

THE WHITE INTEREST IN SCHOOL INTEGRATION

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Abstract

Discussions concerning desegregation, affirmative action, and voluntary integration focus primarily, if not exclusively, on whether such policies harm or benefit minorities. Scant attention is paid to the benefits whites receive in multiracial schools, despite white interests underpinning more than thirty years of Supreme Court integration jurisprudence. In this Article, I explore the academic and social benefits whites receive in multiracial schools, and I do so from a white parent's perspective. The Article begins by describing the interest-convergence theory and how white interests explain the course and content of the Supreme Court's desegregation and affirmative action jurisprudence. Multiracial schools will not be created or sustained unless white parents believe it to be in their children's best interest. The Article next describes the extreme racial segregation in schools today and how white children are the most racially isolated students. This isolation exacerbates the unconscious and automatic racial bias that infects everyone and will impair white children's ability to successfully navigate the multicultural marketplace. Integrated schools, however, help de-bias white children and teach them cross-cultural competence, a skill they need to effectively participate in a market with increasingly multicultural customers, co-workers, and global business partners. The Article ends by describing steps white parents can take to effectively integrate schools and guarantee their children gain critical cross-cultural competency skills.

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INTRODUCTION

This Article is written for white people. More specifically, it is for white parents of school-aged children, of which I am one. The point of this Article is to convince white parents to racially integrate schools because interracial contact will benefit white children. Racially diverse schools create academic and social benefits to white children that better prepare them for the multicultural world in which they will live and work. The interracial contact that occurs in integrated schools improves white students' academic performance and, more importantly, develops their cross-cultural competence skills. Instead of perceiving efforts to racially diversify primary and secondary schools as solely for the advantage of minorities, white parents need to understand that their children will benefit as much, if not more, from these efforts.

White families¹—the target audience of this Article—on average have two school-age children,² are middle-class,³ own a home,⁴ and live in racially segregated suburbs.⁵ They make more money than black and

1. When I use the term “whites” in this Article, I mean non-Hispanic, Caucasian whites.

2. U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY (2003), <http://www.census.gov/population/socdemo/hh-fam/cps2002/tabAVG3.pdf>.

3. *Id.* (showing that white families' median family income is \$53,356).

4. Seventy-four percent of white families own a home. U.S. CENSUS BUREAU, POPULATION PROFILE OF THE UNITED STATES: 2000, at 7–3 (2000), *available at* <http://www.census.gov/population/pop-profile/2000/chap07.pdf>.

5. Claudia Ricci, *Sorting Out the Census: We're Still Separate and Unequal*, 11 U. ALB. 1 (2002), *available at* <http://www.albany.edu/mumford/census/magazine/>. The average white

Hispanic families and live in safer neighborhoods with better public schools, environmental quality, and public health.⁶ Typically, they are “very satisfied” with their schools, their kids expect to graduate from college, and most expect to go to graduate school.⁷

This average white family constitutes a shrinking share of the United States’ population. When white parents of the current generation entered the workforce in the 1980s and 1990s, they experienced a mostly homogeneous world that was becoming increasingly diverse. It was nothing like the remarkably new multicultural world in which white children of the future generation will live and work. As of the most recent Census data, whites make up 66% of the United States population, while minorities constitute 33%.⁸ By 2025, the country will be transformed: whites will be 58% of the population, while 42% will be racial minorities.⁹ Minorities will become the majority by 2042, and by 2050, the nation will consist of 54% “minorities.”¹⁰ Whites will simply be the largest minority group.

Minorities will also constitute an ever-increasing percentage of business owners, professionals, and governmental leaders. The percentage of minority-owned businesses grew from 7% in 1982¹¹ to 18% in 2002,¹² and this will certainly increase as the minority

person lives in a community nearly 83% white. *Id.*

6. JOHN R. LOGAN, LEWIS MUMFORD CTR. FOR COMPARATIVE URBAN & REG’L RESEARCH, UNIV. AT ALBANY, SEPARATE AND UNEQUAL: THE NEIGHBORHOOD GAP FOR BLACKS AND HISPANICS IN METROPOLITAN AMERICA 1 (2002) [hereinafter SEPARATE AND UNEQUAL], available at http://www.s4.brown.edu/cen2000/SepUneq/SUReport/Separate_and_Unequal.pdf. White family incomes average around \$50,000, which is “\$18,000 more than blacks, \$15,000 more than Hispanics, but \$3300 less than Asians.” *Id.* at 3. White students have the most experienced teachers. NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., THE CONDITION OF EDUCATION 2003, at 59 (2003), available at <http://nces.ed.gov/pubs2003/2003067.pdf>.

7. Sixty percent of whites are “very satisfied” with their children’s school. NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., THE CONDITION OF EDUCATION 2006: INDICATOR 38: PARENTS’ ATTITUDES TOWARD SCHOOLS 81–82 (2006), available at http://nces.ed.gov/programs/coe/2006/pdf/38_2006.pdf; see also NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., THE CONDITION OF EDUCATION 2006: INDICATOR 23: POSTSECONDARY EXPECTATIONS OF 12TH-GRADERS, at 60, 159, 289 (2006), available at <http://nces.ed.gov/programs/coe/2006/section3/indicator23.asp> (discussing educational attainment expectations of students broken down by socioeconomic status). Sixty-nine percent of white children attend college. NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., THE CONDITION OF EDUCATION 2006: INDICATOR 29: IMMEDIATE TRANSITION TO COLLEGE 66 (2006), available at <http://nces.ed.gov/pubs2006/2006071.pdf>.

8. News Release, U.S. Census Bureau, An Older and More Diverse Nation by Midcentury (Aug. 14, 2008), <http://www.census.gov/newsroom/releases/archives/population/cb08-123.html>.

9. U.S. CENSUS BUREAU, 2008 NATIONAL POPULATION PROJECTIONS: TABLES AND CHARTS tbl.3 (2008), available at <http://www.census.gov/population/www/projections/tablesandcharts.html> (follow hyperlink “CSV” for Table 3: Percent of the Projected Population by Race and Hispanic Origin for the United States: 2008 to 2050).

10. U.S. Census Bureau, *supra* note 8.

11. U.S. SMALL BUS. ADMIN., OFFICE OF ADVOCACY, MINORITIES IN BUSINESS, 2001, at 3 (2001), available at <http://archive.sba.gov/advo/stats/min01.pdf>

12. U.S. SMALL BUS. ADMIN., OFFICE OF ADVOCACY, MINORITIES IN BUSINESS: A

population grows. Minorities also will play an increasing role in government and leadership. Apart from the obvious proof of this fact—President Barack Obama’s election and Justice Sonia Sotomayor’s appointment to the Supreme Court—minorities are increasingly represented in the United States Senate, House of Representatives, and in the judiciary. In 1990, minorities made up only 9% of the legislative branch.¹³ Less than two decades later, they made up nearly 16%.¹⁴ Minority representation in the judiciary has risen to nearly 16%.¹⁵ The number of minority doctors¹⁶ and lawyers is also increasing,¹⁷ and the American Bar Association recently elected its first Hispanic president.¹⁸

The multicultural environment white children will navigate upon graduation is a product not only of demographics but also of the interconnected, global economy. As columnist Thomas Friedman explained in his popular book *The World Is Flat*, globalization is not coming—it is already here, influencing business and the skills individuals need to flourish in the new, flat economy.¹⁹ Globalization will bring different races and ethnicities from around the world to one click away from being the clients, customers, and business partners of America’s youth. Most American businesses already “operate and compete in a global environment, serving and working with people and cultures of all kinds.”²⁰

DEMOGRAPHIC REVIEW OF MINORITY BUSINESS OWNERSHIP 6–7 (2007), available at <http://archive.sba.gov/advo/research/rs298tot.pdf>.

13. MILDRED L. AMER, CONG. RESEARCH SERV., MEMBERSHIP OF THE 101ST CONGRESS: A PROFILE (1990).

14. See MILDRED AMER & JENNIFER E. MANNING, CONGR. RESEARCH SERV., MEMBERSHIP OF THE 111TH CONGRESS: A PROFILE 1, 5–6 (2008).

15. AM. BAR ASS’N, CTR. FOR RACIAL & ETHNIC DIVERSITY, RACIAL AND ETHNIC DIVERSITY IN THE AMERICAN BAR ASSOCIATION 3 (2009) [hereinafter RACIAL AND ETHNIC DIVERSITY], available at http://www.abanet.org/minorities/pdfs/full_report.pdf.

16. ASS’N OF AM. MED. COLLS., DIVERSITY IN THE PHYSICIAN WORKFORCE: FACTS & FIGURES 2006, at 20–22 (2006), available at <https://www.aamc.org/factsandfigures>. Even with this modest growth, minorities are still grossly underrepresented in the medical field in comparison to their numbers in the general population. See *id.* at 43–44.

17. RACIAL AND ETHNIC DIVERSITY, *supra* note 15, at 3. Minorities are still grossly underrepresented in the legal profession. *Id.*

18. News Release, Am. Bar Ass’n, American Bar Association Nominates Stephen N. Zack to Become Association President 2010: First Hispanic American Nominated to ABA’s Highest Office (Feb. 16, 2009), http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=555.

19. THOMAS L. FRIEDMAN, THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY (2005).

20. Brief for General Motors Corp. as Amicus Curiae Supporting Respondents at 4, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241 & 02-516), 2003 WL 399096, at *4 [hereinafter Amicus Brief of General Motors]; Brief for 65 Leading American Businesses as Amici Curiae Supporting Respondents at 7, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241 & 02-516), 2003 WL 399056, at *7 [hereinafter Amici Brief of 65 Leading Businesses]; T. K. BIKSON & S. A. LAW, RAND, INST. ON EDUC. & TRAINING, GLOBAL PREPAREDNESS AND HUMAN RESOURCES: COLLEGE AND CORPORATE PERSPECTIVES 1–2 (1994), available at

Globalization and changing domestic demographics mean America's youth will be entering an unprecedented era of heterogeneity during their lives. Their political leaders, doctors, patients, lawyers, clients, co-workers, and business partners will be more racially diverse than anything experienced by previous generations. The ability to effectively operate in and navigate through this multiracial and multiethnic world and business environment requires cross-cultural communication and competence skills that their parents did not have to develop to succeed. Integrated schools, and only integrated schools, will equip children with these newly essential skills.

The Supreme Court, researchers, legal scholars, educators, graduates of integrated schools, and Fortune 500 companies have tried to convince parents that racially diverse schools benefit white students.²¹ But the message is ignored, and to the detriment of their children, white parents continue to place their children in racially isolated schools more than any other racial group. White parents should listen to the clarion call in this Article to racially integrate schools—when they have ignored others—for two reasons. First, this Article appeals to whites exclusively by discussing the benefits white students gain from attending racially diverse schools. While minorities and society reap substantial benefits from integrated schools, these benefits will be set aside to remove justifications that divert attention from the thing that matters most to white parents—whether their children gain an advantage from racially integrated classrooms. Second, this Article will appeal to the base interest that is arguably paramount—the future, financial success of our children. White children's future careers and earnings hinge on educating them in diverse classrooms today.

This Article will proceed in four parts. Part I clarifies why this Article is directed only to white parents even though diversity concerns everyone. It explains the interest-convergence theory and why it is critical to have the support of whites in creating and sustaining culturally and racially diverse schools. The interest-convergence theory conveys an ugly truth—whites (or any empowered group) will not help minorities (or any disempowered group) unless it is in their best interest to do so. By dissecting the course and content of the Supreme Court's decisions on race-based admission policies in education, the Article demonstrates that this cynical view is correct. Interest-convergence theory explains why the Article is written solely to white parents and why it presumes that only selfish motivations will achieve racially diverse schools.

Part II explains that integration is necessary because *Brown v. Board of Education*²² did not end segregated schooling. Part II describes the resegregation of primary and secondary schools in the United States during the last two decades and how white children are the most racially

http://www.rand.org/pubs/monograph_reports/2005/RAND_MR326.pdf.

21. See *infra* Part III.

22. 347 U.S. 483 (1954).

isolated students. Minority children are receiving the social benefits of racially integrated schools, but white children are not.

Part III explains why white parents should care about the racial composition of their children's classrooms. It explains the unconscious racial prejudices that inhere in everyone—even the most consciously egalitarian-minded—and the harms children will suffer in their future work environments from their automatic biases. After review of the overwhelming evidence from social scientists, the Supreme Court, and the business community, the Article concludes that education in a multiracial classroom overcomes these unconscious biases and creates academic and cross-cultural skills that are necessary for children to effectively work in an increasingly diverse marketplace.

Part IV describes how white parents can attain a racially integrated education for their children. It explains why parents must broaden their conception of school quality beyond mere academic indicators and embrace its socializing function. Only when parents expand their view of what constitutes a quality education will they strive for integration. Part IV explains the steps parents can take to integrate schools and provide their children with a rich, interracial educational experience that will hone their cross-cultural competence skills and prepare them for the new multiracial world.

I. THE ROLE OF WHITE PARENTS IN INTEGRATION: INTEREST CONVERGENCE

This Article focuses solely on the benefits of diversity to whites because multiracial schools will never be created and sustained unless whites understand and appreciate the advantages of such schools to their children. This idea is explained by the “interest-convergence dilemma” posited by Professor Derrick Bell.²³ In an influential article published in 1980, Professor Bell forcefully argued that “[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”²⁴ This pessimistic view of whites was premised on the underlying notion that people in power do not assist subordinated people because of altruistic or charitable motives; they do so only when it serves their own group interest. It is only when the interests of those in power (whites) converge with the interests of those not in power (minorities) that benefits are bestowed to minorities.²⁵

Professor Bell applied his interest-convergence theory to argue that the Supreme Court ended “separate but equal” schooling in *Brown v.*

23. Derrick A. Bell, Jr., Comment, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) [hereinafter Bell, *Brown v. Board of Education*].

24. *Id.*; see also *id.* at 524 (arguing that material gains come to minority communities only when those gains serve white interests); DERRICK A. BELL, JR., *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 7 (1992) [hereinafter BELL, *FACES AT THE BOTTOM OF THE WELL*].

25. BELL, *FACES AT THE BOTTOM OF THE WELL*, *supra* note 24, at 7.

*Board of Education*²⁶ not because it was the morally right thing to do or because jurisprudence compelled it, but because it served white interests.²⁷ The first benefit to elite whites of ending the Jim Crow era was enabling the United States to win the loyalties of non-white countries in the propaganda battle with communism during the Cold War.²⁸ *Brown* ended state-sponsored segregation in 1954 because elite whites on the Supreme Court, in the executive branch, the Department of Defense, and the State Department knew that it was necessary to gain an edge over Russia.²⁹ It was impossible to win the alliances of “brown” countries—Cambodia, Korea, Vietnam, etc.—while minorities were denied equality and access in the United States.³⁰ National security and the preeminence of democracy over communism dictated the outcome of *Brown*, not a change in heart or ethos by white leaders. Professor Bell further argued that *Brown* also benefited whites by preventing racial unrest and the internal spread of communism because it provided “needed reassurance to American blacks” who had just returned from risking their lives in World War II and who were disillusioned by the separate but equal regime.³¹ Because—and only because—the interests of whites converged with the interests of blacks, the Supreme Court ended the separate but equal doctrine in *Brown*.³²

This cynical explanation of whites’ benevolent conduct is difficult to embrace and, to white parents, may sound like the ravings of a fringe civil rights activist. But the theory finds significant support in historical records, scholarship, the course and content of desegregation and affirmative action jurisprudence, and common sense.

