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NOTE

Parents Involved in Community Schools v. Seattle School District No. 1: A Return to a Separate and Unequal Society?

KIMBERLY J. FREEDMAN†

I. INTRODUCTION

“To invalidate the plans under review is to threaten the promise of *Brown*. The plurality’s position, I fear, would break that promise. This is a decision that the Court and the Nation will come to regret.”¹ With that ominous warning, Justice Breyer delivered his passionate dissent in *Parents Involved in Community Schools v. Seattle School District No. 1*² and left both the Supreme Court and America with a wary and disheartening outlook on the future. In Justice Breyer’s eyes, Chief Justice Roberts’s plurality opinion³ betrayed the very heart of *Brown v. Board of Education*⁴ in an age in which *Brown*’s central message of equality remains imperative,⁵ and, in turn, created the unnerving potential for vast and far-reaching consequences.⁶

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1. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2837 (2007) (Breyer, J., dissenting).

2. Chief Justice Roberts authored Parts I, II, III-A, and III-C of the majority opinion in *Parents Involved*, as well as Parts III-B and IV, in which Justices Scalia, Thomas, and Alito joined. *Id.* at 2746 (majority opinion).

3. The conflict in this case revolved around school assignment plans from Louisville, Kentucky and Seattle, Washington. *Id.* at 2746–49. Both plans used race as a factor when assigning students to a particular school in order to ensure that schools achieved a racial balance. *Id.* at 2746. In his plurality opinion, Chief Justice Roberts held that the use of racial classifications in school assignment plans is not a narrowly tailored means by which to achieve a compelling government interest and thus found the plans at issue unconstitutional. *Id.* at 2755 (plurality opinion).

4. 347 U.S. 483 (1954).

5. As Chemerinsky stated, “The fiftieth anniversary of *Brown* should be the occasion for more than a celebration of that decision; it must be the time for making its promise a reality.” Erwin Chemerinsky, *The Deconstitutionalization of Education*, 36 *LOY. U. CHI. L.J.* 111, 135 (2004).

6. Justice Breyer’s dissent extensively describes prior court holdings and explains how the plurality opinion ignores both precedent and reason in order to find the plans in question unconstitutional. *Parents Involved*, 127 S. Ct. at 2811–21 (Breyer, J., dissenting); see also John

In an effort to shield against the detrimental effects of *Parents Involved*, this note seeks to analyze the potential psychological consequences of this case and arm both social scientists and the legal community with the proper framework—built on history, psychological research, and foresight—to ward off such consequences should they ever threaten to become a reality. Since *Brown*, psychological research has served the essential purpose of evaluating the influence that legal decisions involving segregation, integration, and race relations have on our country.⁷ This note stresses the necessity of continued psychological research in the future—focusing specifically on children’s self-esteem, self-efficacy, and attitude formation—in order to thoroughly evaluate the consequences of *Parents Involved* and, most importantly, to provide the essential tools with which legal scholars and activists can counter this case’s potentially detrimental consequences.

While it is impossible to presently predict the complete array of costs *Parents Involved* may impose on this country in the future, both history and scientific research strongly suggest that the Supreme Court’s decision in this case will result in negative psychological repercussions for minority school children, school children in general, and this nation as a whole. Part II of this note discusses the significant impact social science research had on the Supreme Court’s decision in *Brown v. Board of Education* and examines the particular psychological factors that the Court took into account when resolving that case. Part III traces *Brown*’s impact on school children and the nation over the past fifty years. It is important to note that while positive changes in self-esteem, self-efficacy, and attitude formation followed the intense push for integration in the 1960s and 1970s, judicial decisions of the 1990s substantially reversed these earlier accomplishments.⁸ Part IV, the heart of this note, describes the potential ways in which *Parents Involved* may further negate *Brown*’s monumental social changes, particularly through its promise of resegregated public schools and a resegregated society which, in turn, threaten to significantly damage school children’s self-esteem, self-efficacy, and attitude formation. Part V describes the possible effects of *Parents Involved* on society at large, and, finally, Part VI discusses what lawyers should do with future social science data—as

W. Borkowski, *The 2006–2007 Term of the United States Supreme Court and Its Impact on Public Schools*, 223 EDUC. L. REP. 481, 491–92 (2007) (noting that Breyer’s dissent recognized “the ways that the majority side-stepped the logical implications of those precedents in order to find these plans unconstitutional”).

7. “The [American Psychological Association] places a high priority on the amelioration of stereotypes, prejudice, and discrimination among individuals and institutions.” Brief for Amici Curiae the American Psychological Ass’n & the Washington State Psychological Ass’n in Support of Respondents at 1, *Parents Involved*, 127 S. Ct. 2738 (Nos. 05-908 & 05-915).

8. See discussion *infra* Part III.

scholars, practitioners, and advocates—to combat the detrimental effects of *Parents Involved*.

The ultimate impact of *Parents Involved* is currently unknown and will probably remain so for some time. It is imperative, however, that this nation progress in full awareness of the harsh realities of past segregation and of the potential for this case to revive segregation and its boundless consequences. It is only through continuous study and constant vigilance that we can accurately track our progress as a nation and effectively alert our lawmakers to court decisions and societal situations in dire need of change.

II. THE BACKBONE OF *BROWN*: PSYCHOLOGY'S INFLUENCE ON THE WARREN COURT

Inasmuch as the Warren Court⁹ relied on principles of constitutional law to overrule *Plessy v. Ferguson*¹⁰ and conclude that separate but equal educational opportunities contravene the Fourteenth Amendment,¹¹ it is also evident that “[t]he legal reasoning in the landmark *Brown* decision was supported, in part, by social science evidence demonstrating that segregated minority schools cause irreparable psychological harm to the minority children who attended schools that in all other tangible respects might well be equal.”¹² In support of its abrogation of *Plessy*, the Supreme Court in *Brown* emphatically stated:

“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 the 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.”¹³

Whatever may have been the extent of psychological knowledge at the

9. Chief Justice Warren, joined by a unanimous Supreme Court, delivered the opinion in *Brown v. Board of Education* in 1954. 347 U.S. at 486.

10. 163 U.S. 537 (1896). In *Plessy*, the Supreme Court, in an opinion by Justice Brown, upheld the constitutionality of an act that mandated separate but equal accommodations for individuals of different races. *Id.* at 552.

11. *Brown*, 347 U.S. at 495.

12. NAACP LEGAL DEF. & EDUC. FUND, INC. ET AL., *LOOKING TO THE FUTURE: VOLUNTARY K-12 SCHOOL INTEGRATION* 16 (2005); see also Amy Stuart Wells & Erica Frankenberg, *The Public Schools and the Challenge of the Supreme Court's Integration Decision*, 89 *PHI DELTA KAPPAN* 178, 179 (2007) (“[T]he social science research on the harms of racial segregation clearly demonstrates a powerful point made by a prior Supreme Court in the *Brown v. Board of Education* ruling: separate is inherently unequal.”).

