMPOSITION ON EDUCATIONAL OUTCOMES (forthcoming 2010), *available at* http://www.tcrecord.org/Content.asp?ContentID=15686 (available online only through paid subscription service).

Racially Integrated Education in the South and the Nation.[15] The conference explored immediate and long-term policy options available to school districts that voluntarily undertake the complicated but critical task of fostering racially integrated schooling after *Parents Involved.* The articles in this Issue were commissioned for and developed from the conference. This day-long discussion about the consequences of resegregation attracted more than 250 citizens from across the country, with numerous others connected via live visual feed online.

The questions examined and solutions offered in this Issue are essential if we are to ensure that all children have access to the educational opportunity they need to reach their full potential, to enhance our nation's economic well being, and, ultimately, to nourish the best of our democracy.[16] Education plays an uplifting role in our society, and whether our schools are segregated or not has dramatic consequences for the future of our nation. Education enables us to compete effectively for leadership in a globally connected economy. Across the country, communities are having dialogues about public education and how to improve it, not only so that all children realize their individual potential, but also because public schools are the primary place where young Americans learn to celebrate differences and embrace commonalities in our pluralistic society.[17]

Given the confusion about what rights we have to pursue integration and the importance of this cause, Chinh Le in the Issue's first piece examines the opportunities that currently exist at the federal level to promote integration. Le posits that the political atmosphere is ripe to resurrect the federal government's commitments to civil rights in education under a new federal administration that prioritizes education reform. According to Le, for more than three decades the federal government has failed to play a pivotal role in promoting school integration. Still, Le examines the historical role of the federal government in school integration to remind us of the critical role that the executive and legislative

15. A video of the conference proceedings can be viewed at http://www.law.unc.edu/centers/civilrights/pastconferences/default.aspx.

16. *See* Bob Herbert, Op-Ed., *In Search of Education Leaders*, N.Y. TIMES, Dec. 5, 2009, at A19. ("By 2050, the percentage of whites in the work force is projected to fall from today's 67 percent to 51.4 percent. The presence of blacks and Hispanics in the work force by midcentury is expected to be huge, with the growth especially sharp among Hispanics.").

17. *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 16 (1971) (recognizing that local school authorities have the power and ability "to prepare students to live in a pluralistic society").

branches have played in these causes—arguably even more so than the federal judiciary—and he highlights the federal agencies and the legal and policy tools that once advanced the goal of racially integrated education. Le explains that current conditions exist for the federal government to once again play this role. It will take renewed executive and congressional leadership to realize the ideals articulated in *Brown* because courts, Le says, are at best only loosely enforcing and hardly expanding education rights, as the *Parents Involved* decision is the latest to demonstrate.

Agreeing with Le, Kimberly Jenkins Robinson posits that the courts will be of little help in pursuing integrated education. Reviewing a decades-long judicial trend detrimental to integrating schools, Robinson recommends a series of executive branch solutions for those seeking integration. Although she argues that historically the President has played only a small role in promoting integration, she suggests President Obama could use the bully pulpit of his office, as well as issue executive orders to take action on racial isolation and appoint a commission and policy advisor to specifically focus on the harms and policy options for mitigating isolation. The U.S. Department of Education also could be another means to promote integration through its enforcement role and its technical assistance. Finally, Robinson warns that given the Court's current decisions and dicta, any of these efforts might still be vulnerable to invalidation from the judiciary.

In the Issue's next piece, Danielle Holley-Walker provides empirical data to inform the scholarly debate about the extent to which courts are *not* expanding education rights, which has important implications for the long-term impact of *Parents Involved*. Some scholars have suggested that *Parents Involved* will have little meaningful impact on school districts which, for numerous reasons, long ago abandoned racial integration as a priority.[18] Others argue that *Parents Involved* provides an excuse for districts to abandon race-conscious strategies.[19] More than two years after the *Parents*

18. *See* James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 HARV. L. REV. 131, 132–33 (2007).

19. *See* Nicholas Lemann, *Reversals*, NEW YORKER, Jul. 30, 2007, at 27, 27 ("[T]he Court issued a decision ... that signaled a complete departure from more than half a century of jurisprudence on race."); Michael Doyle, *Supreme Court Curbs Use of Race in School Policies*, MCCLATCHY, Jun. 28, 2007, http://www.mcclatchydc.com/homepage/story/17445.html (discussing the viewpoints of both the critics and supporters of the *Parents Involved* decision). *But see* Press Release, American Civil Liberties Union, ACLU Expresses Mixed Feelings About Supreme Court Decision in School Desegregation Cases (Jun. 28, 2007), http://www.aclu.org/racial-justice/aclu-expresses-mixed-feelings-about-