Professor Mary L. Dudziak, a legal historian, provided the historical evidentiary foundation for the interest-convergence theory at work in *Brown* in her landmark book *Cold War Civil Rights: Race and the Image of American Democracy*.³³ In it, she painstakingly establishes through review of hundreds of documents from the State Department, the Justice Department, and the media in the 1950s that *Brown* was, in fact, decided primarily because of Cold War considerations.³⁴ Scholars

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

27. Bell, *Brown v. Board of Education*, *supra* note 23, at 524 (arguing that *Brown* “cannot be understood without some consideration of the decision’s value to whites . . . in policymaking positions . . . to see the economic and political advances at home and abroad”).

28. *Id.* at 524–25; *see also* DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* 105 (6th ed. 2008).

29. Bell, *Brown v. Board of Education*, *supra* note 23, at 524–25.

30. *See id.* (stating that *Brown* was needed to give the United States credibility in the face of emerging third-world countries).

31. Bell, *Brown v. Board of Education*, *supra* note 23, at 524–25.

32. *Id.* at 525–26.

33. MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* 6–17 (2000).

34. *Id.* at 107–51. *See generally* Mary L. Dudziak, *Brown as a Cold War Case*, 91 J. AM. HIST. 32 (2004) (considering *Brown* in an international context during the Cold War); Richard Delgado, *Explaining the Rise and Fall of African American Fortunes—Interest Convergence*

quickly recognized that Professor Dudziak's work confirmed the interest-convergence theory.³⁵

Scholars have also successfully employed interest-convergence theory to explain modern political successes for minority groups,³⁶ the outcome of Supreme Court cases,³⁷ legislative enactments,³⁸ and gains and losses of other subordinated groups such as Latinos and the disabled.³⁹ One notable study by political scientists Rufus P. Browning, Dale R. Marshall, and David H. Tabb that tracked policies in ten cities during twenty years found that city governments were unresponsive to minority interests unless coalitions including whites advanced such interests.⁴⁰ Other scholars utilize interest convergence as it is being used in this Article—as a predictive or strategic tool for reform.⁴¹ In sum, the academic world embraces the interest-convergence theory as a valid means to explain legislative and judicial policy choices.

The most telling evidence that minority interests do not advance unless accompanied by white interests is the content of desegregation jurisprudence since *Brown*. For nearly fifty years after *Brown*, the only compelling state interest courts have recognized that justified race-based student assignment policies, such as affirmative action or desegregation, was remedying past *de jure*, or state sponsored, discrimination.⁴² Race-

and Civil Rights Gains, 37 HARV. C.R.-C.L. L. REV. 369, 371–77 (2002) (arguing that interest convergence and Cold War considerations explain not only why the Civil Rights movement came about but also why the Civil Rights movement ended ten years later).

35. See Cynthia Lee, *Cultural Convergence: Interest Convergence Theory Meets the Cultural Defense*, 49 ARIZ. L. REV. 911, 922–25 (2007) (identifying scholars concluding that Dudziak's book confirmed the interest-convergence theory).

36. See, e.g., Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, 79 ST. JOHN'S L. REV. 253, 281–85 (2005).

37. See, e.g., Derrick Bell, *Diversity's Distractions*, 103 COLUM. L. REV. 1622, 1624–29 (2003); Richard Delgado, *Rodrigo's Roundelay: Hernandez v. Texas and the Interest-Convergence Dilemma*, 41 HARV. C.R.-C.L. L. REV. 23, 42–55 (2006); Maria Pabon Lopez, *Reflections on Educating Latino and Latina Undocumented Children: Beyond Plyler v. Doe*, 35 SETON HALL L. REV. 1373, 1377, 1405 (2005).

38. See, e.g., John Hayakawa Torok, "Interest Convergence" and the Liberalization of Discriminatory Immigration and Naturalization Laws Affecting Asians, 1943–65, 9 CHINESE AM.: HIST. & PERSP. 1, 8 (1995) ("Although the interest-convergence principle was developed to explain changes in law by a judicial decree . . . it also has explanatory power in the legislative context to explain statutory changes . . .").

39. See, e.g., Delgado, *supra* note 37, at 42–55 (arguing that interest-convergence theory explains gains for Latinos in the Supreme Court); Elizabeth F. Emens, *Integrating Accommodation*, 156 U. PA. L. REV. 839, 916–19 (2008) (explaining how advancing the rights of the disabled may require benefits to third parties to be advanced because of the interest-convergence principle).

40. RUFUS P. BROWNING, DALE ROGERS MARSHALL & DAVID H. TABB, PROTEST IS NOT ENOUGH: THE STRUGGLE OF BLACKS AND HISPANICS FOR EQUALITY IN URBAN POLITICS 3–4, 245–46 (1984).

41. See, e.g., Lee, *supra* note 35, at 933–39 (identifying scholars employing interest convergence as a predictor).

42. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720,

based plans designed to alleviate past societal discrimination were prohibited⁴³ despite a majority of the Court's acknowledgment that "[f]rom the standpoint of the victim . . . an injury stemming from racial prejudice can hurt as much when the demeaning treatment based on race identity stems from bias masked deep within the social order as when it is imposed by law."⁴⁴ The Court steadfastly allowed remediation of only *de jure* segregation, despite its knowledge that segregation stemming from societal racism was also harmful to minorities.⁴⁵ If judicial desegregation efforts served only minority interests, this view is indefensible. Allowing race-based policies to address *de jure* discrimination but prohibiting such policies from tackling societal discrimination only makes sense when white interests are also considered. Remedying government-sanctioned discrimination served white interests during the Cold War era, but there was no concomitant benefit to whites—and in fact only perceived harm—in ending societal discrimination.⁴⁶

When a majority of the Supreme Court finally recognized another

722 (2007) (noting that race-based policies are supported by only two compelling interests: remedying the effects of past discrimination and increasing diversity in higher education); *Freeman v. Pitts*, 503 U.S. 467, 494 (1992); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 274 (1986); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 300, 307–09 (1978) (distinguishing the race-based student assignment policies in desegregation cases from the affirmative action policy at issue because the desegregation cases “involved remedies for clearly [established] constitutional violations. . . . Racial classifications thus were designed as remedies for the vindication of constitutional [rights]”); *see also* Rachel F. Moran, *Let Freedom Ring, Making Grutter Matter in School Desegregation Cases*, 63 U. MIAMI L. REV. 475, 483–90 (2009) (discussing the distinction between the integration rationale and the diversity rationale to justify race-based assignment policies).

43. *See, e.g., Parents Involved*, 551 U.S. at 730–32; *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 504–06 (1989); *Wygant*, 476 U.S. at 274 (“This Court never has held that societal discrimination alone is sufficient to justify a racial classification.”); *Bakke*, 438 U.S. at 307–09.

44. *Parents Involved*, 551 U.S. at 795 (Kennedy, J., concurring); *id.* at 806–08, 838–40 (Breyer, J., dissenting, joined by Souter, Stevens, and Ginsburg, J.J.) (finding it “meaningless” to distinguish between *de jure* discrimination and societal discrimination); *see also* *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 276 (1986) (finding that there has been “serious racial discrimination in this country” but holding that societal discrimination is insufficient “for imposing discriminatory legal remedies that work against innocent people”); *Fullilove v. Klutznick*, 448 U.S. 448, 477–78 (1980) (opinion of Burger, C.J., joined by White and Powell, J.J.) (upholding plan because it had important purpose of overcoming effects of prior discrimination); *id.* at 518–20 (Marshall, J., concurring, joined by Brennan and Blackmun, J.J.).

45. *Parents Involved*, 551 U.S. at 795.

46. *See, e.g., Bakke*, 438 U.S. at 310 (finding that permitting redress for societal discrimination would “impose[] disadvantages upon persons . . . who bear no responsibility for whatever harm the beneficiaries of the [race-based] special admissions program are thought to have suffered”); *see also* Aderson Bellagarde Francois, Only Connect: *The Right to Community and the Individual Liberty Interest in State-Sponsored Racial Integration*, 112 PENN ST. L. REV. 985, 1020 (2008) (“Every attack upon race conscious educational remedies . . . has been premised upon the argument that race conscious remedies victimize the innocent individual . . .”).

compelling interest that could justify race-based admission policies—the diversity interest—it did so only because of societal and white interests, not minority interests.⁴⁷ In *Grutter v. Bollinger*, the Supreme Court upheld Michigan Law School’s race-conscious admission plan because, among other reasons, diversity in higher education is “essential to the military’s ability to fulfill its principle mission to provide national security.”⁴⁸ The national security interest implicit and unstated in *Brown* was expressly recognized fifty years later. The Court also found that race-based admission policies in law schools, which are “the training ground for a large number of our Nation’s leaders,” are necessary “to cultivate a set of leaders with legitimacy in the eyes of the citizenry.”⁴⁹ Minorities did not need to become leaders for their own or their races’ benefit, or to provide varied goals and perspectives in politics. They needed a pathway to leadership merely to legitimize the multicultural masses and to create confidence among them that democracy provides them a fair chance. Again, the unstated white interests implicit in *Brown*—pacifying racial unrest by providing reassurance to minorities—were expressly relied on in *Grutter*. The other reasons the *Grutter* court accepted the Michigan admission policy are also white interests and are discussed in detail in Part III.

The interest-convergence theory not only explains the content of integration jurisprudence but also its course. In light of the massive resistance to *Brown*, particularly in the South, the Supreme Court was

47. See Michelle Adams, *Stifling the Potential of Grutter v. Bollinger: Parents Involved in Community Schools v. Seattle School District No. 1*, 88 B.U. L. REV. 937, 948–53 (2008) (arguing that the societal benefit from affirmative action, not the benefit to minorities, drove the *Grutter* decision); Bell, *Diversity’s Distractions*, *supra* note 37, at 1624–25, 1632 (concluding that interest-convergence explains the *Grutter* decision); Derrick A. Bell, Jr., *The Unintended Lessons in Brown v. Board of Education*, 49 N.Y.L. SCH. L. REV. 1053, 1059–60 (2005) [hereinafter Bell, *The Unintended Lessons*] (same); Deirdre M. Bowen, *Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action*, 85 IND. L.J. 1197, 1205–07 (2010); Lani Guinier, Comment, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 172–98 (2003) (arguing that *Gratz* shifted the focus from the benefits minorities receive from an integrated education to the benefits whites receive); Kenneth B. Nunn, *Diversity as a Dead-End*, 35 PEPP. L. REV. 705, 723–24, 731 (2008) (“[T]he reason the Supreme Court found a compelling state interest in *Grutter* was that people of color could be used as a means to white ends.”); Wendy Parker, *Limiting the Equal Protection Clause Roberts Style*, 63 U. MIAMI L. REV. 507, 531–32 (2009); Daria Roithmayr, *Tacking Left: A Radical Critique of Grutter*, 21 CONST. COMMENT. 191, 211–13 (2004); Justin Pidot, Note, *Intuition or Proof: The Social Science Justification for the Diversity Rationale in Grutter v. Bollinger and Gratz v. Bollinger*, 59 STAN. L. REV. 761, 795–96 (2006) (concluding that, “[A]ffirmative action stands on an odd footing: racial preferences for underrepresented minorities are justified, not for their direct educational benefits to those underrepresented minorities, but because of the benefits that primarily accrue to white[s] . . . [D]iversity primarily benefits white students.”).

48. 539 U.S. 306, 331 (2003) (citing Brief for Julius W. Becton, Jr. et al. as Amici Curiae Supporting Respondents at 5, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241 & 02-516), 2003 WL 1787554, at *6).

49. *Id.* at 332.

reluctant to actively enforce desegregation for a decade. But beginning in the mid-1960s, bolstered by the public support of the Civil Rights Act of 1964, the Court began actively using *Brown* to end all vestiges of *de jure* segregation. The Court in *Green v. County School Board*⁵⁰ and *Swann v. Charlotte-Mecklenburg Board of Education*⁵¹ required districts that engaged in *de jure* segregation to do more than simply end illegal practices; it required affirmative steps to remedy past wrongs, such as busing students to ensure integration.⁵² During this time, the Court left undecided whether race-conscious measures could be used to combat *de facto* segregation—segregation caused by private choices rather than by government acts.

By 1973, the convergence of black and white interests that led to *Brown* had clearly diverged. The Supreme Court ruled in *Keyes v. School District No. 1* that *de facto* segregation did not violate the Equal Protection Clause⁵³ and later prohibited interdistrict busing to remedy segregation in *Milliken v. Bradley*.⁵⁴ The Court made explicit in *Milliken* and *Keyes* that court-ordered desegregation efforts could not be used to end *de facto* segregation and could not include districts that had never engaged in *de jure* segregation.⁵⁵

The Court's willingness to draw a line between improper *de jure* segregation and permissible *de facto* segregation, a mere twenty years after finding that “[s]eparate educational facilities are inherently unequal,”⁵⁶ can only be explained by white interests. Ending *de jure* segregation was enough to appease America's minorities and win the propaganda campaign with the nonwhite nations of the world, with minimal harm to whites who could find refuge in the suburbs. It was unnecessary to end *de facto* segregation to advance white interests, so the Court never did.⁵⁷ It is no coincidence that between 1954 and 1972, the Supreme Court issued eighteen unanimous desegregation orders against school districts and since then has issued zero.⁵⁸ Indeed, after the significant victories of the Civil Rights movement and the fall of the

50. 391 U.S. 430, 441–42 (1968).

51. 402 U.S. 1, 18–19, 28 (1971).

52. *Id.* at 26–31.

53. 413 U.S. 189, 200 (1973).

54. 418 U.S. 717, 744–45, 752–53 (1974); *see also* Moran, *supra* note 42, at 486–87.

55. *See, e.g.,* Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 794 (2007) (Kennedy, J., concurring) (“Our cases recognized [that] . . . [s]chool districts that had engaged in *de jure* segregation had an affirmative constitutional duty to desegregate; those that were *de facto* segregated did not.”); *see also* Robert A. Garda, Jr., *Coming Full Circle: The Journey from Separate but Equal to Separate and Unequal Schools*, 2 DUKE J. CONST. L. & PUB. POL’Y 1, 9–32 (2007) (describing the Supreme Court’s differing interpretations of *Brown* over time); Martha Minow, *After Brown: What Would Martin Luther King Say?*, 12 LEWIS & CLARK L. REV. 599, 619 (2008) (explaining that in the 1970s the Court recast *Brown* as a rejection of official segregation).

56. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

57. *See* Bell, *Brown v. Bd. of Educ.*, *supra* note 23, at 524–25.

58. Goodwin Liu, *Brown, Bollinger, and Beyond*, 47 HOW. L.J. 705, 717–18 (2004).

Berlin Wall, the Supreme Court eviscerated desegregation efforts through the “resegregation trilogy”⁵⁹ of *Board of Education v. Dowell*,⁶⁰ *Freeman v. Pitts*,⁶¹ and *Missouri v. Jenkins*.⁶² With white interests fulfilled, desegregation efforts ended.⁶³ While ending *de facto* segregation may not have served white interests in the 1970s through the 1990s, that is no longer the case in the new millennium, as explained in Part III.