13. *Brown*, 347 U.S. at 494 (alterations in original) (citing the state court opinion).

time of *Plessy v. Ferguson*, this finding is amply supported by modern authority.

Furthermore, in its now widely known and hotly debated “footnote eleven,”¹⁴ the Warren Court referenced six psychological studies it used to supplement its historic decision.¹⁵ Taken together, these six studies detail the negative psychological impact segregation has on minority and majority students alike.¹⁶ The first study cited in footnote eleven, conducted by psychologist Kenneth Clark,¹⁷ has been of particular interest to several social scientists and legal scholars in the years since *Brown*.¹⁸ In his study, Clark observed that southern African American children, when asked questions regarding images of both black and white dolls, tended to “choose pictures of white dolls in relation to positive characteristics and pictures of black dolls in relation to negative characteristics.”¹⁹ Based on these results, Clark concluded that discrimination, prejudice, and segregation had a negative impact on the self-image of African American children.²⁰ Specifically, Clark stated that “[t]he essence of this detrimental effect is a confusion in the child’s concept of his own self-esteem—basic feelings of inferiority, conflict, confusion in his self-image, resentment, hostility towards himself, hostility towards whites, intensification of . . . a desire to resolve his basic conflict by sometimes escaping or withdrawing.”²¹

While social scientists and legal scholars have subsequently questioned the research techniques used in Clark’s study,²² the true significance of Clark’s work, and the true significance of the other studies

14. See, e.g., Sanjay Mody, *Brown Footnote Eleven in Historical Context: Social Science and the Supreme Court’s Quest for Legitimacy*, 54 STAN. L. REV. 793, 801 (2002); Michael Heise, *Brown v. Board of Education, Footnote 11, and Multidisciplinarity*, 90 CORNELL L. REV. 279, 293 (2005).

15. *Brown*, 347 U.S. at 494–95 n.11.

16. Neil G. Williams, *Brown v. Board of Education Fifty Years Later: What Makes for Greatness in a Legal Opinion?*, 36 LOY. U. CHI. L.J. 177, 181 n.26 (2004).

17. Clark’s research is entitled “Effect of Prejudice and Discrimination on Personality Development.” *Brown*, 347 U.S. at 494 n.11.

18. See, e.g., RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* 353–57 (Alfred A. Knopf 2004) (1976); JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* 43–45 (2001); Williams, *supra* note 16, at 181–82.

19. Williams, *supra* note 16, at 181–82.

20. *Id.* at 182.

21. KLUGER, *supra* note 18, at 353.

22. Williams, *supra* note 16, at 182; see also Heise, *supra* note 14, at 294 (“Commentators described Dr. Clark’s methodology as ‘primitive,’ certainly by today’s standards and even perhaps by social scientific standards existing in the mid-1950s.”). Regardless of his research techniques, Clark’s findings concerning the negative effects of segregation have since been confirmed, as extensive and reliable modern research clearly documents segregation’s detrimental effects. See *discussion infra* Part IV.

cited in footnote eleven, rests not in intricate details or methodology but rather in the notion that this psychological research forced the Supreme Court to confront the divided state of our nation²³ and acknowledge the profound psychological harms caused by state-mandated segregation.²⁴ Armed with the results of this psychological research and flanked with the very words of the Fourteenth Amendment,²⁵ the Supreme Court in *Brown* concluded that “in the field of public education the doctrine of ‘separate but equal’ has no place”²⁶ and delivered a compelling decision poised to change this nation and its people for the better.²⁷

III. THE PSYCHOLOGICAL IMPACT OF *BROWN*: THE YEARS OF GROWTH AND DEVELOPMENT, PROSPECTS AND PROMISES

In the years following *Brown*, several prominent Supreme Court decisions resulted in significant strides toward fulfilling *Brown*’s promise of true racial equality.²⁸ First, in *Green v. County School Board*,²⁹ the Supreme Court held that the desegregation mandated by *Brown* required the “elimination of all traces of a school system’s prior segregation in every facet of school operations—from student, faculty, and staff assignment to extracurricular activities, facilities, and transportation.”³⁰ In so holding, the *Green* Court reaffirmed the Court’s decision to place

23. “Whatever its methodological faults may have been, the Clarks’ psychological research rings true to my personal life experiences.” Williams, *supra* note 16, at 190.

24. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954); Kenneth B. Clark et al., *The Effects of Segregation and the Consequences of Desegregation: A (September 1952) Social Science Statement in the Brown v. Board of Education of Topeka Supreme Court Case*, (1952), reprinted in 59 AM. PSYCHOLOGIST 495, 497–99 (2004).

25. In relevant part, the Fourteenth Amendment proclaims:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

26. *Brown*, 347 U.S. at 495.

27. In his heartfelt dissent in *Parents Involved*, Justice Breyer expounds upon the Warren Court’s opinion in *Brown*:

Brown held out a promise. It was a promise embodied in three Amendments designed to make citizens of slaves. It was the promise of true racial equality—not as a matter of fine words on paper, but as a matter of everyday life in the Nation’s cities and schools. It was about the nature of a democracy that must work for all Americans. It sought one law, one Nation, one people, not simply as a matter of legal principle but in terms of how we actually live.

Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 127 S. Ct. 2738, 2836 (2007) (Breyer, J., dissenting).

28. The cases referenced within this note, while of particular relevance here, by no means comprise all pertinent decisions demonstrating the implementation of *Brown*.

29. 391 U.S. 430 (1968).

30. NAACP LEGAL DEF. & EDUC. FUND, INC. ET AL., *supra* note 12, at 6.

the burden of dismantling the dual school system and bringing about racial integration on each county's individual school board.³¹

A few years later, in *Swann v. Charlotte-Mecklenburg Board of Education*,³² the Supreme Court held that, should a school board fail in its duty to create an acceptable school integration plan, a district court has broad discretion to impose a plan that uses a ratio of white to black students as a starting point to achieve racial integration in public schools.³³ Implicit in *Swann* is the notion that simply requiring a school district to promulgate racially neutral assignment plans would not accomplish *Brown's* promise; the quest for true equality requires a proactive approach and the commitment of the courts.³⁴

Lastly, in *Regents of the University of California v. Bakke*,³⁵ the Supreme Court extended *Brown* to the realm of higher education by stating that a college admissions program may take race into account in order to achieve educational diversity.³⁶ Although the *Bakke* Court struck down the particular program at issue, Justice Powell made it exceedingly clear that "in some situations race can be helpful information in enabling the admissions officer to understand more fully what a particular candidate has accomplished—and against what odds."³⁷

Green, *Swann*, and *Bakke* all capture the spirit of great change that took place during the 1960s and 1970s—the decades in which "school desegregation finally began to take hold."³⁸ Psychological research tracing the effects of segregation and discrimination similarly reflects the spirit of change enveloping the nation during this point in history. Studies tracking *Brown's* impact on minority school children revealed extremely positive psychological consequences, such as improved self-esteem and self-efficacy,³⁹ for those students who attended public

31. See *Green*, 391 U.S. at 441–42; *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 299 (1955) ("School authorities have the primary responsibility for elucidating, assessing, and solving these problems."). This case, commonly referred to as "*Brown II*," sought to effectively implement the holdings of the 1954 *Brown* decision.