Involved decision, Holley-Walker surveys how many districts may be in the Louisville-like conundrum of having once been required to implement race-conscious student assignment strategies and, after reaching unitary status, now are limited in what actions they can take to maintain desegregated schools against external segregating forces. She finds that eighty-seven Southern districts have been declared unitary since 2004 due, in part, to the U.S. Department of Justice's push to end desegregation cases, and that because of their small, racially homogenous enrollments, the prospects of future integration will have to come through interdistrict efforts. Among larger, more diverse districts, she finds a variety of policies that districts have adopted, including using socioeconomic status and attendance zones to further diversity. Holley-Walker's study provides important new evidence as to the extent that Southern districts may be affected by *Parents Involved* and what policy responses they are adopting. Like Le's and Robinson's pieces, Holley-Walker's findings have implications for the role that the federal government can serve in school desegregation efforts.

In our current demographic reality, Kristi Bowman reminds us that the principles of *Brown* matter to *all* Americans, including the substantial and growing Latino/a student population. These students today attend some of the most segregated schools in the nation. In light of the *Parents Involved* decision, Bowman's article is important because the Court likely will evaluate the legality of integration policies based on whether districts' policies consider various minority groups outside of the "traditional," binary classification of race used in many court-ordered desegregation plans that were once, but are not now, reflective of many districts' student demographics.[20] Bowman's article evaluates the effectiveness of both litigation and policy initiatives as a range of possible strategies for pursuing educational opportunity for Latino/a students. Ultimately, Bowman advocates not only pursuing all of these initiatives concurrently but also for continuing to value and employ race–ethnicity-conscious

supreme-court-decision-school-desegregation-cases (claiming that, although the decision rejected voluntary integrations plans in Louisville and Seattle, it did not "signal the end of voluntary integration").

20. A majority of Justices expressed concern about assignment plans using binary conceptions of race ("white/nonwhite" or "black/other"). *See, e.g.*, Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1 (*Parents Involved*), 551 U.S. 701, 723–24 (2007). The Court now seemingly expects schools to have a definition of diversity that considers various minority groups and, importantly, is clearly related to a district's identifiable educational goals.

measures rather than colorblind ones,[21] as our society pursues the goal of advancing educational opportunities for all children.

The Issue also reaffirms why the struggle for racial integration in public schools is a noble goal for which we all must continue to fight. As the nation grapples with solutions to the growing dropout rate[22] and its need for a technologically advanced workforce, Roslyn Mickelson and Martha Bottia stress the role integrated schools can play in remedying our national education crisis. In evaluating high quality research from the past twenty years about the relationships between persistent gaps in mathematics achievement and the racial and socioeconomic composition of K–12 schools, Mickelson and Bottia clarify the social science record about school composition effects on mathematics outcomes in K–12 schools.[23] They conclude that students from all grade levels, racial, and socioeconomic status backgrounds who attend racially and economically integrated schools are likely to have higher math outcomes. Yet, even as empirical evidence about the positive academic effects of racial and socioeconomic integration are more definitive and clearer than ever, the *Parents Involved* decision limits the options that school districts have to create those integrated learning environments. Simultaneously, contemporary school reform efforts to raise student achievement focus almost exclusively on improving curricula,

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21. Certain Justices refer to our Constitution as colorblind, meaning that it "neither knows nor tolerates classes among citizens." Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting) (arguing against the majority upholding the doctrine of separate, but equal). According to Justice Kennedy:

> The statement by Justice Harlan that "[o]ur Constitution is color-blind" was most certainly justified in the context of his dissent in *Plessy*.... The Court's decision in that case was a grievous error it took far too long to overrule.... And, as an aspiration, Justice Harlan's axiom must command our assent. In the real world, it is regrettable to say, it cannot be a universal constitutional principle.

Parents Involved, 551 U.S. at 788 (Kennedy, J., concurring) (citations omitted); *see also id.* at 830 (Breyer, J., dissenting) ("And I have found no case that otherwise repudiated this constitutional asymmetry between that which seeks to *exclude* and that which seeks to *include* members of minority races.").

22. Herbert, *supra* note 16 ("An American kid drops out of high school at an average rate of one every 26 seconds. In some large urban districts, only half of the students ever graduate. Of the kids who manage to get through high school, only about a third are ready to move on to a four-year college.").