The interest-convergence theory explains why this Article is directed to white parents. Racially integrated and diverse schools likely will not be created or endure unless white parents believe it to be in their children’s best interest.⁶⁴ Coalitions for social change, such as integrating the schools, can only be created once whites recognize the benefits of a multiracial education for their children.⁶⁵ As history shows, the job of integrating the nation’s schools simply cannot be accomplished without white parents’ participation and support, which will not be given unless they know it will benefit their children.⁶⁶ It is for this reason that this Article will not argue that racial integration helps minorities, even though it likely does.⁶⁷ It will also not argue that

59. Leland Ware, *Race and Urban Space: Hypersegregated Housing Patterns and the Failure of School Desegregation*, 9 WIDENER L. SYMP. J. 55, 63 (2002); see also Ronald Turner, *The Voluntary School Integration Cases and the Contextual Equal Protection Clause*, 51 HOW. L.J. 251, 291–96 (2008); GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, UCLA, HISTORIC REVERSALS, ACCELERATING RESEGREGATION, AND THE NEED FOR NEW INTEGRATION STRATEGIES 5–6 (2007) [hereinafter ORFIELD & LEE, HISTORIC REVERSALS], available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/historic-reversals-accelerating-resegregation-and-the-need-for-new-integration-strategies-1/orfield-historic-reversals-accelerating.pdf>.

60. 498 U.S. 237, 247–48, 250 (1991).

61. 503 U.S. 467, 494–95 (1992).

62. 515 U.S. 70, 89 (1995).

63. See CHARLES T. CLOTFELTER, AFTER *BROWN*: THE RISE AND RETREAT OF SCHOOL DESEGREGATION 197 (2004); James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 252 (1999); James E. Ryan, Sheff, *Segregation, and School Finance Litigation*, 74 N.Y.U. L. REV. 529, 531 & n.10 (1999).

64. Erica Frankenberg & Chinh Q. Le, *The Post-Parents Involved Challenge: Confronting Extralegal Obstacles to Integration*, 69 OHIO ST. L.J. 1015, 1071 (2008) (whether schools will be integrated depends primarily on the “private decisions that each parent makes about where to live, which school board members to elect, where to send their children to school, and what to teach them”); see AMY STUART WELLS ET AL., BOUNDARY CROSSING FOR DIVERSITY, EQUITY AND ACHIEVEMENT: INTER-DISTRICT SCHOOL DESEGREGATION AND EDUCATIONAL OPPORTUNITY 12–13 (2009) (explaining how support among white parents is critical to enacting voluntary integration programs).

65. See Cashin, *supra* note 36, at 274–75, 281–82.

66. WELLS ET AL., *supra* note 64, at 12–13 (stating that the “oldest and now longest-running inter-district school desegregation plan in the country” began by a mostly white school district complaining to the state commissioner of education that their students were suffering due to lack of meaningful interaction with children from other cultures).

67. See Roslyn Arlin Mickelson, *Twenty-First Century Social Science on School Racial Diversity and Educational Outcomes*, 69 OHIO ST. L.J. 1173, 1200–22 (2008) (summarizing

creating diverse schools serves a civic mission and benefits society as a whole, even though it certainly does.⁶⁸ These arguments will not be made because white parents evidently do not care, and these reasons will not spur them into action. The benevolent, moral, third party and societal justifications for integrating schools simply have not persuaded white parents to create diverse schools because, as shown by the interest-convergence theory, parents act only out of self-interest.

While this dark view of humanity is jarring, any parent can attest to how they treat their children's interests differently than their own. Adults may be willing to sacrifice certain opportunities, forego certain benefits, and suffer certain harms to help others. Donating to charities, engaging in volunteer work, and supporting legislation that helps the powerless though it impacts adults negatively through higher taxes, are just a few examples of conduct empowered adults engage in contrary to their self interest. Individually and collectively, adults can and often do sacrifice their interests for benevolent and charitable purposes.

But when it comes to their children, the equation changes. Adults are unwilling to sacrifice the future of their children by sending them to an "inferior" school for the betterment of society or because it may help students at the inferior school. Parents would only send their children to the "inferior" school if the "inferior" school actually provided their children advantages not found elsewhere or if it was necessary to protect the nation or democracy. Parents simply will not close doors of opportunity on their children's future to improve the opportunities of another, even though they often make that choice for themselves. Parents can teach their children sacrifice and service to others in ways that do not foreclose their future prospects. This is a selfish (and possibly wrong) view of parenting and living, but most parents feel this way—they will not infringe upon their children's future for the betterment of others even though they may make that choice for themselves. This powerful parental protection instinct underlies interest-convergence theory, at least with respect to student assignment plans, and explains why white parents must view integration as in the best interests of their children if integration is to occur.

modern social science research confirming the social, academic, and long-term benefits minorities receive from an integrated education); Roslyn Arlin Mickelson & Martha Bottia, *Integrated Education and Mathematics Outcomes: A Synthesis of Social Science Research*, 88 N.C. L. REV. 993, 1026–42 (2010) (summarizing fifty-nine modern studies to conclude that racial integration improves minority math scores). For a discussion of whether integration benefits minority students, compare *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 768–69 (2007) (Thomas, J., concurring) (noting that the social science research is unclear whether minorities benefit from integrated education), and *Grutter v. Bollinger*, 539 U.S. 306, 364 (2003) (Thomas, J., dissenting) (noting that diversity in higher education may harm black students), with *Parents Involved*, 551 U.S. at 839 (Breyer, J., dissenting) (concluding that racial diversity improves minority academic outcomes), and *Grutter*, 539 U.S. at 330 (majority opinion) (finding that student body diversity prepares students for global marketplace).

68. See *Grutter*, 539 U.S. at 330.

II. *BROWN* DID NOT PERMANENTLY INTEGRATE PUBLIC SCHOOLS

With an understanding of the importance of whites “buying in” to creating integrated schools, it is next important to understand why schools need integrating. Many believe that *Brown v. Board of Education* permanently integrated schools.⁶⁹ Whites often assume that there is no need to integrate schools or neighborhoods “because integration exists in the images of popular cultures.”⁷⁰ There is not an advertisement, television sitcom, or drama that does not feature a multiracial workplace, school, or peer group. But nothing could be further from reality, particularly with respect to schools. Schools are as segregated today as they were in the 1960s, and those that are not already are rapidly re-segregating.⁷¹

As explained above, when today’s children graduate from school, they will live in a truly multiracial society.⁷² This is already happening in schools. The percentage of public school students who were considered to be part of a racial or ethnic minority group increased from 22% in 1972 to 44% in 2007, due mainly to the increase in Hispanic students.⁷³ “We are in the last decade of a white majority in American public schools and there are already minorities of white students in our

69. See JONATHAN KOZOL, *THE SHAME OF THE NATION: THE RESTORATION OF APARTHEID SCHOOLING IN AMERICA* 18 (2005) (noting that many Americans believe the extremes of racial isolation in schools has diminished).

70. Minow, *supra* note 55, at 622.

71. ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 3–5; see ERICA FRANKENBERG ET AL., *THE CIVIL RIGHTS PROJECT, HARVARD UNIV., A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM?* 5, 37, 42, 67 (2003) [hereinafter FRANKENBERG, *A MULTIRACIAL SOCIETY*], available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/a-multiracial-society-with-segregated-schools-are-we-losing-the-dream/frankenber-multiracial-society-losing-the-dream.pdf>; JOHN LOGAN, UNIV. AT ALBANY, LEWIS MUMFORD CTR. FOR COMPARATIVE URBAN & REG’L RESEARCH, *CHOOSING SEGREGATION: RACIAL IMBALANCE IN AMERICAN PUBLIC SCHOOLS, 1990–2000*, at 1 (2002) [hereinafter MUMFORD CENTER, *CHOOSING SEGREGATION*], available at <http://mumford.albany.edu/census/SchoolPop/SPReport/SPDownload.pdf>; JOHN LOGAN, UNIV. AT ALBANY, LEWIS MUMFORD CTR. FOR COMPARATIVE URBAN & REG’L RESEARCH, *RESEGREGATION IN AMERICAN PUBLIC SCHOOLS? NOT IN THE 1990s*, at 1–2 (2004) [hereinafter MUMFORD CENTER, *RESEGREGATION*], available at http://mumford.albany.edu/census/noresegregation/noresegregation_report.pdf; GARY ORFIELD & CHUNGMEI LEE, *THE CIVIL RIGHTS PROJECT, HARVARD UNIV., BROWN AT 50: KING’S DREAM OR PLESSY’S NIGHTMARE?* 2–3 (2004), available at <http://www.eric.ed.gov/PDFS/ED489168.pdf>; GARY ORFIELD & CHUNGMEI LEE, HARVARD UNIV., *THE CIVIL RIGHTS PROJECT, RACIAL TRANSFORMATION AND THE CHANGING NATURE OF RACIAL SEGREGATION* 15 (2006) [hereinafter ORFIELD & LEE, *RACIAL TRANSFORMATION*], available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/racial-transformation-and-the-changing-nature-of-segregation/orfield-racial-transformation-2006.pdf>.

72. See *supra* notes 9–20 and accompanying text.

73. NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., *THE CONDITION OF EDUCATION 2009: INDICATOR 7: RACIAL/ETHNIC ENROLLMENT IN PUBLIC SCHOOLS* 16 (2009) [hereinafter *THE CONDITION OF EDUCATION 2009*], available at <http://nces.ed.gov/pubs2009/2009081.pdf>.

two largest regions, the South and the West.”⁷⁴ The same transformation is occurring in post-secondary and post-baccalaureate education.⁷⁵

Despite the explosion of minorities in public schools and a concomitant increase in the opportunity for integration, schools are still racially segregated. White, black, and Hispanic children generally attend schools where their group is the majority.⁷⁶ Most of the roughly 16,000 school districts in the country are hyper-segregated, meaning they have an “enrollment that is greater than ninety percent white or ninety percent minority.”⁷⁷ Every major urban school district is nonwhite and segregated, and suburban schools are white and getting whiter.⁷⁸

Because segregation is historically thought of as a black/white issue, it is a good launching point to understanding the racial isolation in schools. Black students have been increasingly segregated in schools during the last two decades.⁷⁹ From 1991 to 2004, the percentage of black students attending majority nonwhite schools increased from 66% to 73%.⁸⁰ In 1990, the average black student attended a school that was 34% white—by the turn of the millennium the number had dropped to 29% white.⁸¹ More striking is the fact that in 1980, 33% of black students attended hyper-segregated schools and that number rose to more than 37% by 2000 and 38% in 2003–2004.⁸²

74. ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 4; *see* ORFIELD & LEE, *RACIAL TRANSFORMATION*, *supra* note 71, at 6–7, 18, 23 (finding that in Texas and California, whites already constitute less than half of the student population and this will occur nationwide within the next decade); *THE CONDITION OF EDUCATION 2009*, *supra* note 73, at iv (finding that between 1972 and 2007, the number of students from racial and ethnic groups increased from 22% to 44% in public schools).

75. *See* WILLIAM J. HUSSAR & TABITHA M. BAILEY, NAT’L CTR. FOR EDUC. STATISTICS, *PROJECTIONS OF EDUCATION STATISTICS TO 2017*, at 10 (36th ed. 2008), *available at* <http://nces.ed.gov/pubs2008/2008078.pdf> (showing a 64% increase in black enrollment in post-secondary education from 1992 to 2006, a 100% increase in Hispanic enrollment, and a 71% increase in Asian enrollment, and anticipating a 26% increase in enrollment for blacks, 39% increase for Hispanics, and a 26% increase for Asians); NAT’L CTR. FOR EDUC. STATISTICS, *POSTSECONDARY INSTITUTIONS IN THE UNITED STATES: FALL 2003 AND DEGREES AND OTHER AWARDS CONFERRED: 2002–03*, at 13 (2005), *available at* <http://nces.ed.gov/pubs2005/2005154.pdf>.

76. FRANKENBERG, *A MULTIRACIAL SOCIETY*, *supra* note 71, at 27; MUMFORD CENTER, *CHOOSING SEGREGATION*, *supra* note 71, at 3. The average black child’s school is 57% black, and the average Hispanic child’s school is 57% Hispanic. FRANKENBERG, *A MULTIRACIAL SOCIETY*, *supra* note 71, at 27; *see* Mark C. Rahdert, *Obstacles and Wrong Turns on the Road from Brown: Milliken v. Bradley and the Quest for Racial Diversity in Education*, 13 *TEMPLE POL. & CIV. RTS. L. REV.* 785, 786, 800 (2004).

77. James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 *HARV. L. REV.* 131, 145 (2007).

78. *See id.*; ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 14.

79. *See* ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 28; Frankenberg & Le, *supra* note 64, at 1025.

80. ORFIELD & LEE, *RACIAL TRANSFORMATION*, *supra* note 71, at 9.

81. MUMFORD CENTER, *RESEGREGATION*, *supra* note 71, at 4.

82. FRANKENBERG, *A MULTIRACIAL SOCIETY*, *supra* note 71, at 28, 31; ORFIELD & LEE, *RACIAL TRANSFORMATION*, *supra* note 71, at 9; *see also* Frankenberg & Le, *supra* note 64, at

These figures paint only a small portion of the picture. With the dramatic rise in Hispanic and Asian populations in the 1990s, segregation must be looked at as a multiracial subject. Sadly, Hispanics and Asians tend to be segregated in minority schools much like blacks. Indeed, Hispanics, the largest minority group in schools, are even more racially isolated than blacks and are becoming more segregated.⁸³ They are “the most segregated group by both race and poverty.”⁸⁴ The average Hispanic attends a school that is only 28% white.⁸⁵ In the late 1960s, 23% of Hispanics attended hyper-segregated schools,⁸⁶ and the number rose to 34% in 1991⁸⁷ and then 39% in 2006.⁸⁸ Indeed, “[s]eventy-six percent of Latino students attend schools with mostly minority student bodies.”⁸⁹

Not only are Asians the least racially isolated minority group, but they are the most integrated of all students.⁹⁰ The number of Asians in majority minority schools (50% to 100% minority) rose modestly from 53% in 1991–1992 to 56% in 2003–2004.⁹¹ The percentage of Asians in hyper-segregated schools also rose modestly from 13% in 1991–1992 to 15% in 2003–2004.⁹² Despite representing “only five percent of the total student enrollment, the average Asian attends a school that is 24% Asian.”⁹³ But “Asians typically attend schools that are 48% white,” a much higher figure than for blacks and Hispanics.⁹⁴

The racial isolation of minorities in schools is stark, but it is nothing compared to how whites have racially segregated their children. White children are the most racially isolated group of students in the United States, and they have little contact with minorities.⁹⁵ The average white child attends a school that is 77% white in a country with only 57%

1026; Adam Cohen, *THE COURTS; The Supreme Struggle*, N.Y. TIMES, Jan. 18, 2004, at A4.

83. ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 5–6, 9; ORFIELD & LEE, *RACIAL TRANSFORMATION*, *supra* note 71, at 8, 14, 18 (identifying the historical rise of Hispanic segregation as “truly shocking”); MUMFORD CENTER, *CHOOSING SEGREGATION*, *supra* note 71; Frankenberg & Le, *supra* note 64, at 1025; see Alexandra Villarreal O’Rourke, *Picking Up the Pieces After PICS: Evaluating Current Efforts to Narrow the Education Gap*, 11 HARV. LATINO L. REV. 263, 263 (2008).

84. ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 31.

85. ORFIELD & LEE, *RACIAL TRANSFORMATION*, *supra* note 71, at 8.

86. FRANKENBERG, *A MULTIRACIAL SOCIETY*, *supra* note 71, at 33.

87. ORFIELD & LEE, *RACIAL TRANSFORMATION*, *supra* note 71, at 11 tbl.4.

88. Frankenberg & Le, *supra* note 64, at 1026.

89. O’Rourke, *supra* note 83, at 263.

90. See ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 27, 37.

91. ORFIELD & LEE, *RACIAL TRANSFORMATION*, *supra* note 71, at 12 tbl.6.

92. *Id.*

93. ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 27.