32. 402 U.S. 1 (1971).

33. *Id.* at 25.

34. *Swann* notes that racially neutral assignment plans fail to take into account the effects of past school segregation and it may thus be necessary for the court system to intervene. *Id.* at 28.

35. 438 U.S. 265 (1978).

36. *Id.* at 316–17 ("In . . . an admissions program, race or ethnic background may be deemed a 'plus' in a particular applicant's file." (footnote omitted)).

37. *Id.* at 317 n.51 (quoting William G. Bowen, *Admissions and the Relevance of Race*, PRINCETON ALUMNI WKLY 7, 9 (Sept. 26, 1977)).

38. NAACP LEGAL DEF. & EDUC. FUND, INC. ET AL., *supra* note 12, at 5; see also AMY STUART WELLS ET AL., *How Desegregation Changed Us: The Effects of Racially Mixed Schools on Students and Society* 9 (2004), available at http://cms.tc.columbia.edu/ial/782_ASWells041504.pdf ("[T]he late 1970s was a particularly pivotal moment in the history of school desegregation policy across the country.").

39. See Jomills Henry Braddock II & James M. McPartland, *Social-Psychological Processes*

schools following the implementation of *Brown's* objectives during the peak of integration. For example, one study, in reviewing the research on the long-term effects of school desegregation,⁴⁰ noted that African Americans who attended desegregated schools developed a "stronger sense that occupational opportunities are available to them, more confidence in their ability to succeed in interracial situations,"⁴¹ and other personal characteristics that, in the future, "may be important for adult occupational success."⁴² Additionally, psychological studies focusing on the impact of desegregation following *Brown* indicate that "desegregation made the vast majority of the students who attended these schools less racially prejudiced and more comfortable around people of different backgrounds,"⁴³ thus contributing to improved attitudes toward individuals of other races and strengthening race relations overall. At its peak, the school desegregation that followed *Brown* "fundamentally changed the people who lived through it"⁴⁴ and brought this nation closer to achieving *Brown's* goals.

Unfortunately, however, the years leading up to *Parents Involved* brought about a significant and detrimental change from the successful implementation of *Brown's* promise of racial equality that had occurred during the years following that decision.⁴⁵ In *Oklahoma City v. Dowell*⁴⁶ in 1991 and *Missouri v. Jenkins*⁴⁷ in 1995, the Supreme Court ordered an end to court-mandated desegregation plans once a district successfully achieved a unitary school system.⁴⁸ Specifically, once a court declared that a school district was unitary, the district was "no longer under a legal duty to continue any of the desegregation efforts that it had undertaken in the decades when it was under court order."⁴⁹ Furthermore, in *Freeman v. Pitts*,⁵⁰ the Court held that "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."⁵¹ Through its decisions in *Dowell*, *Jenkins*,

that Perpetuate Racial Segregation: The Relationship Between School and Employment Desegregation, 19 J. BLACK STUD. 267, 269 (1989) ("[D]ata indicated that school desegregation had positive effects for Blacks on subsequent college and occupational attainments.").

40. *Id.*

41. *Id.*

42. *Id.*

43. WELLS ET AL., *supra* note 38, at 5.

44. *Id.*

45. See NAACP LEGAL DEF. & EDUC. FUND, INC. ET AL., *supra* note 12, at 7.

46. 498 U.S. 237 (1991).

47. 515 U.S. 70 (1995).

48. Erwin Chemerinsky, *Turning Sharply to the Right*, 10 GREEN BAG 2D 423, 428 (2007).

49. NAACP LEGAL DEF. & EDUC. FUND, INC. ET AL., *supra* note 12, at 8.

50. 503 U.S. 467 (1992).

51. *Id.* at 490.

and *Freeman*, the Supreme Court “sent the unmistakable message that district courts should get out of the business of school desegregation and return school districts to local control.”⁵²

As the Supreme Court limited desegregation orders in the 1990s and consciously removed itself and the legal system from the arena of school integration, an unfortunate, yet predictable, result emerged. Without court guidance and enforcement, and with no recent significant initiatives from Congress or the White House⁵³ to further *Brown*’s vision, a resegregation crisis began to occur.⁵⁴ For example, a 2005 report states that “[t]he desegregation of black students, which increased continuously from the mid-1950s to the late 1980s, has now declined to levels not seen in three decades,”⁵⁵ and a 2007 report indicates that “[r]esegregation, which took hold in the early 1990s . . . is continuing to grow in all parts of the country.”⁵⁶ As the resegregation crisis has developed, it is not surprising that the negative psychological harms that existed in pre-*Brown* America have begun to reemerge as well. Numerous studies on the effects of segregation have concluded that the racism, discrimination, and inequality perpetuated by the recent crisis strike to the very core of children’s self-esteem and self-efficacy and significantly increase the development of prejudicial attitudes in school-age children.⁵⁷

In an effort to prevent such retrogression and to maintain existing integration efforts, as well as in an effort to thwart the psychological repercussions of the resegregation crisis, Louisville and Seattle, as well as several other school districts throughout the country,⁵⁸ sought to implement the type of race-conscious school assignment plans at issue in *Parents Involved*.⁵⁹ By condemning these plans as unconstitutional and effectively stripping school districts of a means by which to prevent

52. James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 HARV. L. REV. 131, 141–42 (2007).

53. GARY ORFIELD & CHUNGMEI LEE, CIVIL RIGHTS PROJECT AT HARVARD UNIV., HISTORICAL REVERSALS, ACCELERATING RESEGREGATION, AND THE NEED FOR NEW INTEGRATION STRATEGIES 6 (2007).

54. See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2802 (2007) (Breyer, J., dissenting); NAACP LEGAL DEF. & EDUC. FUND, INC. ET AL., *supra* note 12, at 9–14; ORFIELD & LEE, *supra* note 53, at 5.

55. NAACP LEGAL DEF. & EDUC. FUND, INC. ET AL., *supra* note 12, at 10.

56. ORFIELD & LEE, *supra* note 53, at 5.

57. See discussion *infra* Part IV.

58. *Parents Involved*, 127 S. Ct. at 2802 (Breyer, J., dissenting); see also Wells & Frankenberg, *supra* note 12, at 178 (“Hundreds of school districts across the country have adopted some variation of these plans because such voluntary integration achieves two goals. First, it provides families with choice, and second, it ensures that schools remain fairly balanced in terms of race, resources, reputation, and political clout.”).