23. Mirroring the disagreements between the Justices about the legality of Seattle's and Louisville's plans, Justice Breyer's opinion drew quite different conclusions from the social science record presented in the case about school districts' compelling interests in diverse schools than did the opinions of either Chief Justice Roberts or Justice Thomas. Roslyn Arlin Mickelson & Martha Bottia, *Integrated Education and Mathematics Outcomes: A Synthesis of Social Science Research*, 88 N.C. L. REV. 993, 1001–04 (2010).

enhancing teacher quality, and instituting standards, assessment, and accountability, amongst other measures that are relatively silent about student composition. Thus, Mickelson and Bottia's findings should encourage parents, educators, policy makers, and jurists to give proper attention to how we might all address the relationship that exists between school racial segregation, concentrated poverty, and persistent achievement gaps in mathematics outcomes.

Given the case Mickelson and Bottia make for the vital importance of pursuing integration, the Issue concludes with two pieces offering hopeful strategies and reminding us of the creativity needed to solve the more complex problems of segregation in our contemporary era. William Glenn describes one such potential approach to reducing racial isolation in school districts that he argues would fall well within the constraints of *Parents Involved*. Glenn suggests that school districts consider grade reconfiguration as a method for educating all grade level students at the same school within a district. This approach is undoubtedly more effective for elementary schools and in districts with certain characteristics and demographics. Glenn points to examples from the 1970s and 1980s, when this strategy was frequently employed in the South during mandatory desegregation efforts. These examples may guide our contemporary understanding of how demographic modeling can ameliorate segregation in a subset of these districts. Justice Kennedy's opinion endorsed the authority of school boards, as they pursue voluntary integration, to consider the demographics of communities as they select sites for new schools.[24] If districts were to implement Glenn's suggestion, case studies of effectiveness, design, and making the political case would be important contributions to understanding how and when this works in our post-*Parents Involved* era.

In the Issue's last piece, Stephen Samuel Smith, like Glenn, describes the use of boundaries as a way to further integration, and illustrates the comprehensive approach needed today to pursue integration. In a detailed case study of Rock Hill, South Carolina, Smith identifies processes that may be useful for other school districts as they consider how to pursue integration after *Parents Involved*. In particular, Smith suggests Rock Hill's success stems from thoughtful leadership and community involvement. In addition, Rock Hill's decision making seemed influenced by the subtle pressures of prior U.S. Department of Health, Education and Welfare ("HEW")

24. *See Parents Involved*, 551 U.S. at 789 (Kennedy, J., concurring); *see also supra* note 10 (quoting relevant portions of Justice Kennedy's *Parents Involved* concurrence).

agreements, a civil rights-minded judge scheduled to hear the case, and the long shadow of nearby Charlotte's unraveling desegregation efforts. Yet, while in many ways this could be construed as a "best practice scenario," Smith also illuminates some of the concerns that districts and advocates of racial justice must confront in our contemporary era. While the recently diversified school board in Rock Hill is described as helping to lead the district through multiple decisions about where to build new schools and how to redistrict to pursue integration, concerns linger about board weariness and tolerance of risk in designing student assignment plans. Their broad definition of racial isolation and limiting the use of race in favor of socioeconomic status are two examples that Smith recounts of board decisions that render it more challenging to accomplish racial integration within the district. This case study points to the need for increased efforts to help educate school boards—elected community leaders—about the specific parameters of legal decisions. Also, the study suggests that lawyers who assist school districts like Rock Hill, committed to integration, to fashion legally acceptable policies might consider how a legal challenge to the policy's implementation could have repercussions beyond just the district at hand.

Taken together, the analyses in this Issue remind us of the work—over decades—that has already gone into making the principles of *Brown* a living legacy, albeit a complicated legacy whose ideals are almost universally praised but far too often not fully implemented. The *Brown* decision itself was a long-fought political, legal, and social struggle, as has been the subsequent struggle to give meaning to its principles. This democratic, pluralistic nation came closer to fulfilling its constitutional promises when attorneys, education experts, historians, school administrators, government agencies, parents, and students worked (sometimes together but always with the same goal) to overturn the principle that separate can be equal. Thus, Justice Breyer regretfully penned in his *Parents Involved* dissent, "The last half-century has witnessed great strides toward racial equality, but we have not yet realized the promise of *Brown*."[25] A new effort is needed and will require no less a comprehensive movement than those of prior generations. Without overt laws mandating segregation, legal strategies today must work in tandem with policy strategies and all must take full account of demographic changes.

25. *Parents Involved*, 551 U.S. at 868 (Breyer, J., dissenting).

These articles offer us a path forward, and offer innovative tools to use in our current—and future—work of the nation-building task of implementing *Brown*. The analyses set forth in this Issue and research by others implore us to remain dedicated to current and future generations in order to achieve our nation's promise of equality for *all*. The stakes could not be higher, and we will need our nation's best scholars and leaders, as exemplified by the authors of this Issue, to help us achieve the promise of *Brown*.