94. *Id.*

95. FRANKENBERG, *A MULTIRACIAL SOCIETY*, *supra* note 71, at 4, 27, 47; ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 24, 26–27.

white students.⁹⁶ And these general statistics are misleading, as nearly half of white students attend schools that are more than 90% white and approximately one-third of white students attend schools that are more than 95% white.⁹⁷ It is shocking that white children have less contact with minorities in schools today than they did in years past, despite the fact that there are many more minorities in schools today.⁹⁸

What do all these statistics mean? Simply that *Brown* did not integrate schools in the long-run. Schools are as segregated today as they were shortly after *Brown* was decided, and the most isolated racial group is white children. While white children primarily attend school with only other whites, minorities are being exposed to other minorities and whites. Many more minority students have grown up interacting with whites than white students have grown up interacting with minorities.⁹⁹ Minorities are also attending school with one another—more than half of blacks and Hispanics attend a school where at least 75% of the enrollment is minority, whereas only 3% of whites attend such schools.¹⁰⁰ Only 12% of whites attend multiracial schools—schools where at least one-tenth of the students are from each of at least three of the five major racial and ethnic groups—whereas 42% of Asians, 27% of Hispanics, and 23% of blacks attend such schools.¹⁰¹ Whites live in neighborhoods with low minority representation while minorities live in neighborhoods with many other minorities.¹⁰² Minorities are accruing

96. ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 24, 26; *see* MUMFORD CENTER, *CHOOSING SEGREGATION*, *supra* note 71, at 3 (“The average white child attends a school that is over 78% white.”); *see also* THE CONDITION OF EDUCATION 2009, *supra* note 73, at 66 (“Public schools in which 75[%] or more of the students were White enrolled 62[%] of all White students . . .”).

97. MUMFORD CENTER, *RESEGREGATION*, *supra* note 71, at 8; ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 26 (“[M]uch of the racial contact that exists is accounted for either by the small but significant number of whites in heavily minority schools or reflects the temporary diversity produced by residential racial transition as blacks and Latinos move very rapidly into some sectors of suburbia.”).

98. *See* FRANKENBERG, *A MULTIRACIAL SOCIETY*, *supra* note 71, at 4, 27; JOHN R. LOGAN & DEIRDRE OAKLEY, LEWIS MUMFORD CTR. FOR COMPARATIVE URBAN & REG’L RESEARCH, *THE CONTINUING LEGACY OF THE BROWN DECISION: COURT ACTION AND SCHOOL SEGREGATION 1960–2000*, at 2 (2004), *available at* http://www.s4.brown.edu/schoolsegregation/reports/brown/Brown_report_1_28.pdf; MUMFORD CENTER, *CHOOSING SEGREGATION*, *supra* note 71, at 1.

99. Pidot, *supra* note 47, at 767.

100. THE CONDITION OF EDUCATION 2009, *supra* note 73, at 66; *see also supra* note 76.

101. ORFIELD & LEE, *RACIAL TRANSFORMATION*, *supra* note 71, at 15; *see also* ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 26 (“Blacks and Latinos are significant presences in each others’ schools. . . . [A]s minority students are increasingly isolated from whites, they often find themselves in schools with other minority populations.”).

102. LEWIS MUMFORD CTR. FOR COMPARATIVE URBAN & REG’L RESEARCH, *ETHNIC DIVERSITY GROWS, NEIGHBORHOOD INTEGRATION LAGS BEHIND 3* (2001), *available at* <http://www.s4.brown.edu/cen2000/wholepop/wpereport/MumfordReport.pdf> (“[T]he typical black lives in a neighborhood that is 51.4% black, 33% white, 11.4% Hispanic, and 3.3% Asian. The typical Hispanic lives in a neighborhood that is 45.5% Hispanic, 36.5% white, 10.8% black and 5.9% Asian.”).

the benefits that derive from multiracial contact whereas whites are not. The next Part details what these benefits are.

III. THE BENEFITS OF RACIALLY DIVERSE SCHOOLS TO WHITE STUDENTS

When whites think of affirmative action policies in colleges and universities or race-based student assignment policies in primary and secondary education, they think of the benefits to minorities. They perceive that racial integration policies in primary and secondary education exist primarily to assist racially and socioeconomically isolated minorities by allowing them entrance to whites' "superior" schools. They believe that affirmative action policies in higher education provide minorities a "leg-up" to get into colleges and universities they otherwise would not attend. White families fail to see that the primary beneficiaries of these policies—as strange as it may initially sound—are in fact white children.

At first blush it appears that the prime imperative of integration was to benefit minorities—improving their educational opportunities, station in life, social networks, etc. After all, the express justification for *Brown* was to end the stigmatic and educational harm suffered by minorities from the Jim Crow era of segregated schooling by opening the doors of white schools to them.¹⁰³ But, as discussed above,¹⁰⁴ *Brown* would not have occurred if minority interests were all that were at stake. Instead, the desegregation era began because of the benefits it created for the empowered whites and their military objectives.

When the focus shifted from desegregation to race-based college admission policies, or affirmative action, the primary beneficiaries again appeared to be underrepresented minorities. But a closer look reveals that white interests, not minority interests, were the foundation for the diversity rationale used to justify race-based admission policies in education. The sad reality, from the perspective of minorities, is that it has always been about whites and the benefits they receive—first from integration and later from diversity. Whites, however, continually ignore the Supreme Court pronouncements of the advantages provided to them by multiracial learning.

This Part will explain the significant benefits that racially diverse schools provide white students and show how the Court's acceptance of the diversity rationale has been steadfastly about the white interests, not minority interests. The benefits that inure to white students in racially integrated schools are twofold: improved learning outcomes and better preparation to navigate an increasingly multicultural marketplace.

103. *See id.*

104. *See supra* Part II.

A. Diversity Improves Academic Learning Outcomes for White Students

The Supreme Court has consistently recognized the academic benefits whites receive from diverse educational settings, but whites either do not understand or are not listening. The benefits were first noted by Justice Lewis Powell in the 1978 case of *Regents of the University of California v. Bakke*, which considered whether the medical school at the University of California at Davis could set aside a certain number of slots for minority students.¹⁰⁵ Justice Powell, in a part of his opinion not joined by any other Justice but considered the controlling opinion, concluded that racial diversity can justify race-conscious admissions systems in higher education¹⁰⁶ and laid the groundwork for the diversity rationale accepted twenty-five years later by a majority of the Supreme Court.¹⁰⁷

Justice Powell concluded that “the attainment of a diverse student body . . . clearly is a constitutionally permissible goal for an institution of higher education,” because diverse educational environments lead to a better “quality” of education—for whites.¹⁰⁸ He noted that the “[n]ation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues.’”¹⁰⁹ Justice Powell adopted the reasoning that “[p]eople do not learn very much when they are surrounded only by the likes of themselves.”¹¹⁰ Because the medical school would have been populated almost exclusively by whites without the affirmative action policy, it is obvious that the educational benefit of diversity noted by Justice Powell was primarily, if not exclusively, for whites. There was no concern that minorities would “be surrounded only by the likes of themselves” at the medical school; the only danger was that whites would be the exclusive race present without an affirmative action policy. Justice Powell believed white academic performance would improve if white students were more widely exposed to minority views.¹¹¹

The academic interests of whites in multiracial classrooms was articulated by the Supreme Court twenty-five years later in *Grutter v. Bollinger*, where the Court held that the University of Michigan Law School’s consideration of race in admissions was justified because it “has a compelling interest in attaining a diverse student body.”¹¹² The

105. 438 U.S. 265, 311–15 (1978).

106. *Id.*

107. *See Grutter v. Bollinger*, 539 U.S. 306 (2003).

108. *Bakke*, 438 U.S. at 311–12.

109. *Id.* at 312 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)). Justice Powell noted furthermore that “[t]he atmosphere of ‘speculation, experiment and creation’—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body,” *id.* (citation omitted), and that “the ‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples.” *Id.* at 313 (quoting *Keyishian*, 385 U.S. at 603).

110. *Id.* at 312 n.48 (internal quotation marks and external citation omitted).

111. *See id.* at 314.

112. *Grutter*, 539 U.S. at 328.

decision marked the first time that a majority of the Supreme Court recognized the diversity rationale as a compelling governmental interest.¹¹³ Like Justice Powell's *Bakke* opinion, the Court found that "diversity promotes learning outcomes" because "'classroom discussion is livelier, more spirited, and simply more enlightening and interesting' when the students have 'the greatest possible variety of backgrounds.'"¹¹⁴ Yet, the expert testimony underlying this finding focused almost exclusively on improved learning outcomes for whites, not minorities. In fact, the primary expert for Michigan, Patricia Gurin, concluded that diversity experiences create positive impacts for white students but negative outcomes for students of color.¹¹⁵ Very little of the empirical data submitted to the *Grutter* Court demonstrated a link between diversity and positive educational outcomes for minorities.¹¹⁶ To the contrary, significant evidence established that blacks have better educational outcomes at historically black colleges than at predominately white institutions.¹¹⁷

The means of attaining a diverse student body endorsed by the Court also evidences the white interests underpinning the decisions. Both Justice Powell in *Bakke*¹¹⁸ and the majority in *Grutter* found that a significant number, or "critical mass," of minority students was necessary to attain the benefits of diversity.¹¹⁹ Harvard's admission policy, which Justice Powell attached to his *Bakke* opinion as an appendix, provided that a significant number of blacks needed to be admitted because a token number "could not begin to bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States."¹²⁰ A large number of blacks were desired not because it assisted a large number of blacks, but because a large number of blacks better exposed whites to a variety of views, backgrounds, and experiences.¹²¹

113. *Id.*

114. *Id.* (quoting Brief for the Michigan Ass'n of Scholars as Amicus Curiae Supporting Petitioners at 14, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241 & 02-516), 2003 WL 164182, at *14).

115. Pidot, *supra* note 47, at 775-76; *see also id.* at 794 (identifying other studies showing negative impacts of diversity policies on minorities); *id.* at 785-87 (discussing Professor Anthony Antonio's experimental study focused on improved complex thinking for white students only in diverse educational settings).

116. *Id.* at 794; *see also* David Kow, *The (Un)compelling Interests for Underrepresented Minority Students: Enhancing the Education of White Students Underexposed to Racial Diversity*, 20 BERKELEY LA RAZA L.J. 157, 176-80 (2010).

117. *See Grutter*, 539 U.S. at 364 (Thomas, J., concurring in part, dissenting in part) (noting "the growing [social science] evidence that racial (and other sorts) of heterogeneity actually impairs learning among black students").

118. *See Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978).

119. *Grutter*, 539 U.S. at 330.

120. *Bakke*, 438 U.S. at 323 (Powell, J., appendix of opinion).

121. *See generally Grutter*, 539 U.S. at 330 (finding that educational benefits flow out of student body diversity, but innately relying on the presumption that whites will benefit from the

Similarly, Michigan sought to enroll a “critical mass” of minority students, which means “a number that encourages underrepresented minority students to participate in the classroom and not feel isolated. . . . or like spokespersons for their race.”¹²² In other words, the number of minorities schools may seek is the number of minorities that ensures they do not feel isolated, not for their own comfort or educational performance, but only to encourage their classroom participation. A “critical mass” of minorities better guarantees that whites receive educational benefits by exposing them to a variety of viewpoints. No mention is made of how a critical mass of minority students may help enrolled minorities; it is only discussed as a means to the end of benefits to whites from diversity.

As further proof that white interests were the foundation of these decisions, the opinions do not discuss, and expressly avoid, any mention of the benefit the affirmative action policy would provide to minorities by allowing them admission into prestigious medical schools or law schools. In *Bakke*, Justice Powell specifically rejected the university’s contention that reducing the historic deficit of minorities in medical school and in the medical profession and countering the effects of societal discrimination justified the consideration of race in admissions.¹²³ In *Grutter*, the University of Michigan specifically denied that their race-based admission policy was designed to remedy past discrimination in law school admissions discrimination.¹²⁴ These nonwhite interests were simply not compelling.

The Supreme Court firmly believes that white children’s academic progress is best served in multiracial schools. The keystone of these cases was not advancement of a radical civil rights agenda, it was advancement of white children’s interests, and white parents need to listen. The white-centric view justifying affirmative action adopted by the Supreme Court in *Bakke* and *Grutter* elicited significant critical notice.¹²⁵ It is not surprising that when the Court considered the constitutionality of race-based student assignment plans in primary and secondary education in *Parents Involved in Community Schools v. Seattle School District No. 1*,¹²⁶ it focused on the academic benefits to minorities, not whites. Given this emphasis, it is also not surprising that the voluntary integration plans in that case were struck down.¹²⁷

In *Parents Involved*, Justice Anthony Kennedy said that “[d]iversity . . . is a compelling educational goal a school district may

exposure to different races).

122. *Id.* at 318–19.

123. *Bakke*, 438 U.S. at 306–10.

124. *Grutter*, 539 U.S. at 319 (citing testimony of Professor Richard Lempert) (finding Michigan’s policy “did not purport to remedy past discrimination, but rather to include students who may bring to the Law School a perspective different from that of members of groups which have not been victims of such discrimination”).

125. *See generally supra* note 47 (collecting critical opinions).

126. *See* 551 U.S. 701, 726 (2007).

127. *See id.* at 747–48.

pursue.”¹²⁸ Justice Kennedy also said, in an opinion not joined by any other Justice but considered the controlling opinion, that “[a] compelling interest exists in avoiding racial isolation.”¹²⁹ Because racially isolated schools provided unequal educational opportunities to minorities, Justice Kennedy found a compelling governmental interest in eliminating them. Justice Stephen Breyer, who was joined by three other Justices, similarly opined that “there is an educational element: an interest in overcoming the adverse educational effects produced by and associated with highly segregated schools.”¹³⁰ None of the five Justices that found a compelling interest in diversity acknowledged the academic benefits to white students.

The failure of these Justices to recognize the diversity benefits to whites does not speak so much to the nonexistence of such benefits as it does to either the Court’s acute awareness that its past white-centric viewpoint of the diversity rationale was controversial or the failure of the districts to articulate and advance the white academic interests in their policies and in litigation. White majoritarian interests still underpinned the *Parents Involved* decision, just as they were the foundation for the *Grutter* and *Bakke* decisions, but this time in reverse.¹³¹ Because the academic (and social) benefits to whites were *not* advanced or recognized in *Parents Involved*, the Supreme Court struck down the voluntary integration plans.¹³² In this regard, the Court was misguided, because whites benefit significantly from multiracial schools.

The Supreme Court’s holdings that multiracial schools provide white students academic benefits find strong support in social science evidence. Five hundred fifty-three social scientists submitted an amicus brief in the *Parents Involved* case that noted that the opportunity to interact with students of different ethnic and racial backgrounds results in exposure to “different cultural knowledge and social perspectives.”¹³³ They summarized a large body of scientific research showing that such exposure “promotes complex thinking” and “enhance[s] critical thinking by exposing students to new information and understandings.”¹³⁴ The

128. *Id.* at 783 (Kennedy, J., concurring in part, concurring in the judgment).

129. *Id.* at 797. *See generally* Ryan, *supra* note 77, at 137 (explaining why Justice Kennedy’s opinion is the controlling opinion).

130. *Parents Involved*, 551 U.S. at 839 (Breyer, J., dissenting).

131. *See* Maurice R. Dyson, *When Government Is a Passive Participant in Private Discrimination: A Critical Look at White Privilege & the Tacit Return to Interposition in PICS v. Seattle School District*, 40 U. TOL. L. REV. 145, 155 (2008) (arguing that white majoritarian interests underpinned the *Parents Involved* holding).