59. *Parents Involved*, 127 S. Ct. at 2802 (Breyer, J., dissenting).

school resegregation, Justice Roberts's plurality opinion in *Parents Involved* "undermines *Brown*'s promise of integrated primary and secondary education that local communities have sought to make a reality."⁶⁰ The Supreme Court's decision in *Parents Involved* has the potential to perpetuate the de facto segregation that emerged in the 1990s.⁶¹ De facto segregation consequently increases the risk of a resurgence of racism and, in turn, a revival of the substantial psychological harms that plagued school children in our pre-*Brown* America.⁶²

IV. THE POTENTIAL PSYCHOLOGICAL CONSEQUENCES OF *PARENTS INVOLVED*

The de facto segregation of schools and society that the plurality sanctions in *Parents Involved* serves to negate *Brown*'s promise of equality and poses a direct threat to minority students' psychological well-being. Psychosocial research has consistently demonstrated that "racially isolated schools—specifically, public schools with high black or Latino concentration—offer inferior educational opportunities."⁶³ Furthermore, the links between de facto segregation and poverty—lack of resources, lack of qualified teachers, high teacher turnover, limited aspirations, and less-powerful social networks—are undeniable.⁶⁴ This section focuses on the detrimental impact that *Parents Involved* will likely have on three major areas of psychological development—self-esteem, self-efficacy, and the formation of prejudicial attitudes—and indicates just how vital the public school system is in protecting *Brown*'s goals.⁶⁵

60. *Id.* at 2800.

61. De facto segregation is segregation caused by housing patterns or general societal discrimination as opposed to de jure segregation, which is segregation caused by a legally enforced dual school system. *Id.* at 2802.

62. Indeed, "history has shown that racially isolated or identifiable schools, even when not de jure, threaten equal educational opportunities for blacks and the goals of *Brown*." Wells & Frankenberg, *supra* note 12, at 183 (emphasis omitted) (citing Brief of the Civil Rights Clinic at Howard University School of Law as Amicus Curiae in Support of Respondents at 15, *Parents Involved*, 127 S. Ct. 2738 (Nos. 05-908 & 05-915), 2006 WL 2927072).

63. Neil S. Siegel, *Race-Conscious Student Assignment Plans: Balkanization, Integration, and Individualized Consideration*, 56 DUKE L.J. 781, 826 (2006).

64. See generally Wells & Frankenberg, *supra* note 12 (recognizing that "it is not surprising that another prominent characteristic of [racially segregated schools] is a shortage of qualified teachers, combined with a high level of teacher turnover").

65. In *Parents Involved*, the Court severely limits the role schools play in furthering the equality ideals set forth in *Brown*. Without public school involvement, we move one step closer to recreating the "sense of inferiority" that "affects the motivation of a child to learn." *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

A. *Self-Esteem*

Parents Involved has the potential to negatively affect minority school children's self-esteem both during the early developmental years and later on in life. Self-esteem, defined as an appraisal of one's self worth, or rather, how positively or negatively one feels about oneself,⁶⁶ constitutes an integral aspect of personal well-being and adjustment.⁶⁷ Psychological research clearly indicates that minority group members' internalization of the discrimination, prejudice, and racial stereotypes that exist in a society can result in diminished self-esteem.⁶⁸ Discrimination, prejudice, and racial stereotyping are still alive and well in America,⁶⁹ and the resegregation crisis in American public schools exemplifies the negative impact of such factors on minority school children's self-esteem. Described by scholars as an "educational apartheid,"⁷⁰ the resegregation crisis has instilled in minority students "feelings of helplessness, hopelessness, and being forgotten by the larger society."⁷¹ Additionally, regardless of how equal racially segregated schools might actually be, "predominantly black schools are perceived as inferior" simply due to America's "racialized history."⁷² These factors have resulted in a vicious feedback loop that consistently perpetuates feelings of inequality and inferiority and, in turn, have led to low academic performance, low graduation rates, and decreased college attendance.⁷³

The negative consequences of the school resegregation crisis on minority school children's self-esteem persist even for those students who graduate from racially isolated public schools and pursue a higher education. Studies indicate that students who enter college with high self-esteem tend to have significantly lower levels of academic and life

66. See MICHAEL W. PASSER & RONALD E. SMITH, *PSYCHOLOGY: THE SCIENCE OF MIND AND BEHAVIOR* 453 (3d ed. 2007).

67. See *id.*

68. AM. PSYCHOLOGICAL ASS'N, *RESOLUTION ON PREJUDICE, STEREOTYPES, AND DISCRIMINATION* 2 (2006), http://www.apa.org/pi/prejudice_discrimination_resolution.pdf.

69. Indeed, "overt, blatant, and hostile forms of prejudice, stereotypes, and discrimination co-exist with modern and less overt forms" in today's society. *Id.* at 1.

70. Wells & Frankenberg, *supra* note 12, at 182.

71. *Id.*

72. *Id.* at 183 (internal quotation marks and citation omitted).

73. *Id.* at 182; see also Brief of 553 Social Scientists as Amici Curiae in Support of Respondents at 12, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738 (2007) (Nos. 05-908 & 05-915) ("[M]inority isolation is a significant predictor of low graduation rates . . ."); NAACP LEGAL DEF. & EDUC. FUND, INC. ET AL., *supra* note 12, at 16 ("Segregated minority schools tend to offer their students weaker academic preparation."); *id.* ("[T]he nation's high dropout rate crisis is concentrated in segregated high schools in big cities."); ORFIELD & LEE, *supra* note 53, at 39-41.

stress.⁷⁴ Conversely, those students who enter the higher education arena with a low sense of self-esteem are more likely to respond negatively to the new academic challenges and social stressors associated with a university education.⁷⁵ Therefore, an added barrier to success in college exists for many minority students whose self-esteem has already been substantially compromised as a result of attending racially isolated and inherently unequal schools.

Additionally, psychosocial research demonstrates that low levels of self-esteem continue to plague minority students well into post-graduate studies. For example, Bonita London, Geraldine Downey, and Shauna Mace found that African American law students “reported significantly lower levels of perceived competence and satisfaction with their performance in law school, and greater feelings of invisibility, isolation and alienation.”⁷⁶ Furthermore, these students tended to internalize such negative perceptions, which consequently affected actual confidence and performance and effectively perpetuated the cycle of self-doubt and diminished self-esteem⁷⁷ that, for many minority students, likely found its roots in racially imbalanced public schools.⁷⁸

The detrimental effects of segregation on minority school children’s self-esteem are thus painfully evident at the compulsory, undergraduate, and graduate levels of America’s educational system. These findings, however, are neither novel nor surprising. In fact, the above-mentioned research bears a striking resemblance to the psychosocial research⁷⁹ that compelled the *Brown* Court to declare separate educational facilities inherently unequal.⁸⁰ While this nation has made great progress since the Supreme Court’s monumental decision in *Brown*, the lingering effects of state-mandated segregation still compel the active desegregation of public schools.⁸¹ The mere existence of the resegregation crisis of the 1990s and the increase in de facto segregation throughout America indicate that this nation has not yet accomplished *Brown*’s goals. In *Parents Involved*, the Supreme Court had the opportunity to both recognize and promote the compelling government interest in

74. See Feven Negga et al., *African American College Students and Stress: School Racial Composition, Self-Esteem and Social Support*, 41 C. STUDENT J. 823, 827 (2007).