132. *See id.*

133. Brief for 553 Social Scientists as Amici Curiae Supporting Respondents at 7, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2927079, at *7 [hereinafter Amici Brief of 553 Social Scientists].

134. *Id.*; *see* Brief for American Council on Education and 20 Other Higher Education Organizations as Amici Curiae Supporting Respondents at 7–9, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2882690, at

research indicates that students faced with perspectives they have never encountered are forced to think through more alternatives and better articulate their reasoning, thereby improving their critical thinking skills. Students experiencing such interactions are more likely to engage in complex thinking as they process new information and cross-racial understandings.¹³⁵

The expanded critical reasoning skills derived from a multiracial education often leads to higher math scores for white students.¹³⁶ A recent survey of modern research concluded that there is “strong evidence that minority segregation negatively affects the [math] achievement of Whites.”¹³⁷ Gary Orfield, an influential researcher, concludes that “never before has there been more evidence about . . . the potential [integration] benefits for both nonwhite and white students . . . [E]vidence [shows] . . . that there are no harms and some large benefits for white as well nonwhite students”¹³⁸ Indeed, during the high water mark of integration, 1964–1980, whites’ high school graduation rates and test performance increased.¹³⁹

However, the conclusion that diverse educational environments improve the academic performance of whites is contested. Many argue that there is no clear-cut consensus in the social science literature definitively concluding that integrating schools improves learning outcomes for whites.¹⁴⁰ The only consensus seems to be that white

*7–9 [hereinafter Amici Brief for the American Council on Education] (supporting that diversity promotes academic achievement for all races); Brief for the National Collegiate Athletic Ass’n & National Basketball Retired Players Ass’n as Amicus Curiae Supporting Respondents at 20–23, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2882690, at *20–23 [hereinafter Amici Brief of the NCAA & National Basketball Retired Players Ass’n] (summarizing research showing positive correlation between racial diversity and academic performance of whites and minorities); Anthony Lising Antonio et al., *Effects of Racial Diversity on Complex Thinking in College Students*, 15 *PSYCHOL. SCI.* 507, 509 (2004) (finding that racial diversity may modestly improve white students’ critical-thinking skills); Bowen, *supra* note 47, at 1243 (finding that students’ critical thinking skills can be increased by attending schools with a critical mass of minorities).

135. See Antonio et al., *supra* note 134, at 507.

136. See Mickelson & Bottia, *supra* note 67, at 1034.

137. *Id.*

138. ORFIELD & LEE, *HISTORIC REVERSALS*, *supra* note 59, at 11; see Derek Black, Comment, *The Case for the New Compelling Government Interest: Improving Educational Outcomes*, 80 *N.C. L. REV.* 923, 943–47 (2002) (discussing research concluding that integrated environment improve educational outcomes); Joanna R. Zahler, Note, *Lessons in Humanity: Diversity as a Compelling State Interest in Public Education*, 40 *B.C. L. REV.* 995, 1025–26 (1999) (discussing positive educational effects on white and minority students from attending integrated schools).

139. See JENNIFER L. HOCHSCHILD & NATHAN SCOVRONICK, *THE AMERICAN DREAM AND THE PUBLIC SCHOOLS* 38 (2003); see also Minow, *supra* note 55, at 621 (“[D]esegregation worked both to produce interracial contact and raise educational opportunities for both blacks and whites . . .”).

140. See *Parents Involved*, 551 U.S. at 761–65 (Thomas, J., concurring) (summarizing social science and concluding that, “Scholars have differing opinions as to whether educational

students' academic achievement and test scores are certainly not harmed by racial integration.¹⁴¹ The National Academy of Education reviewed all the social science evidence submitted to the Supreme Court in *Parents Involved* and concluded that “[w]hite students are not hurt by desegregation efforts or adjustments in racial composition of schools.”¹⁴² In the most basic terms, placing white children in racially diverse classrooms cannot hurt them academically and may even help.

But academic benefits are not the primary reason to integrate schools. The real benefit of multiracial schools to white students is the cross-cultural skills they impart—skills that will make children more employable and more successful in their future jobs.

B. *Diversity Prepares White Students to Succeed in a Multicultural Marketplace*

While the academic benefits of integration to whites are debatable, there is virtually unanimous agreement that diverse educational environments better prepare white students for a multiracial work environment. This section explains how people are inherently and unconsciously prejudiced and how this will limit children in their future careers. Multiracial education overcomes these inherent biases and helps children develop cross-cultural competence—a critical skill for the new millennium.

Cross-cultural competence is the ability to work with others across racial and ethnic lines without discomfort, stereotype, or prejudice. It is an understanding of, and ability to relate to, people of different races and cultures. The goal of improving the cross-cultural talents of white students underpins Supreme Court decisions on diversity in education and this section argues that this skill is essential to children's future

benefits arise from racial balancing.”); *id.* at 839 (Breyer, J., dissenting) (arguing that the social science evidence is not dispositive but merely “strong enough” to justify deference to local school boards); Neil S. Siegel, *Race-Conscious Student Assignment Plans: Balkanization, Integration, and Individualized Consideration*, 56 DUKE L.J. 781, 825–26 (2006) (identifying the competing literature regarding whether diversity yields improved academic achievement).

141. See Brief for the American Educational Research Ass'n as Amicus Curiae Supporting Respondents at 11, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2882690, at *11 [hereinafter Amicus Brief of the American Educational Research Ass'n]; Amici Brief of 553 Social Scientists, *supra* note 133, at 8 (“[S]tudies have confirmed . . . that school desegregation has had little or no measurable negative impact on the test scores of white students.”); THE CIVIL RIGHTS PROJECT, SOCIAL SCIENCE FINDINGS ABOUT SCHOOL INTEGRATION, FACT SHEET 1, available at <http://civilrightsproject.ucla.edu/legal-developments/court-decisions/resources-on-u.s.-supreme-court-voluntary-school-desegregation-rulings/crp-social-science-talking-points-2007.pdf> (“Integrated school environments do not harm the test scores of white students.”); ORFIELD & LEE, RACIAL TRANSFORMATION, *supra* note 71, at 22–23 (arguing that racial integration does not harm academic achievement of whites); Ryan, *supra* note 77, at 143.

142. NAT'L ACAD. OF EDUC., RACE-CONSCIOUS POLICIES FOR ASSIGNING STUDENTS TO SCHOOLS: SOCIAL SCIENCE RESEARCH AND THE SUPREME COURT CASES 2, 20 (Robert L. Linn & Kevin G. Welner eds., 2007).

career success.

1. People Are Implicitly Biased . . . But Students Can Develop Cross-Cultural Competence

The bad news is that most people, whites *and* minorities, harbor implicit racial stereotypes and biases.¹⁴³ These inherent biases particularly harm minorities, but also work to the detriment of whites who harbor them. The good news is that students can become de-biased and develop cross-cultural competence in racially integrated schools.

People implicitly categorize and subdivide others into social categories. It is the brain's natural reaction to deal with significant amounts of information. It is simply human nature to subdivide, categorize, and then generalize about the different groupings.¹⁴⁴ Once this categorization occurs, people develop more favorable attitudes to their "ingroup" members than to "outgroup" members and inherent biases are hatched, followed by stereotyping (cognitive beliefs about social groups) and prejudice (negative affective feelings about social groups).¹⁴⁵

This implicit bias is automatic and independent of conscious attitudes. These biases arise from universal social categorization processes and exist unconsciously even in people that truly believe they are not prejudiced.¹⁴⁶ While few people harbor explicitly racist beliefs

143. See Brief for the American Psychological Ass'n & the Washington State Psychological Ass'n as Amici Curiae Supporting Respondents at 23–25, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2006) (Nos. 05-908 & 05-915), 2006 WL 2927084, at *23–25 [hereinafter Amici Brief of the APA & the Washington State Psychological Ass'n] (explaining how ordinary cognitive processes lead to unconscious bias and stereotypes).

144. See *id.*; Charles Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of "The Id, the Ego, and Equal Protection,"* 40 CONN. L. REV. 931, 960–62 (2008) [hereinafter Lawrence, *Unconscious Racism*] (explaining that, "[B]ias or stereotype occurs because the brain works by placing information into categories. . . . The bias in favor of whites is a prejudice like any other preference, a natural product of categorization."); Avital Mentovich & John T. Jost, *The Ideological "Id"?: System Justification and the Unconscious Perpetuation of Inequality*, 40 CONN. L. REV. 1095, 1101–02 (2008) (explaining that people stereotype for reasons of "cognitive economy" and "efficiency"); Catherine Smith, *Unconscious Bias and "Outsider" Interest Convergence*, 40 CONN. L. REV. 1077, 1079, 1084–87 (2008) (explaining social identity theory as explanation for unconscious bias).

145. Amici Brief of the APA & the Washington State Psychological Ass'n, *supra* note 143, at 5; GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 263–64 (1954); see Jerry Kang, *The Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1499–1500 (2005) (discussing the categorization in the context of racial schemas).

146. INST. OF MED. OF THE NAT'L ACADS., *UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE* 10 (Brian D. Smedley, Adrienne Y. Stith & Alan R. Nelson eds., 2003) (identifying "considerable empirical evidence that even well-meaning whites who are not overtly biased and who do not believe that they are prejudiced typically demonstrate unconscious implicit negative racial attitudes and stereotypes"); Kang, *supra* note 145, at 1512 (explaining the "overwhelming evidence that implicit bias measures are dissociated from explicit bias measures"); Charles M. Blow, *A Nation of Cowards?*, N.Y. TIMES, Feb. 21,

and individuals like to think of themselves as free from bias and prejudice,¹⁴⁷ these cognitive mechanisms are at work in all people, not just prejudiced ones, and not just whites.¹⁴⁸ Professor Jerry Kang explains the disconnect between our conscious racial beliefs and

the cognitive processes running beneath the surface. . . . [C]ertain mental processes will execute automatically [and] . . . those implicit mental processes may draw on racial meanings that, upon conscious consideration, we would expressly disavow. It is as if some “Trojan Horse” virus had hijacked a portion of our brain.¹⁴⁹

Even when we are aware of the racial Trojan horse, we are unable to effectively overcome our automatic bias through mere force of will. Conscious self-correction of unconscious bias is both difficult and unlikely.¹⁵⁰

Because implicit racial bias is automatic and unconscious, it is widespread. Most people, including young children, harbor an implicit and unconscious bias against members of traditionally disadvantaged groups.¹⁵¹ As Professor Charles R. Lawrence III famously concluded in 1987, we “share a historical experience that has resulted in individuals within the culture ubiquitously attaching a significance to race that is irrational and often outside of their awareness.”¹⁵² Over the last twenty years, cognitive psychology validated the conclusion that racial bias is widespread and lurks below conscious awareness.¹⁵³ Researchers at Yale

2009, at A21, available at <http://nytimes.com/2009/02/21/opinion/21blow.html> (“[M]ost whites harbor a hidden racial bias that many are unaware of and don’t consciously agree with.”).

147. See Kang, *supra* note 145, at 1508.

148. See Smith, *supra* note 144, at 1087; Mentovich & Jost, *supra* note 144, at 1107, 1111–12.

149. Kang, *supra* note 145, at 1508; see also *id.* at 1512; Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CAL. L. REV. 969, 975 (2006) (explaining how implicit bias is automatic, free from deliberative processes).

150. Kang, *supra* note 145, at 1530; Mentovich & Jost, *supra* note 144, at 1100, 1104–05.

151. Jolls & Sunstein, *supra* note 149, at 971 (implicit bias is widespread); Camille Zubrinsky Charles, *Integration and Housing Choice: A Dialogue*, 17 POVERTY & RACE 1, 6 (2008); Po Bronson & Ashley Merryman, *See Baby Discriminate*, NEWSWEEK, Sept. 14, 2009, at 53.

152. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 327 (1987) [hereinafter Lawrence, *The Id*]; see Lawrence, *Unconscious Racism*, *supra* note 144, at 953.

153. See Brief for the American Psychological Ass’n as Amicus Curiae Supporting Respondents at 5–7, *Grutter v. Bollinger*, 539 U.S. 306 (2003) [hereinafter Amicus Brief of the APA] (Nos. 02-241 & 02-516), 2003 WL 398321, at *5–7; INST. OF MED. OF THE NAT’L ACADS., *supra* note 146, at 10; CIARA TORRES-PELLISCY, MONIQUE CHASE & EMMA GREENMAN, BRENNAN CTR. FOR JUSTICE, IMPROVING JUDICIAL DIVERSITY 11–12, 36 (2008), available at http://brennan.3cdn.net/96d16b62f331bb13ac_kfm6bplue.pdf (summarizing modern research

University and the University of Washington designed the Implicit Association Test (IAT) to test for implicit bias; it is available for anyone to take online.¹⁵⁴ Millions of people have taken the IAT, and analysis of tens of thousands of these tests found that 88% of whites harbor unconscious racial bias.¹⁵⁵ Even the Supreme Court has recognized the existence of implicit bias and its harms in the workplace.¹⁵⁶

People's automatic racial bias dramatically affects their behavior towards others. The overwhelming evidence shows that people engage in disparate treatment of others on the basis of race, even if they sincerely believe they are not biased.¹⁵⁷ Implicit bias manifests itself into subtle discriminatory behavior, anxiety when interacting with people of other races, and avoidance of dealing with people of other races.¹⁵⁸ Implicit bias also creates self-fulfilling prophecies in social interactions, in that the person harboring the implicit stereotypes perceives others in ways that conform to stereotypical expectations.¹⁵⁹

The harm of unconscious bias up to this point has fallen almost entirely on minorities. Significant scholarship is devoted to changing laws, policies, and constitutional interpretations to overcome implicit bias to protect subordinated groups.¹⁶⁰ But, in the increasingly diverse

establishing implicit bias); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 955–58 (2006); Mentovich & Jost, *supra* note 144, at 1101–12; Kang, *supra* note 145, at 1499–512; Smith, *supra* note 144, at 1079, 1083 (2008).

154. PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/> (last visited Jan. 30, 2011).

155. Shankar Vedantam, *See No Bias*, WASH. POST, Jan. 23, 2005, at W12, available at <http://www.washingtonpost.com/ac2/wp-dyn/A27067-2005Jan21?language=printer>. *But see* Hal R. Arkes & Philip E. Tetlock, *Attributions of Implicit Prejudice, or "Would Jesse Jackson 'Fail' the Implicit Association Test?,"* 15 PSYCHOL. INQUIRY 257, 258–59 (2004) (questioning whether IAT properly tests bias, prejudice, and racism); Amy L. Wax, *The Discriminating Mind: Define It, Prove It*, 40 CONN. L. REV. 979, 1018–21 (2008) (summarizing research questioning conclusions drawn from IAT test).

156. *See* *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 990 (1988) (finding that "subconscious stereotypes and prejudices" exist in the workplace).

157. *See* Jolls & Sunstein, *supra* note 149, at 972; Kang, *supra* note 145, at 1514; Kristin A. Lane et al., *Implicit Social Cognition and Law*, 3 ANN. REV. L. & SOC. SCI. 427, 429 (2007). *But see* Wax, *supra* note 155, at 1018 (arguing that implicit bias does not necessarily lead to discriminatory conduct).

158. Amicus Brief of the APA, *supra* note 153, at 6–7, 9, 15; Amici Brief of the APA & the Washington State Psychological Ass'n, *supra* note 143, at 7, 23–25; Mentovich & Jost, *supra* note 144, at 1105–06.

159. INST. OF MED. OF THE NAT'L ACADS., *supra* note 146, at 10.

160. *See, e.g.,* Jolls & Sunstein, *supra* note 149, at 975; Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action,"* 94 CAL. L. REV. 1063, 1064–66 (2006); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1164–65 (1995); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CAL. L. REV. 997, 1003–08 (2006); Lawrence, *The Id*, *supra* note 152, at 324; Lawrence, *Unconscious Racism*, *supra* note 144, at 961–62; Mentovich & Jost, *supra* note 144, at 1101–02.

world, whites will also be detrimentally affected by their unconscious bias. As discussed in detail below, the discomfort, mistreatment, and misperceptions created by unconscious bias will significantly hinder white children's success in a multicultural marketplace.

While bias is implicit and automatic, it is not immutable. Dr. Gordon Allport's revolutionary, though intuitive, finding was that bias can be overcome, and prejudice reduced, when meaningful interracial contact occurs.¹⁶¹ People are capable of being de-biased by contact with minorities on equal terms. The more contact between races, the more likely people of different races will become friends and shed harmful stereotypes, biases, and prejudices.¹⁶² Racially diverse classrooms create this contact, reducing cultural ignorance and increasing cross-cultural competence and comfort.

The earlier this contact occurs, the more effective it will be at removing automatic bias and creating cross-cultural competence.

[S]tereotypes about race and (visible) ethnicity set in early and are extremely difficult to correct in adolescence and adulthood. . . . It is more difficult to teach racial tolerance to college-age students; the time to do it is when the students are still young, before they are locked into racialized thinking.¹⁶³

Researchers agree that the racial attitudes children develop early on can become entrenched, life-long beliefs, making primary and secondary education the critical time to expose children to different races and ethnicities.¹⁶⁴

161. See ALLPORT, *supra* note 145, at 264, 281; see also Walter G. Stephan & John C. Brigham, *Intergroup Contact: Introduction*, J. SOC. ISSUES, July 1985, at 1, 2 (explaining that among other factors, opportunities to interact with "outgroup members" individually will improve intergroup relations). *But see* Bronson & Merryman, *supra* note 151, at 53 (arguing that racial contact alone is insufficient to overcome implicit racial bias).

162. See Amicus Brief of the APA, *supra* note 153, at 12–15; Amici Brief of the APA & the Washington State Psychological Ass'n, *supra* note 143, at 10–14 (describing Allport's contact theory and the voluminous studies supporting it); Kang, *supra* note 145, at 1531–35.

163. *Comfort ex rel. Neumyer v. Lynn Sch. Comm.*, 283 F. Supp. 2d 328, 356 (D. Mass. 2003), *aff'd*, 418 F.3d 1, 6 (1st Cir. 2005) (en banc).

164. See Amici Brief for the American Council on Education, *supra* note 134, at 15–16; Amicus Brief of the American Educational Research Ass'n, *supra* note 141, at 6; Amici Brief of the APA & the Washington State Psychological Ass'n, *supra* note 143, at 4, 8–10; Brief for Media & Telecommunication Cos. as Amici Curiae Supporting Respondents at 10–12, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2927065, at *10–12 [hereinafter Amici Brief of Media & Telecommunications Cos.]; Amici Brief of the NCAA & National Basketball Retired Players Ass'n, *supra* note 134, at 14–15; Brief for the National Parent Teacher Ass'n as Amicus Curiae Supporting Respondents at 7–10, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2882699, at *7–10 [hereinafter Amicus Brief of National Parent Teacher Ass'n]; Brief for Profs. Amy Stuart Wells et al. as Amici Curiae Supporting Respondents at 25–26, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2927074, at *25–26 [hereinafter Amici

There is a strong consensus from social scientists that diverse classrooms decrease prejudices, biases, and stereotypes and improve intergroup relations. In the influential book *The Shape of the River*, former Princeton and Harvard University Presidents William Bowen and Derek Bok, respectively, summarized research on the issue and concluded that “racial diversity does appear to bring about positive results in increasing the mutual understanding of whites and minority students, enhancing their ability to live and work together successfully.”¹⁶⁵ More recently, the amicus brief from 553 social scientists submitted in *Parents Involved* summarized a large body of scientific research and concluded that integrated school settings “reduce racial prejudice and bias” and create students with “more tolerant and inclusive viewpoints about individuals of different racial groups than students who have less interracial contact.”¹⁶⁶ The amicus brief filed by the American Psychological Association also cited dozens of psychological studies concluding that attending integrated schools was beneficial to students through the prevention of stereotypes and leads to increased interaction with members of other racial groups into adulthood.¹⁶⁷ The highly respected American Educational Research Association reached the same conclusion,¹⁶⁸ and the National Academy of Education, after reviewing all the social science evidence submitted to the Court in *Parents Involved*, concluded that “[e]arly experience in desegregated schools tends to . . . improve skills and comfort with interracial settings.”¹⁶⁹

Educators also know that integrated classrooms provide social benefits to whites by diminishing their prejudice and promoting cross-racial understanding. For more than 150 years, educators have stressed the value of classroom diversity.¹⁷⁰ The National Education Association

Brief of Wells].

165. WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* 267–68 (1998); see also Janet Ward Schofield, *School Desegregation and Intergroup Relations: A Review of the Literature*, 17 REV. RES. EDUC. 335, 340 (1991).

166. Amici Brief of 553 Social Scientists, *supra* note 133, at 6; see also Brief for the American Federation of Labor & Congress of Industrial Organizations as Amicus Curiae Supporting Respondents at 19–24, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-24 & 02-516), 2003 WL 536743, at *19–24 [hereinafter Amicus Brief of the American Federation of Labor & Congress of Industrial Organizations].

167. Amici Brief of the APA & the Washington State Psychological Ass’n, *supra* note 143, at 19–20.

168. Amicus Brief of the American Educational Research Ass’n, *supra* note 141, at 6–9 (diversity promotes cross-racial understanding and reduces prejudice).

169. NAT’L ACAD. OF EDUC., *supra* note 142, at 32; see also *id.* at 2; Mickelson, *supra* note 67, at 1216–18; Linda R. Tropp, Amy E. Smith & Faye J. Crosby, *The Use of Research in the Seattle and Jefferson County Desegregation Cases: Connecting Social Science and the Law*, 7 ANALYSES OF SOC. ISSUES & PUB. POL’Y 93, 106 (2007).

170. BOWEN & BOK, *supra* note 165, at 218; see Brief for the Massachusetts Ass’n of School Superintendents, the Massachusetts Ass’n of School Committees, Inc. as Amicus Curiae Supporting Respondents at 10–11, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*,

and the American Federation of Teachers, the two largest teacher unions, filed a brief in support of integration in *Parents Involved* on the grounds that integrated schools reduce racial stereotypes and prejudice.¹⁷¹

Students of integrated schools and their parents also conclude that their schools better prepared them for a multicultural world. One survey of the social science research revealed the consistent finding that graduates of integrated schools “express[ed] a sense of having acquired increased skills in being effective in interracial contexts.”¹⁷² Indeed, graduates of integrated K-12 education thought the daily interracial interactions to be “one of the most meaningful experiences of their lives.”¹⁷³ In sum, there is a consensus among experts, educators, graduates of integrated schools, and the public “that integration is a desirable policy goal, mainly for the social benefit of increased information and understanding about cultural and social differences among various racial and ethnic groups.”¹⁷⁴

The elimination of inherent bias and the development of interracial skills are best accomplished in schools through interracial contact rather than through indirect means. Diversity workshops, ethnic studies classes, and reading great works by minorities are ineffective in removing unconscious stereotypes and prejudice.¹⁷⁵ Interracial competence cannot be taught; it must be learned through experience and direct contact. It cannot be conveyed by book, lecture, or training; it must be lived. The skills needed to relate with people of different races or ethnicities require practice that cannot be found in homogeneous

551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2927067, at *10–11.

171. Brief for the National Education Ass’n, et al. as Amici Curiae Supporting Respondents at 15–25, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2927085, at *15–25 [hereinafter Amici Brief of the National Education Ass’n]; see Amici Brief of 553 Social Scientists, *supra* note 133, at 6.

172. NAT’L ACAD. OF EDUC., *supra* note 142, at 2, 32; see Amici Brief of 553 Social Scientists, *supra* note 133, at 6; Amicus Brief of National Parent Teacher Ass’n, *supra* note 164, at 12–13.

173. AMY STUART WELLS ET AL., *HOW DESEGREGATION CHANGED US: THE EFFECTS OF RACIALLY MIXED SCHOOLS ON STUDENTS AND SOCIETY* 6 (2004), available at http://cms.tc.columbia.edu/i/a/782_ASWells041504.pdf.

174. David J. Armor, *Facts and Fictions About Education in the Sheff Decision*, 29 CONN. L. REV. 981, 982 (1997); see THE CIVIL RIGHTS PROJECT, *supra* note 141, at 1; Eboni S. Nelson, *Examining the Costs of Diversity*, 63 U. MIAMI L. REV. 577, 587–88 (2009); Kimberly Jenkins Robinson, *The Constitutional Future of Race-Neutral Efforts to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, 50 B.C. L. REV. 277, 333–34 (2009). But see *Parents Involved*, 551 U.S. at 769 (Thomas, J., concurring) (noting that the social science research is “unclear whether increased interracial contact improves racial attitudes and relations”); Siegel, *supra* note 140, at 828–29 (identifying research that alternately supports and disputes claims that diversity yields improved intergroup relations).

175. Amicus Brief of the American Educational Research Ass’n, *supra* note 141, at 9; Amicus Brief of the APA, *supra* note 153, at 14–15; Amici Brief of the National Education Ass’n, *supra* note 171, at 21; Amici Brief of 553 Social Scientists, *supra* note 133, at 7.

schools.

These skills also cannot be taught or passed down by parents. Just because parents are unbiased and stereotype free—or at least perceive themselves to be so—does not mean their children will be. “[P]arents are generally not the principal influences on their children’s attitudes about race. . . . Indeed, most studies have found only a small correlation between the racial attitudes of children and their parents.”¹⁷⁶ Parents simply cannot count on their anti-prejudice teachings and conduct, or on diversity training or ethnic studies, to help their children overcome implicit racial biases and equip them with cross-cultural competence. Only multiracial schools can adequately perform the job.

The Supreme Court and, more importantly, white children’s future employers, all appreciate the white interest in the cross-cultural competence that derives from interracial contact in integrated schools.

2. The Supreme Court Values Cross-Cultural Competence

The Supreme Court consistently recognizes the social benefits of integrated educational settings to white students. In *Regents of the University of California v. Bakke*, Justice Powell concluded that diversity was important in a medical school because it better prepared graduates to “serve a heterogeneous population.”¹⁷⁷ He reasoned that a medical student with a diverse background “may bring to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity.”¹⁷⁸ Stated bluntly, minorities in the classroom better equip whites to practice medicine in a heterogeneous world.

The socializing benefit of diversity to whites was echoed during the next twenty-five years of Supreme Court jurisprudence,¹⁷⁹ but was not expressly revisited again until *Grutter v. Bollinger*.¹⁸⁰ The *Grutter* Court found that diversity was a compelling governmental interest because, among other white interests already noted, it “better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.’ . . . [T]he skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”¹⁸¹ “[W]hen a critical mass of underrepresented minority students is present, racial stereotypes lose their force because nonminority students learn there is no ‘minority

176. Amici Brief of the APA & the Washington State Psychological Ass’n, *supra* note 143, at 9.

177. 438 U.S. 265, 314 (1978).

178. *Id.*

179. *See, e.g.*, *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 473 (1982); *Estes v. Metro. Branches of Dall. NAACP*, 444 U.S. 437, 451 (1980) (Powell, J., dissenting); *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 212 (1972); *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 16 (1971).

180. 539 U.S. 306 (2003).

181. *Id.* at 330.

viewpoint' but rather a variety of viewpoints among minority students."¹⁸² A diverse student body better prepares students because it "promotes cross-racial understanding, helps to break down racial stereotypes, and enables [students] to better understand persons of different races."¹⁸³ No mention is made of how a critical mass of minority students may help those minorities; the critical mass is only discussed as a means to the end of white social benefit from diversity.

This is clearly a white interest because it is whites that lack exposure to other races prior to entering college or law school, not minorities. Of the matriculating first-year students at Michigan Law School (the subject of the *Grutter* decision), 90% of white students had attended segregated schools growing up, whereas only 50% of matriculating black students had attended segregated schools.¹⁸⁴ The "exposure" and socializing benefit of diversity in education is undeniably a benefit that accrues primarily to whites because of their racial isolation.¹⁸⁵

Four of the five Justices that accepted the diversity rationale in *Parents Involved* recognized the socializing benefits diverse educational environments provide white students. Justice Breyer, joined by three other Justices, articulated that racially diverse primary and secondary schools would better prepare students to live and work in a multicultural world because integration decreases prejudice and increases interracial sociability and friendship.¹⁸⁶ Justice Kennedy, writing alone, said that "a district may consider it a compelling interest to achieve a diverse student population," though he did not elaborate on the reasons why.¹⁸⁷ Three of the remaining four Justices never weighed in on the debate about whether racial diversity in schools achieves intangible socialization.¹⁸⁸ Justice Clarence Thomas stood alone in denying any social benefit from integrated classrooms.¹⁸⁹

3. The Marketplace Demands Cross-Cultural Competence

If the Supreme Court, educators, students, social scientists, and scholars do not persuade white parents that integrated schools will benefit their children in life after school, their future employers should. The business community—from small businesses to Fortune 500 companies—agrees that whites educated in multiracial classrooms will

182. *Id.* at 319–20.

183. *Id.* at 330 (internal quotation marks and external citation omitted).

184. Pidot, *supra* note 47, at 766.

185. *Id.*; see Juan F. Perea, *Buscando America: Why Integration and Equal Protection Fail to Protect Latinos*, 117 HARV. L. REV. 1420, 1453 (2004) (stating that most of the benefits of diversity attend to whites because of the disproportionate number of white students at institutions of higher education).

186. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 840–43 (2007) (Breyer, J., dissenting).

187. *Id.* at 797–98 (Kennedy, J., concurring in part and concurring in the judgment).

188. *See id.* at 726 (Roberts, J., plurality opinion).

189. *Id.* at 769 (Thomas, J., concurring).

be better, more productive, and effective professionals than whites educated in segregated settings. These businesses will be hiring products of integrated educational environments because, as the United States Department of Labor concluded, being able to function effectively in highly diverse settings will be a critical skill to succeed in U.S. business.¹⁹⁰ Our children's employers will be hiring applicants who have the ability to interact with and understand the various perspectives held by people of different races and ethnicities.¹⁹¹ They can best hone and establish these skills for future employers by attending integrated schools.

Eighty-nine major corporations, such as Microsoft, British Petroleum, ExxonMobil, DuPont, IBM, 3M, General Motors, and MTV Networks, filed briefs supporting the affirmative action program at the University of Michigan,¹⁹² and entities representing more than 2,800 companies filed briefs supporting voluntary integration in *Parents Involved*.¹⁹³ These companies spent corporate resources to support racially integrated learning environments because they realize the future of American business hinges on how it will react and evolve to meet the

190. U.S. DEP'T OF LABOR, SECRETARY'S COMM'N ON ACHIEVING NECESSARY SKILLS, SKILLS AND TASKS FOR JOBS: A SCANS REPORT FOR AMERICA 2000, at 1-3 to 1-4, 2-6 (1999), available at <http://wdr.doletal.gov/opr/fulltext/document.cfm?docn=6140>. The Department of Labor also noted the importance of educating students to work in diverse groups as far back as 1990. LAURESS WISE ET AL., U.S. DEP'T OF LABOR, EMP. & TRAINING ADMIN., SECRETARY'S COMM'N ON ACHIEVING NECESSARY SKILLS, IDENTIFYING NECESSARY JOB SKILLS: A REVIEW OF PREVIOUS APPROACHES 21 (1990), available at <http://wdr.doleta.gov/SCANS/injs/injs.pdf>.