75. *Id.*

76. Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-Method Approach to Studying Individual Engagement and Institutional Change*, 60 VAND. L. REV. 455, 479 (2007).

77. *Id.* at 480.

78. See *supra* notes 71–73 and accompanying text.

79. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) (“Segregation of white and colored children in public schools has a detrimental effect upon the colored children.”).

80. *Id.* at 495.

81. Wells & Frankenberg, *supra* note 12, at 183.

racially integrated public schools. Instead, the Supreme Court chose to further de facto segregation and perpetuate the resegregation crisis currently occurring in our nation's schools.⁸² In turn, this case serves to enhance the reemerging discrimination, prejudice, and racial stereotyping that consistently result in decreased levels of self-esteem among minority school children.

B. *Self-Efficacy*

Similarly, *Parents Involved* has the potential to significantly damage minority school children's sense of self-efficacy. Distinct from the concept of self-esteem,⁸³ self-efficacy generally refers to one's beliefs concerning his or her ability to perform the behaviors needed to achieve desired outcomes.⁸⁴ Within the context of racial discrimination and academic success specifically, self-efficacy has been defined as "the realization that one can succeed in adverse circumstances, overcome the unyielding reality of discrimination, and realize a profitable middle-class income through academic success . . . or effect a significant change in the world from one's own efforts."⁸⁵ Psychosocial research has consistently demonstrated that high levels of prejudice, stereotypes, and discrimination, which are all exacerbated in the context of school and societal segregation, yield adverse cognitive, behavioral, and motivational consequences for minority group members. This, in turn, results in lowered aspirations and reduced efforts.⁸⁶ Conversely, demographically diverse settings, such as integrated public schools, have been shown to combat prejudice, stereotypes, and discrimination⁸⁷ and instill in minority students a stronger sense of self-efficacy and academic accomplishment.

Since their inception, public schools have been the very institutions "charged with educating students in the sense of empowering them to achieve academically."⁸⁸ But it was not until the Supreme Court's decree in *Brown* that public schools were required to truly open their doors for all children, irrespective of race, and provide equal academic achievement opportunities for both black and white Americans. In the

82. See generally *id.* (recognizing that *Parents Involved* "significantly narrowed the options" by which school districts can "create and maintain racially diverse school enrollments").

83. Maurice R. Dyson, *Racial Free-Riding on the Coattails of a Dream Deferred: Can I Borrow Your Social Capital?*, 13 WM. & MARY BILL RTS. J. 967, 985 (2005).

84. See PASSER & SMITH, *supra* note 66, at 225.

85. Dyson, *supra* note 83, at 985.

86. See AM. PSYCHOLOGICAL ASS'N, *supra* note 68, at 2; *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) ("A sense of inferiority affects the motivation of a child to learn." (internal quotation marks omitted)).

87. See AM. PSYCHOLOGICAL ASS'N, *supra* note 68, at 4.

88. Siegel, *supra* note 63, at 819.

years following *Brown*, minority students' self-efficacy improved immensely as a result of school integration efforts,⁸⁹ and social science research demonstrates that integrated public schools continue to enhance self-efficacy in a variety of ways. First, studies indicate that racial integration improves critical thinking skills and academic achievement for all children in integrated schools.⁹⁰ For example, "[e]ducational psychology theories indicate that learning in diverse classrooms, where students from different backgrounds communicate their different experiences and perspectives, encourages students to think in more complex ways."⁹¹ Similarly, "psychologists have found that exposure to 'discrepant' experiences enhances students' critical thinking and cognitive skills because students are required to think beyond their intuitive assumptions."⁹²

Second, in light of the recent rise in de facto segregation and the current school resegregation crisis, continued integration efforts are an absolute imperative in order to counter the negative effects of racially isolated schools on minority students' self-efficacy. Scientific evidence indicates that not only will a student's peers exert a "strong influence on the student's attitude toward and behavior in school . . . but that they also affect academic achievement."⁹³ Thus, in many urban, racially isolated schools, where students "face tremendous peer pressure . . . to avoid academic success and the accompanying stigma of 'acting white,'"⁹⁴ the pressure not to succeed often outweighs an individual student's personal desire to excel academically.⁹⁵ This, in turn, decreases one's sense of self-efficacy.

It is possible, however, to rectify the detrimental consequences of de facto segregation on minority school children's self-efficacy through renewed integration efforts in public schools. Psychological research indicates:

"[O]ne of the most effective ways to improve children's cognitive skills is to put them in an environment with other children who want

89. See Braddock & McPartland, *supra* note 39, at 269.

90. Brief of 553 Social Scientists as Amici Curiae in Support of Respondents, *supra* note 73, at 7.

91. *Id.* at app. 12.

92. Brief of the National Parent Teacher Ass'n as Amicus Curiae in Support of Respondents at 16, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738 (2007) (Nos. 05-908 & 05-915).

93. James E. Ryan, *Schools, Race, and Money*, 109 *YALE L.J.* 249, 286 (1999).

94. *Id.* at 288.

95. See *id.* at 289. It is also important to note that this is one cost of racially isolated schools that money seems incapable of rectifying. See *id.* School integration "provides more demonstrable benefits for poor minority students than does simply increasing expenditures in urban districts." *Id.* at 296.

to acquire cognitive skills and whose families support such learning.” More precisely, and perhaps more importantly, the research also consistently shows that “[c]hildren of low socioeconomic status appear . . . to benefit significantly from exposure to more affluent and more highly motivated peers.”⁹⁶

While change is possible, “[r]ace-conscious student assignment policies are necessary to maintain racially integrated schools”⁹⁷ and to facilitate new integration initiatives in areas that have already become racially isolated. Indeed, this country needs race-conscious student assignment plans in order to prevent exacerbation of the prejudice, stereotypes, and discrimination that negatively affect minority students’ self-efficacy and prevent minority school children from reaching their full potential. Yet, in *Parents Involved*, the Supreme Court declared such plans unconstitutional.⁹⁸ Instead of championing integration, the Supreme Court chose to condone the resegregation crisis currently engulfing our nation and our schools. Thus, the Supreme Court’s decision in *Parents Involved* will likely increase the vast amount of prejudice, stereotypes, and discrimination that already exists in America and, in turn, perpetuate the low self-efficacy that predominates in racially isolated schools.

C. *The Formation of Prejudicial Attitudes*

Finally, the Supreme Court’s decision in *Parents Involved* will likely have a detrimental impact in one additional area of psychological development—the formation of prejudicial attitudes. In *Brown*, the Warren Court stressed the role that schools play not only in a child’s intellectual growth, but in his or her social development as well. Specifically, Justice Warren noted that public education “is a principle 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.”⁹⁹ Thus, the *Brown* Court explicitly acknowledged that early exposure to individuals of different races and ethnicities through public education paves the way for positive interactions between racial groups beyond compulsory education and into adulthood.

In the half-century since *Brown*, psychosocial research has repeat-

96. *Id.* at 300 (second alteration in original) (footnote omitted).