191. See BIKSON & LAW, *supra* note 20, at 21.

192. See Brief for Massachusetts Institute of Technology et al. as Amici Curiae Supporting Respondents at 9, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (No. 02-241 & 02-516), 2003 WL 367215, at *9 [hereinafter Amici Brief of DuPont and IBM] ("DuPont and IBM . . . concur with other such businesses concerning the general need for diversity in education in order to prepare future business and technical leaders to deal in a shrinking and diverse world."). See generally Motion for Leave to File Amicus Curiae Brief and Brief for Exxon Mobil Corp. as Amicus Curiae Supporting Neither Party, *Gratz v. Bollinger*, 539 U.S. 244 (Nos. 02-241 & 02-516), 2003 WL 554411 [hereinafter Amicus Brief of Exxon Mobil] (supporting universities' diversity initiatives); Motion for Leave to File Brief Amicus Curiae Out of Time and Brief for BP America Inc. as Amicus Curiae Supporting Neither Party, *Gratz v. Bollinger*, 539 U.S. 244 (Nos. 02-241 & 02-516), 2003 WL 1339512 [hereinafter Amicus Brief of BP] (same); Amicus Brief of General Motors, *supra* note 20 (same); Amici Brief of 65 Leading Businesses, *supra* note 20 (same); Brief for Media Cos. as Amici Curiae Supporting Respondents, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (Nos. 2-241 & 2-516), 2003 WL 554414 [hereinafter Amici Brief of Media Cos.] (same); Motion for Leave to File Brief Amicus Curiae Out of Time and Brief for MTV Networks Supporting Respondents, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (Nos. 2-241 & 2-516), 2003 WL 1785765 [hereinafter Amicus Brief of MTV Networks] (same).

193. See, e.g., Brief for the Louisville Area Chamber of Commerce, Inc. and Louisville Metro Mayor Jerry E. Abramson as Amici Curiae Supporting Respondents at 9, *Parents Involved*, 551 U.S. 701 (2006) (No. 05-915), 2006 WL 2927086, at *9 [hereinafter Amici Brief of Louisville Chamber of Commerce]; Amici Brief of Media & Telecommunications Cos., *supra* note 164. The *Parents Involved* case dealt with race-based student assignment plans in both Seattle, Washington and Louisville, Kentucky, which is why the Louisville Chamber of Commerce submitted an amicus brief. *Parents Involved*, 551 U.S. at 709-11.

increasingly global and interconnected world economy and the increasing diversity of our own population.¹⁹⁴ Not one single business weighed in against the affirmative action policy at the University of Michigan or the race-based assignment plans in Louisville, Kentucky and Seattle, Washington.

It may appear that businesses supported integrated education environments so that they could more readily draw from highly qualified minority student bodies. This was one part of their argument.¹⁹⁵ But the primary reason businesses threw their weight behind integrated education was because they wanted applicants who could deal with multicultural consumers, workforces, and business partners.¹⁹⁶ As Professor David Wilkins explained, “the central argument [of the business interests in *Grutter*] is the importance of producing leaders who have had *experience with diversity*—not of producing leaders who *are themselves diverse*.”¹⁹⁷

General Motors’ amicus brief in *Grutter* summarized the three key reasons why businesses need employees with cross-cultural competence:

Such cross-cultural competence affects a business’ performance of virtually all of its major tasks: (a) identifying and satisfying the needs of diverse customers; (b) recruiting and retaining a diverse work force, and inspiring that work force to work together to develop and implement innovative ideas; and (c) forming and fostering productive working relationships with business partners and subsidiaries around the globe.¹⁹⁸

Each of these three multicultural aspects of the marketplace our children will enter—multicultural markets, multicultural workforce, and multicultural business partners—are examined next.

a. Multicultural Markets

Employers are, and increasingly will be, looking for applicants with cross-cultural competence who can create products for as well as serve, sell, and market to a multicultural consumer base. Minorities in the United States already

wield an impressive \$600 billion in annual purchasing power . . . a number that is increasing exponentially with

194. See Amicus Brief of General Motors, *supra* note 20, at 3.

195. See, e.g., *id.* at 23–24.

196. See David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”*: *The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1592 (2004) (explaining that American corporations wanted culturally competent leaders, not necessarily diverse leaders).

197. *Id.*

198. Amicus Brief of General Motors, *supra* note 20, at 12–13.

expanding minority populations. Moreover, with the global expansion of many businesses and the advent of internet shopping, the customer bases of many businesses now include people from many races and diverse cultures around the world.¹⁹⁹

The consuming power of minorities is growing, and businesses want employees who can respond to these unique buyers in this rapidly expanding market.

One way to accomplish this is to hire more minorities to connect with the rapidly expanding minority market. As discussed below, companies are certainly doing this. But another important avenue businesses are pursuing is hiring whites with cross-cultural competence. The business amici in *Grutter* recognized that individuals who have been educated in a diverse setting “are better able to develop products and services that appeal to a variety of consumers and to market offerings in ways that appeal to those consumers.”²⁰⁰ Businesses recognize that:

Having high-level employees who possess cross-cultural competence is essential for a business to profit from [the vast minority marketplace]. It is undeniable that consumers’ cultures can and often do influence their purchasing preferences. Businesses whose employees are able to identify and cater to these market preferences will prosper; those whose employees lack the sensitivity and domain knowledge to meet these diverse market demands will not.

To meet the challenge, businesses require managers and employees who understand that people from diverse backgrounds manifest diverse interests and who know how to translate that understanding into creative product development, community outreach, and marketing and advertising campaigns.²⁰¹

Whites raised in racial isolation simply cannot develop, market, and sell products to the growing multiracial market as effectively as whites exposed to multiple ethnicities. It is hard to conceive of a product for a minority group if a person has not been exposed to that group. It is difficult to develop marketing strategies for a racial and ethnic group with which a person has not interacted. It is particularly hard to create and implement sales strategies for a culture and race about which a person knows nothing. If our children lack multicultural competence and carry with them automatic racial biases, they will not effectively serve a

199. *Id.* at 13.

200. Amici Brief of 65 Leading Businesses, *supra* note 20, at 7.

201. Amicus Brief of General Motors, *supra* note 20, at 13–14.

multiracial consumer base. General Motors is acutely aware of this: “[A] business’ lack of sensitivity to culturally based beliefs may disaffect an entire target market and result in decreased sales.”²⁰²

Market studies, focus groups, and market segmentation reports are effective tools businesses employ to understand minority markets, but these tools are best utilized by people with in-depth, first-hand knowledge of the unique product preferences and buying habits of minorities. In supporting the affirmative action plan in Michigan, the DuPont Corporation argued that its success “is dependent on cultivating a workforce that understands the many needs that DuPont’s products serve.”²⁰³ IBM added that “[b]usiness globalization and growing diversity in the United States means that IBM customers reflect a variety of racial, ethnic, and other backgrounds. It is an imperative for IBM to understand and relate to the values of its customers.”²⁰⁴

Media companies pay special attention to their future employees’ ability to understand multiracial markets. They note that their sales “depend on [their] ability to communicate with people and communities reflecting increasingly diverse racial and ethnic backgrounds,” and they therefore “need talented college graduates, minority and non-minority, who have been educated in an environment that reflects the nation’s diversity.”²⁰⁵ MTV Networks also recognizes that their future employees “require an understanding of the racially and culturally diverse audiences that MTVN serves. Cultural communities constitute distinctive market niches.”²⁰⁶

The ability to serve and sell to a heterogeneous populace is important to small as well as large companies. The Louisville Area Chamber of Commerce, comprised of 2,900 businesses and home of the voluntary integration plan at question in *Parents Involved*, argued that “a company’s ability to address racial and cultural diversity issues is increasingly important. Success in business often depends on how well a company can deal with diverse customers and business partners.”²⁰⁷

Cross-cultural competence and freedom from unconscious bias are important for more than just marketing and selling goods; they are also critical in the provision of professional services. The Association of American Medical Colleges finds that cross-cultural competence “is just as important as scientific competence in the [effective] delivery of health care.”²⁰⁸ The landmark report *Unequal Treatment: Confronting*

202. *Id.* at 14–15.

203. Amici Brief of DuPont and IBM, *supra* note 192, at 5.

204. *Id.*

205. Amici Brief of Media Cos., *supra* note 192, at 2.

206. Amicus Brief of MTV Networks, *supra* note 192, at 6–7.

207. Amici Brief of Louisville Chamber of Commerce, *supra* note 193, at 9.

208. Donald L. Gabard, Commentary, *Increasing Minority Representation in Health Care Professions*, 36 J. ALLIED HEALTH 165, 165 (2007); see also ASS’N OF AM. MED. COLLS., CULTURAL COMPETENCE EDUCATION 1 (2005), available at <http://www.aamc.org/meded/tacct/culturalcomp.pdf>; ASS’N OF AM. MED. COLLS., DIV. OF DIVERSITY POLICY & PROGRAMS, EXPLORING DIVERSITY IN THE PHYSICIAN WORKFORCE:

Racial and Ethnic Disparities in Health Care, prepared by the Institute of Medicine at the request of Congress, found that unconscious implicit bias, stereotyping, and prejudice infected health care and prevented doctors from properly serving minority patients.²⁰⁹ The obvious harm, of course, falls on minority patients, but the inability to effectively care for an ever-growing segment of the population will inevitably hurt white doctors.

Medical doctors will be better equipped to care for patients of different racial/ethnic backgrounds if the doctor has sensitivity to the patient's cultural differences and nuances and is relatively free from racial bias. The Institute of Medicine recommended cross-cultural education of doctors to remedy the ineffective medical treatment provided to minorities.²¹⁰ Indeed, the president of the Association of American Medical Colleges stated in 2008 that one of the most important hurdles faced by medical education is teaching cultural competence to medical students.²¹¹ The same considerations apply to psychiatrists and psychologists, who must understand the unique mental health needs and perspectives of their heterogeneous clients to better serve their needs.²¹² If our children plan on being doctors, psychiatrists, and psychologists, they must develop interracial competence to include the increasing numbers of minorities among their patients.

Lawyers also need multiracial competence to better serve and attract an increasingly diverse client base.²¹³ “[C]ross-cultural communication has become a vital skill for lawyers to master.”²¹⁴ The Supreme Court recognized this when it held that Michigan Law School could “better prepare[] students for an increasingly diverse workforce and society, and better prepare[] them as professionals” in multiracial classrooms

BENEFITS, CHALLENGES AND FUTURE DIRECTIONS 1 (2007), available at https://services.aamc.org/publications/showfile.cfm?file=version85.pdf&prd_id=190&prv_id=231&pdf_id=85.

209. INST. OF MED. OF THE NAT'L ACADS., *supra* note 146, at 9–12; see also Barbara A. Noah, *A Prescription for Racial Equality in Medicine*, 40 CONN. L. REV. 675, 710–14 (2008).

210. See INST. OF MED. OF THE NAT'L ACADS., *supra* note 146, at 12.

211. Darrell G. Kirch, *A Word from the President: “Toward a More Perfect Union in Medicine,”* ASS'N OF AM. MEDICAL COLLS., http://www.aamc.org/newsroom/reporter/dec08/89120/dec08_word.html (last visited Feb. 11, 2011). Of course, the best way to create a culturally competent white doctor is through experiential learning with minority students, not formal cultural competency training or workshops. Gabard, *supra* note 208, at 165–66.

212. Amicus Brief of the APA, *supra* note 153, at 25–26.

213. See, e.g., Karia Stephens, Sandra Ibarra & Kim Moore, *Advocacy in the Legal System: Cultural Complexities*, in RACE, CULTURE, PSYCHOLOGY & LAW 419, 427–29 (Kimberley Holt Barrett & William H. George eds., 2005) (discussing importance of cross-cultural competence to lawyers); Nelson P. Miller, *Beyond Bias—Cultural Competence as a Lawyer Skill*, MICH. BAR J., June 2008, at 38, 39 (2008); Ida Abbott, *Fostering Cultural Competence Is Necessary—And Profitable*, THE COMPLETE LAWYER, <http://www.thecompletelawyer.com/fostering-cultural-competence-is-necessary-and-profitable.html> (last visited Feb. 8, 2011).

214. Jatrine Bentsi-Enchill, *Client Communication: Measuring Your Cross-Cultural Competence*, LEGALCAREEREXPO.COM, <http://www.legalcareerexpo.com/displayindustryarticle.cfm?articlenbr=32007&startrec=13> (last visited Feb. 10, 2011).

by reducing implicit bias and stereotypes.²¹⁵ Indeed, many law school clinics take an active approach to teaching students cross-cultural skills to better represent clients, and professional organizations, including the American Bar Association, similarly train practicing lawyers.²¹⁶

Whether our children are lawyers, marketers, doctors, politicians, salesmen, businessmen, or have any other job that relies on clients (which includes virtually all jobs), cross-cultural competence and the elimination of unconscious bias will be critical for their success in identifying with and understanding their multicultural clients. Our children's future business success will, more than ever, hinge on their ability to understand, communicate with, and relate to their diverse clients.

b. Multicultural Workplaces

Cross-cultural competence will also be necessary to succeed in a multicultural workplace. The workplace certainly will be more multicultural in the future. This is dictated by sheer demographics combined with smart business practices. In terms of demographics, one-third of new labor entering the United States workforce in 2000 was minority; in fifty years, this percentage will exceed the percentage of white work force entrants.²¹⁷ Corporations are also actively pursuing diversity as a business strategy to better serve multicultural consumers and business partners.²¹⁸ Companies are more devoted to diversity than at any time in their past and not only hire more minorities but also hire diversity consultants to promote the value of diversity generally.²¹⁹ Affirmative action policies, once looked at as a sacrifice of quality and productivity simply to get minorities in the door,²²⁰ are no longer viewed in such terms by businesses. Seeking a diverse workforce is not done for aesthetic purposes or to fulfill legal equal opportunity requirements—it is done to improve profits.

Entering the workforce free of stereotypes or bias and being

215. *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (quoting Amicus Brief of the American Educational Research Ass'n, *supra* note 141, at 3).

216. See, e.g., Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POV. L.J. 131, 132–33 (2006) (discussing clinic textbooks that include cross-cultural ideas); JMKCONTACT, INC., CULTURAL COMPETENCY FOR LAWYERS 3–5, available at http://www.jmkcontact.com/attachments/002_Cultural_Competency.pdf; Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 35–37 (2001) (identifying scholarship on the importance of and differing methods used to teach multicultural competence).

217. Amicus Brief of General Motors, *supra* note 20, at 15.

218. Amicus Brief of BP, *supra* note 192, at 3–5; Amicus Brief of Exxon Mobil, *supra* note 192, at 3–6; Amici Brief of 65 Leading Businesses, *supra* note 20, at 1 (“The existence of racial and ethnic diversity in institutions of higher education is vital to *amici*'s efforts to hire and maintain a diverse workforce . . . [S]uch a workforce is important to *amici*'s continued success in the global marketplace.”).

219. Wilkins, *supra* note 196, at 1556.

220. See *id.* at 1571.

comfortable working with minorities will be critical for our children to successfully navigate this heterogeneous work environment. Fortune 500 companies recognize that the ability to work in an interracial setting and communicate across interracial lines are “skills of great importance in our increasingly heterogeneous world.”²²¹ These companies will be looking for these skills when making hiring decisions.