97. Brief of 553 Social Scientists as Amici Curiae in Support of Respondents, *supra* note 73, at 3; see also Wells & Frankenberg, *supra* note 12, at 179 (arguing that integration measures will be “far less effective without the use of race-conscious student assignment plans to balance all schools simultaneously and thus create more equality across the district”).

98. See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738, 2767–68 (2007) (plurality opinion).

99. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

edly confirmed, and the Supreme Court has consistently recognized, the *Brown* Court's observations concerning the long-term benefits of early racial integration in public schools.¹⁰⁰ *Parents Involved*, however, ignores fifty years of precedent and study by disregarding the impact that integration has on establishing early interactions between racial groups and perpetuating lasting interracial bonds. Instead, the Supreme Court's decision in *Parents Involved* has the potential to substantially contribute to the formation of prejudicial attitudes both by cultivating modern forms of racial stereotypes and prejudices and by promoting the notion of "in-group bias."¹⁰¹

1. THE CULTIVATION OF IMPLICIT STEREOTYPES AND PREJUDICE

While the overt racism and discrimination that flourished in the pre-*Brown* era has diminished significantly over the past fifty years, modern forms of prejudice and stereotypes,¹⁰² although less overt, more ambiguous, and more difficult to detect, still exist in today's society.¹⁰³ Substantial psychological research suggests that this modern discrimination presents itself in the form of implicit biases—"discriminatory biases based on implicit attitudes or implicit stereotypes."¹⁰⁴ Psychosocial research additionally indicates that "implicit race attitudes are acquired early and remain relatively stable across development."¹⁰⁵ Specifically, by six years of age, "children appear to have formed detectable implicit attitudes toward social groups."¹⁰⁶ Furthermore, stereotype conscious-

100. See *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) ("[S]tudent body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'" (citation omitted)); Brief for Amici Curiae the American Psychological Ass'n & the Washington State Psychological Ass'n in Support of Respondents, *supra* note 7, at 2 ("Extensive psychological research shows that, under certain conditions, interaction among persons of different races can diminish racial stereotypes and promote cross-racial understanding, empathy, and mutual respect. These findings apply with particular force in the context of K-12 education."); Braddock & McPartland, *supra* note 39, at 286 ("[D]esegregated experiences create a different attitudinal basis among Blacks that, in part, produces or sustains desegregation in adult life.").

101. See *supra* Part IV.C.ii. "In-group bias" is defined as "favoritism toward groups to which one belongs." Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 951 (2006).

102. The American Psychological Association distinguishes between "stereotypes" and "prejudices" by defining "stereotypes" as "generalized beliefs about groups and their members" and "prejudices" as "unfavorable affective reactions to or evaluations of groups and their members." AM. PSYCHOLOGICAL ASS'N, *supra* note 68, at 1.

103. *Id.*

104. Greenwald & Krieger, *supra* note 101, at 951.

105. Andrew Scott Baron & Mahzarin R. Banaji, *The Development of Implicit Attitudes: Evidence of Race Evaluations from Ages 6 and 10 and Adulthood*, 17 PSYCHOL. SCI. 53, 57 (2006).

106. *Id.* at 56.

ness—the awareness that other individuals endorse stereotypes¹⁰⁷—appears to develop between the ages of six and ten, when “most children move from virtually no awareness of others’ stereotypes, to being able to infer an individual’s stereotype, to awareness of broadly held stereotypes.”¹⁰⁸

Viewed as a whole, the “evidence that implicit attitudes produce discriminatory behavior is already substantial and will continue to accumulate.”¹⁰⁹ Such mounting evidence does not, however, “imply that long-term changes in implicit biases are impossible.”¹¹⁰ In fact, many social scientists strongly believe that automatic stereotypes and prejudices are malleable¹¹¹ and, given the right conditions, such as early exposure to different races, ethnicities, and cultures, discriminatory attitudes and discriminatory behavior can and will change.¹¹²

America’s public schools provide just the place to develop racial harmony and, in turn, curb the development of discriminatory stereotypes and prejudices.¹¹³ Indeed, the Supreme Court has recognized that public schools serve to “socialize students to values of mutual understanding, social cooperation, and social unity.”¹¹⁴ Thus, utilizing the public school system to deactivate implicitly discriminatory attitudes

107. Clark McKown & Rhona S. Weinstein, *The Development and Consequence of Stereotype Consciousness in Middle Childhood*, 74 CHILD DEV. 498, 510–11 (2003).

108. *Id.*

109. Greenwald & Krieger, *supra* note 101, at 961 (footnote omitted).

110. *Id.* at 964.

111. See generally Irene V. Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 PERSONALITY & SOC. PSYCHOL. REV. 242 (2002) (arguing that automatic stereotypes and prejudice can in fact change, in contrast to the assumption that such responses are fixed and inescapable).

112. Brief for Amici Curiae the American Psychological Ass’n & the Washington State Psychological Ass’n in Support of Respondents, *supra* note 7, at 4 (noting that early intervention can “significantly lessen racial prejudices among children and, ultimately, the likelihood that they will engage in discriminatory behavior”).

113. Siegel, *supra* note 63, at 822.

114. *Id.* To emphasize the important role that public schools play in promoting racial harmony, Siegel quotes Judge Kozinski, a member of Ninth Circuit Court of Appeals who heard *Parents Involved* on appeal from the district court and concurred in the judgment upholding the constitutionality of the Seattle and Louisville plans:

“[T]ime spent in school . . . has a significant impact on [a] student’s development. The school environment forces students both to compete and cooperate. . . . Schoolmates often become friends, rivals and romantic partners; learning to deal with individuals of different races in these various capacities cannot help but foster the live-and-let-live spirit that is the essence of the American experience. . . . Schools . . . don’t simply prepare students for further education . . . ; good schools prepare students for life, by instilling skills and attitudes that will serve them long after their first year of college.”

Id. (alterations in original) (quoting *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 426 F.3d 1162, 1195 (9th Cir. 2005) (en banc) (Kozinski, J., concurring), *rev’d*, 127 S. Ct. 2738 (2007)).

and biases serves only to further this nation's understanding of public schools as "equalizing, socializing, [and] nationalizing"¹¹⁵ institutions.

Public schools can accomplish very little, however, while such schools remain racially isolated. Integration is a necessary prerequisite to accomplishing the above-mentioned goals. Yet, without active school district involvement in the integration process, integration efforts cannot succeed.¹¹⁶ Consequently, "without school district involvement, children are far less likely to reap the benefits of learning, at an early age, to resist the racial stereotypes that so often result in division and discrimination."¹¹⁷

As demonstrated above, patterns of thinking affect patterns of action. If a child grows up in a racially isolated neighborhood and attends a racially isolated school, that child is more likely to grow up to both discriminate against others and to be discriminated against by others. Conversely, if that child spends his developmental years in a racially integrated neighborhood and attends a racially integrated school, that same child is likely to develop respect and empathy for individuals of other racial groups, form long-lasting bonds with members of such groups simply as a result of increased contact, and, in essence, personify the spirit and meaning of *Brown*.

By declaring race-conscious student assignment plans unconstitutional in *Parents Involved*, the Supreme Court usurped the role of school districts in the integration process, rendered school boards across America powerless to promote racial integration, and frustrated fifty years of progress toward *Brown's* vision of equality. The plurality's decision in this case indicates that the Supreme Court failed to comprehend that "[i]nteraction between children and adolescents of different races helps not only 'to break down racial stereotypes,' but to *prevent* the development of stereotypical thinking."¹¹⁸ By invalidating the school assignment plans at issue and, in turn, contributing to the current school resegregation crisis, the Supreme Court's decision in *Parents Involved* has the potential to exacerbate the subtle forms of racial stereotypes and prejudice that exist in modern-day America and result in the development of prejudicial attitudes among this nation's school children.

115. *Id.* at 823 (quoting ALEXANDER BICKEL, *THE SUPREME COURT AND THE IDEA OF PROGRESS* 120–21 (1970)).

116. *See, e.g.*, Brief of 553 Social Scientists as Amici Curiae in Support of Respondents, *supra* note 73, at 3; Wells & Frankenberg, *supra* note 12, at 178.

117. Brief for Amici Curiae the American Psychological Ass'n & the Washington State Psychological Ass'n in Support of Respondents, *supra* note 7, at 3.

118. *Id.* at 4.

2. IN-GROUP V. OUT-GROUP THINKING

While *Parents Involved* has the potential to substantially influence the development of prejudicial attitudes by cultivating the very discriminatory biases and implicit attitudes that perpetuate such attitudes, *Parents Involved* also has the ability to contribute to the development of prejudicial attitudes in both minority and majority school children by inherently promoting the psychosocial notion of "in-group bias."

Described by social science researchers as "favoritism toward groups to which one belongs,"¹¹⁹ "in-group bias" reflects one's natural inclination to view oneself and one's respective groups in a positive, favorable light. Consequently, psychosocial research has shown that "individuals tend to assign value to differences between others and the group to which they belong, developing more favorable attitudes toward 'in-group' members."¹²⁰ While in some instances, "in-group bias" is acceptable and even appropriate,¹²¹ "a positive attitude toward any ingroup necessarily implies a *relative* negativity toward a complementary outgroup."¹²² "In-group bias" thus presents the opportunity for the development of prejudicial attitudes toward members of different racial groups.

Indeed, research indicates that "in-group bias" can and does create racial stereotyping when an individual ascribes certain traits to out-group members "solely on the basis of their group membership."¹²³ Such stereotyping, in turn, can lead to the development of prejudicial attitudes toward individuals of different racial groups. For example, studies regarding "in-group bias" suggest that in-group members create stereotypes about out-group members based solely on the assumption that out-group members are more homogeneous than in-group members.¹²⁴ In other words, "people tend to assume that members of their own group will possess a *diversity* of attitudes and beliefs, while others will conform to stereotypic expectations."¹²⁵ While in reality the diversity *within* a group is almost always greater than the diversity *among* groups, the mere fact that that individuals "perceive greater homogeneity and less differentiation within an outgroup than in ingroup"¹²⁶ promotes

119. Greenwald & Krieger, *supra* note 101, at 951.

120. Brief for Amici Curiae the American Psychological Ass'n & the Washington State Psychological Ass'n in Support of Respondents, *supra* note 7, at 5.

121. Greenwald & Krieger, *supra* note 101, at 951.

122. *Id.* at 952.

123. Brief for Amici Curiae the American Psychological Ass'n & the Washington State Psychological Ass'n in Support of Respondents, *supra* note 7, at 6.

124. *Id.*

125. *Id.*

126. *Id.*

the development of prejudicial attitudes in school children because it suggests that children will come to perceive others not as individuals, but solely as members of racial groups.

Additionally, psychological research indicates that in-group members create stereotypes about out-group members by “explain[ing] the causes of the actions of members of other groups and their own group in different ways.”¹²⁷ For example, in-group members often credit their own positive behaviors to internal causes while attributing negative behaviors to situational factors.¹²⁸ Conversely, in-group members tend to attribute the negative behaviors of out-group members to global, stable, and internal factors while dismissing positive behaviors of out-group members as being situationally caused.¹²⁹ Such stereotypes can lead to the development of prejudicial attitudes regarding the behavioral tendencies of out-group members and, in the context of racial discrimination, the development of prejudicial attitudes regarding the behavioral tendencies of members of different races.

The consequences of “in-group bias,” however, are neither fixed nor permanent. In fact, “numerous studies have shown that cooperation between members of different social groups reduces both biased favoritism toward in-group members and animosity toward out-group members.”¹³⁰ Thus, once again, public schools provide the perfect setting in which children of diverse racial backgrounds can overcome the negative influences of “in-group” bias and develop positive attitudes with respect to members of different racial groups. Public schools cannot further this goal, however, when such schools remain racially isolated as a result of de facto segregation. The Supreme Court’s holding in *Parents Involved* perpetuates de facto segregation, thus foreclosing the opportunity for public schools to minimize the impact of “in-group bias.” In turn, *Parents Involved* serves only to contribute to the formation of prejudicial attitudes within this nation’s school children.

V. THE IMPACT OF *PARENTS INVOLVED* ON SOCIETY AT LARGE: A LOOK TOWARD THE FUTURE

Although the ultimate impact of *Parents Involved* is currently

127. *Id.*

128. *Id.*

129. *Id.*

130. B. Ann Bettencourt & Nancy Dorr, *Cooperative Interaction and Intergroup Bias: Effects of Numerical Representation and Cross-Cut Role Assignment*, 24 PERSONALITY & SOC. PSYCHOL. BULL. 1276, 1276 (1998); see also Greenwald & Krieger, *supra* note 101, at 964 (noting that when an individual forms a new connection with a member of a previously devalued out-group, preconceived notions and attitudes toward that group as a whole may change “dramatically and rapidly”).

unknown and will likely remain so for some time, the discussion in Part IV demonstrates that the Supreme Court's decision has the ability to significantly damage school children's self-esteem and self-efficacy¹³¹ and increase the development of prejudicial attitudes within minority and majority school children.¹³² Yet, inasmuch as *Parents Involved* presents potentially significant psychological consequences for minority and majority students, the Supreme Court's decision in *Parents Involved* has even greater implications for this nation as a whole.¹³³

The psychosocial research since *Brown* has consistently indicated that children who interact regularly with individuals of other races are less likely to form stereotypical ways of thinking about other racial groups,¹³⁴ and, in turn, these children develop the ability to connect with members of other racial groups in ways that yield monumental benefits throughout compulsory education and well into adulthood.¹³⁵ Adults who did not have the opportunity to interact with racially diverse peers in their childhood, however, may find it difficult to abandon racial stereotypes formed decades earlier.¹³⁶ Thus, the effective repeal of *Brown*'s mandated integration policies in *Parents Involved*, coupled with the increase in de facto segregation and the school resegregation crisis, suggests that the ultimate impact of *Parents Involved* on society as a whole may be the product of a generation of adults whose immutable views reflect the heightened levels of racial discrimination and inequality that existed in pre-*Brown* America.

Furthermore, as Justice Breyer carefully explained in his dissent in *Parents Involved*,¹³⁷ a hands-off approach to racial integration and racial equality risks the return to a segregated school system and a segregated

131. See discussion *supra* Part IV.A–B.

132. See discussion *supra* Part IV.C.

133. In *Race-Conscious Student Assignment Plans: Balkanization, Integration, and Individualized Consideration*, Neil Siegel recognizes the incredible effect that early integration initiative can have on this nation as a whole:

“The reality is that attitudes and patterns of interaction are developed early in life and, in a multicultural and diverse society such as ours, there is great value in developing the ability to interact successfully with individuals who are very different from oneself. It is important for the individual student, to be sure, but it is also vitally important for us as a society.”

Siegel, *supra* note 63, at 828 (quoting *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 426 F.3d 1162, 1174 (9th Cir. 2005) (en banc) (Kozinski, J., concurring), *rev'd*, 127 S. Ct. 2738 (2007)).

134. See Brief for Amici Curiae the American Psychological Ass'n & the Washington State Psychological Ass'n in Support of Respondents, *supra* note 7, at 2.

135. See *supra* note 100 and accompanying text.

136. Brief for Amici Curiae the American Psychological Ass'n & the Washington State Psychological Ass'n in Support of Respondents, *supra* note 7, at 2.

137. See *Parents Involved*, 127 S. Ct. at 2802 (Breyer, J., dissenting).

society,¹³⁸ replete with the detrimental psychological consequences the *Brown* Court worked so hard to remedy. In *Parents Involved*, the Supreme Court fails to recognize that, while this country has made significant strides in race relations in the years since *Brown*, the subtle vestiges of this country's state-mandated segregation policies still remain. In fact, by failing to acknowledge the lingering effects of segregation in today's society, the Supreme Court ignored the wise words of a prior Supreme Court in a very similar case. In *Grutter v. Bollinger*, decided just years before *Parents Involved*, the Supreme Court, while expressing the hope that the use of racial preferences would no longer be necessary to further this country's interest in racial integration and racial equality in the future,¹³⁹ recognized that a hands-on approach was still the only way to truly further *Brown's* goals at that point in time. *Parents Involved*, therefore, has the potential to perpetuate the resegregation of society as a whole and erase the significant progress initiated by *Brown*.

Finally, Justice Roberts seeks to justify the decision in *Parents Involved* by stating that "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race."¹⁴⁰ Yet, such a literal adherence to the wording of *Brown*¹⁴¹ only serves to undermine the true meaning of that case. Fifty years ago, *Brown* fought for racial equality in this nation, "not simply as a matter of legal principle but in terms of how we actually live."¹⁴² Furthermore, *Brown* represented a break from a racially embattled past and the promise of a better, brighter, and more equal future; in essence *Brown* symbolized the ideal society this nation hoped to one day realize. Thus, *Parents Involved* threatens not only to undermine the actual holding of *Brown* by perpetuating de facto segregation and condoning school resegregation but also to demolish the very ideals that *Brown* represents.

VI. CONCLUSION: WHERE SHOULD WE GO FROM HERE?

With *Brown's* voice of promise still ringing in the ears of this nation, *Plessy's* ghost stealthily reemerges through the Supreme Court's decision in *Parents Involved* and once again threatens to swallow progress and stifle this nation's quest for equality. The potential consequences of *Parents Involved* addressed in this note are not definitive; at this point in time no one can be absolutely certain of this case's impact,

138. *Id.*

139. 539 U.S. 306, 343 (2003).

140. *Parents Involved*, 127 S. Ct. at 2768 (plurality opinion).

141. *Brown II* literally held that school districts were required to "achieve a system of determining admission to the public schools on a nonracial basis." *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 300-01 (1955).

142. *Parents Involved*, 127 S. Ct. at 2836 (Breyer, J., dissenting).

and only time will reveal the true consequences of *Parents Involved* on minority students, school children in general, and this nation as a whole. The reality remains, however, that remnants of a previously segregated society still color this country's present,¹⁴³ and Justice Roberts's opinion in *Parents Involved* has the potential to exacerbate the lingering effects of segregation. Indeed, "the Court's conservative majority ignored . . . history and failed to see that there is a crucial difference between using race to subordinate minorities through government-mandated segregation and using race to achieve compelling goals, such as school desegregation."¹⁴⁴ The Supreme Court's decision thus marks a significant departure from prior civil rights cases, and it is therefore extremely important for society to remain alert to the potential psychological repercussions of *Parents Involved*.

Psychologists, social scientists, and society bear the burden of ensuring that *Parents Involved* does not negatively affect our children and our society. We must study the consequences that this decision has on school children's self-esteem, self-efficacy, and attitude formation, and, should the potential consequences discussed in this note come to fruition, we must be armed both with the knowledge to recognize such harms and an unwillingness to accept them.

Attorneys, as scholars, practitioners, and advocates, play a particularly special role in ensuring that the potential consequences of *Parents Involved* do not pervasively invade this country and become our reality. As scholars, lawyers must constantly produce literature that tracks the state of this nation's public schools and carefully scrutinizes Supreme Court decisions which, following Justice Roberts's directives in *Parents Involved*, will undoubtedly widen the gap between segregation and equality. Most importantly, however, attorneys must prevent the potential consequences of this case from coming to fruition through the practice of law itself. Zealous advocacy is the vehicle through which the legal community, in time, can bring a test case, similar to the monumental case of *Brown v. Board of Education*, before the Supreme Court with the hopes that, one day, the decision in *Parents Involved* will become as despised and discarded as *Plessy v. Ferguson*.

In essence, the Supreme Court's decision in *Parents Involved* served to place yet another substantial barrier between this nation and true equality. As James E. Ryan stated:

The danger and significance of *Parents Involved* is that it will make that already remarkably difficult struggle even harder, if not impossi-

143. "The enduring hope is that race should not matter; the reality is that too often it does." *Id.* at 2791 (Kennedy, J., concurring in part and concurring in the judgment).

144. Chemerinsky, *supra* note 48, at 429.

ble. . . . What was lost by this decision, therefore, was the opportunity for the Court not simply to tolerate voluntary integration but to champion it as a way to make the promise of *Brown* a reality in the twenty-first century.¹⁴⁵

The Supreme Court has, effectively, washed its hands of any future involvement in the struggle for racial equality that still exists in our nation. Thus, the task of turning *Brown*'s promise into a reality rests no longer with the Supreme Court, but with American society itself. In his passionate dissent, Justice Breyer laments the plurality's holding:

Finally, what of the hope and promise of *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, *Brown v. Board of Education* challenged this history and helped to change it.¹⁴⁶

Now, should *Parents Involved* result in negative consequences for this nation in the future, society itself must challenge the outcome of this case and help to change it.

145. Ryan, *supra* note 52, at 156.

146. *Parents Involved*, 127 S. Ct. at 2836 (Breyer, J., dissenting).