Cross-cultural competence and freedom from unconscious bias are important traits for several reasons. First, a cross-racially competent worker will be a better recruiter of ethnic and minority talent. General Motors notes that the ability of businesses to recruit and retain talented labor “will depend upon the sensitivity of their managers to interracial and multicultural issues. . . . Indeed, companies that manage diversity well already are proving more successful in attracting and retaining top-quality workers.”²²² It is more difficult to attract and hire a diverse workforce if automatic bias and stereotypes are present. Indeed, employers still possess strong racial preferences in hiring because of enduring stereotypical beliefs, which leads to employment discrimination in hiring.²²³ An employee who harbors implicit prejudices may overlook a highly qualified, but racially different, candidate. Automatic bias will prevent white children from seeing quality through color when they are adults.

In one well-publicized study, employers were sent fictitious resumes of comparably qualified individuals but with either black signaling names, such as Lakisha, or white signaling names, such as Emily. Despite the similar resumes, white resumes received 50% more callbacks.²²⁴ Even if a minority is granted an interview, a white recruiter lacking cross-racial literacy may interpret the minority candidate as having worse skills or being a worse interviewee based on implicit bias.²²⁵ Businesses know that “[g]raduates who lack sensitivity to perspectives influenced by race and ethnicity will be ill-equipped to meet the fundamental challenge of attracting, retaining, and managing the human capital that businesses need to survive.”²²⁶ Cross-racial contacts in school make it much less likely that whites, as adults, will resist highly qualified racial minorities being admitted into coworker groups.²²⁷

221. Amici Brief of DuPont and IBM, *supra* note 192, at 10; *see also* Amici Brief of 65 Leading Businesses, *supra* note 20, at 6–7; Amicus Brief of MTV Networks, *supra* note 192, at 8–9.

222. Amicus Brief of General Motors, *supra* note 20, at 15.

223. Amicus Brief of the American Federation of Labor & Congress of Industrial Organizations, *supra* note 166, at 15–16.

224. Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991, 991 (2004). The authors estimated this effect to be equivalent to the benefit generated from eight years of additional experience. *Id.* at 992.

225. *See* Kang, *supra* note 145, at 1535.

226. Amicus Brief of General Motors, *supra* note 20, at 17.

227. Amicus Brief of the American Federation of Labor & Congress of Industrial

The second reason our children need cross-cultural competence is to better retain, develop, work with, and maximize a diverse workforce. Businesses understand that

a lack of exposure to persons of different races and ethnicities may result in economically inefficient, and improper . . . promotion decisions, influenced by false stereotypes rather than an objective assessment of true merit. Such decisions not only destroy morale, but deprive the business of the benefit of excellent workers' untapped potential.²²⁸

Unconscious bias prevents advancement of highly skilled minorities to key positions that would increase corporate competitiveness.²²⁹ This is occurring in law firms, where minorities are often pigeonholed into practice areas that match the stereotypical ideas of the areas in which minority lawyers should be interested, or at which they should excel. This consequently leads to a higher attrition rate and less efficient use of minority attorneys.²³⁰

Not only will the workforce be more heterogeneous due to demographics and hiring practices, but businesses are strategically creating multicultural work teams because they promote better analysis, creativity, innovation, and high quality decisions.²³¹ These teams must be able to work together in harmony to be effective—no small feat—and intercultural competence is critical for effectively working on or managing such teams.²³² According to General Motors,

The best ideas and products are created by teams of people who can work together without prejudice or discomfort. . . . The absence of such obstacles is of

Organizations, *supra* note 166, at 26.

228. Amicus Brief of General Motors, *supra* note 20, at 16.

229. See Faye Cocchiara, Myrtle P. Bell & Daphne Perkins Berry, *Latinas and Black Women: Key Factors for a Growing Proportion of the US Work Force*, 25 EQUAL OPPORTUNITIES INT'L 272, 280–82 (2006); Nilanjana Dasgupta, *Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations*, 17 SOC. JUST. RES. 143, 155–56 (2004).

230. Edward Iwata, *Legal Industry Still Lacking in Minorities*, USA TODAY, Sept. 9, 2004, at 3B, available at http://www.usatoday.com/money/2004-09-09-attorneys_x.htm.

231. See Amicus Brief of BP, *supra* note 192, at 2–5; Amicus Brief of Exxon Mobil, *supra* note 192, at 3–6; Amicus Brief of General Motors, *supra* note 20, at 24; Amici Brief of 65 Leading Businesses, *supra* note 20, at 7; Amicus Brief of MTV Networks, *supra* note 192, at 6; ROBERT ROSEN, *GLOBAL LITERACIES: LESSONS ON BUSINESS LEADERSHIP AND NATIONAL CULTURES* 150 (2000); Alexei V. Matveev & Richard G. Milter, *The Value of Intercultural Competence for Performance of Multicultural Teams*, 10 TEAM PERFORMANCE MGMT. 104, 104 (2004).

232. See Norman Dinges, *Intercultural Competence*, in 1 HANDBOOK OF INTERCULTURAL TRAINING: ISSUES IN THEORY AND DESIGN 176, 176–200 (Dan Landis & Richard W. Brislin eds., 1983); Matveev & Milter, *supra* note 231, at 104.

special import in the new work environments of cutting-edge businesses, which stress teamwork and the free movement of ideas between people.²³³

Just as with hiring and promotion, white children's unconscious prejudices may prevent them from seeing past the color of the skin to the quality of the idea. "[M]anagers unskilled in considering diverse perspectives may fail to recognize excellent ideas when they come from unexpected sources."²³⁴ Individuals become quality-blind when the idea comes from a person of color.

A white employee who has not experienced the interracial interactions bound to occur in the multicultural workplace will not be efficient or productive because they will be uneasy, anxious, and worried about interactions with people of different races.²³⁵ This low-level unease "may impede productivity and prevent the formation of the close working relationships that make a business 'hum.'"²³⁶ At its worst, a white worker not exposed to different races is more likely to engage in actionable discrimination in the workplace. The AFL-CIO believed that creating integrated schools was a compelling interest because it would prevent workplace discrimination by eliminating automatic bias and prejudice.²³⁷

Workers with a multiracial education, though, will decrease incidents of overt racial discrimination and contribute to a racially positive work environment.²³⁸ They will be more at ease in the multiracial workplace and on multicultural work teams.²³⁹ They will recognize brilliant ideas from any source, work seamlessly in multiracial workgroups, and hire and promote based on qualifications more than color.

For these reasons, small businesses as well as Fortune 500 companies will seek employees with multicultural skills developed in integrated schools. The Louisville Area Chamber of Commerce noted that racially diverse schools prepared "students for a racially diverse workforce"²⁴⁰ and spoke to the "importance of racial integration in

233. Amicus Brief of General Motors, *supra* note 20, at 15–16.

234. *Id.* at 16; *see also* Amicus Brief of MTV Networks, *supra* note 192, at 8; Jolls & Sunstein, *supra* note 149, at 972.

235. *See* Amici Brief of Wells, *supra* note 164, at 19.

236. Amicus Brief of General Motors, *supra* note 20, at 16; *see* Amicus Brief of MTV Networks, *supra* note 192, at 8.

237. *See* Amicus Brief of the American Federation of Labor & Congress of Industrial Organizations, *supra* note 166, at 2.

238. *See* Amici Brief of 65 Leading Businesses, *supra* note 20, at 7.

239. *See* Amicus Brief of National Parent Teacher Ass'n, *supra* note 164, at 15; Brief for Religious Organization and Affiliated Individuals as Amici Curiae Supporting Respondents at 12, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, No. 1, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2882697, at *12; Amici Brief of Wells, *supra* note 164, at 18; Amicus Brief of the American Educational Research Ass'n, *supra* note 141, at 14–15.

240. Amici Brief of Louisville Chamber of Commerce, *supra* note 193, at 7.

education as it prepares students for working in a diverse workplace.”²⁴¹ The Chamber concluded that “if we want our children to live and work in a world where they are going to be dealing with people who don’t necessarily look and/or sound like they do, then what better way to prepare them for that than to be in that setting in the school building because they are going to get it in the workplace.”²⁴² American businesses are acutely aware that cross-cultural competence cannot be taught from a book and that it derives only from multiracial contact in schools and will be hiring candidates with racially integrated educational backgrounds.²⁴³

In sum, white workers educated in multiracial classrooms will be better employees and managers than white workers educated exclusively with whites. White graduates of integrated primary and secondary schools have already recognized this benefit in their working lives. They uniformly report that “integrated education better prepared them for living and working in an increasingly diverse American society and global economy. Indeed, subjects drew on their intergroup skills, honed during their K-12 years, more heavily for their occupations than for any other aspect of their lives.”²⁴⁴

c. Multicultural Business Partners

Finally, multicultural competence is increasingly necessary in cultivating global business partners in the new globalized economy. In the globalized, interlinked economy, businesses must increasingly connect with international partners to realize competitive advantage.²⁴⁵ Thomas Friedman explained the growth and permanence of a global economy in *The World is Flat* and concluded that the future “is going to be driven by groups of individuals . . . of a much more diverse background Now we are going to see the real human mosaic emerge—from all over the world . . . to drive the next generation of innovation.”²⁴⁶ Our children must be prepared to comfortably interact with and relate to this racial and cultural mosaic.

While interracial competence is critical in all international business endeavors, from the small business sourcing in international markets to the Fortune 500 companies outsourcing significant operations, it is particularly important in the technical and scientific industries. As IBM and DuPont explained,

241. *Id.* at 10.

242. *Id.* at 11.

243. Amicus Brief of General Motors, *supra* note 20, at 10, 12, 17, 19.

244. Amici Brief of Wells, *supra* note 164, at 22–23.

245. Kenneth J. Petersen, David J. Frayer & Thomas V. Scannell, *An Empirical Investigation of Global Sourcing Strategy Effectiveness*, 36 J. SUPPLY CHAIN MGMT. 29, 29 (2000); *see also* Debra Sparks, *Partners*, BUS. WK., Oct. 25, 1999, at 106.

246. FRIEDMAN, *supra* note 19, at 75.

The advancement of science has become an increasingly collaborative enterprise, and science and engineering have increasingly become global enterprises that cannot be limited by boundaries, backgrounds, races or cultures. . . . [T]he need for scientists and engineers to work with individuals of other races and ethnicities becomes an inescapable reality.²⁴⁷

Indeed, these companies believe that cross-cultural competence derived from integrated educational settings is necessary to maintain America's economic leadership.²⁴⁸

Because our future business partners will be global as well as local, our children's ability to interact and understand people of different races and cultures is a skill that will be in high demand. Friedman noted that,

Today, your first management job out of business school could be melding the specialties of a knowledge team that is one-third in India, one-third in China, and a sixth each in Palo Alto and Boston. That takes a special kind of skill, and it is going to be much in demand in the flat world.²⁴⁹

Robert Rosen, a psychologist and businessman, concluded after interviewing nearly one hundred CEOs and one thousand senior executives worldwide that pacesetters in the new global economy "mobilize people in culturally mindful ways" and corporations will place a high value on multicultural experiences and competencies.²⁵⁰ The RAND Corporation also concluded that "[c]rosscultural competence is the *critical new human resource requirement* for corporations that have espoused a global business strategy."²⁵¹ In 1994, RAND noted that multicultural skills were "desirable" for moving up the career ladder, and "[i]n the future, such requirements are expected to be more widespread at ever lower levels of the corporation."²⁵²

It is not only influential business researchers who predict a demand for workers with cross-cultural skills; multinational businesses are already seeking these abilities in applicants. They recognize that a multiracial education is a strong indication of cross-cultural competence. Companies such as Microsoft, 3M, Coca-Cola, Dow, Intel, and sixty other corporations learned through experience that,

247. Amici Brief of DuPont and IBM, *supra* note 192, at 12.

248. *See id.* at 15–16.

249. FRIEDMAN, *supra* note 19, at 443.

250. ROSEN, *supra* note 231, at 373; *see also* Steve Sizoo & Hendrick Serrie, *Developing Cross-Cultural Skills of International Business Students: An Experiment*, 31 J. INSTRUCTIONAL PSYCHOL. 160, 160 (2004).

251. BIKSON & LAW, *supra* note 20, at 24 (emphasis altered); *see also id.* at 51 (multicultural competence is "the most important new attribute for future effective performance in a global marketplace").

252. *Id.* at 26.

[I]ndividuals who have been educated in a diverse setting are more likely to succeed [in the global marketplace] because they can make valuable contributions to the workforce in several important and concrete ways. . . . [M]anagers with cross-cultural experience [are] better able to work with business partners, employees, and clientele in the United States and around the world.²⁵³

These businesses find racial and ethnic diversity in education “vital to [their] efforts to . . . employ individuals of all backgrounds who have been educated and trained in a diverse environment.”²⁵⁴ General Motors echoes the desire to find applicants educated in multiracial schools: “Establishing trust across racial and cultural lines is a serious corporate challenge for all businesses that have international aspirations. Graduates from our Nation’s elite academic institutions who have been immersed in cross-cultural learning environments will be better prepared to meet it.”²⁵⁵

Sending white children to school with Hispanics and blacks today will *not* make them understand Indian and Chinese business partners in the future, but it will make them better *able* to understand these partners. Cross-cultural competence requires an openness and adaptability to different cultures.²⁵⁶ Students who learn how to understand and deal with one culture are better at learning and dealing with new cultures. They are simply more adaptable and more willing to learn the new culture. Cross-cultural competence is like any skill—it improves with use and practice.

White children are at a significant competitive disadvantage with minorities in this regard. Unlike whites, minorities already live in racially diverse neighborhoods, attend multiethnic schools, have significant interracial contact, are creating interracial networks and friendships and are honing their cross-cultural competence skills.²⁵⁷ Even in college, where there is often more interracial contact opportunity for whites than in primary and secondary school, whites, unlike minority students, spend most of their time with same-race friends.²⁵⁸ This results in minorities being more comfortable than whites in racially integrated workplaces and neighborhoods.²⁵⁹ As a

253. Amici Brief of 65 Leading Businesses, *supra* note 20, at 7; *see also id.* at 2, 5.

254. *Id.* at 1.

255. Amicus Brief of General Motors, *supra* note 20, at 17; *see also id.* at 2, 4, 12.

256. BIKSON & LAW, *supra* note 20, at 26.

257. Nancy Denton, *From Segregation to Integration: How Do We Get There?*, in *THE INTEGRATION DEBATE: COMPETING FUTURES FOR AMERICAN CITIES* 23, 33–36 (Chester Hartman & Gregory D. Squires eds., 2010).

258. Guinier, *supra* note 47, at 118.

259. *See* Charles, *supra* note 151, at 2.

consequence, white children are lagging behind on a skill that is becoming more critical in the domestic and global marketplace. The black/white and Hispanic/white academic achievement gaps are well known, but whites are on the wrong side of the cross-cultural competence gap.

General Motors justified its support of Michigan's affirmative action program to reduce this significant white skill deficit:

A diminution of diversity in institutions of higher education would mean that a huge percentage of their graduates would arrive in the workplace having grown up in racially and ethnically homogeneous neighborhoods and attended racially and ethnically homogeneous schools: environments that empirical studies show breed prejudice and stereotypes. Having been "surrounded only by the likes of themselves," such students are likely to hold highly parochial and limited perspectives.²⁶⁰

White children's racial isolation guarantees that they will enter the multiracial business and the professional world harboring unconscious bias and stereotypes, lacking cross-cultural competence, and being uncomfortable working with minorities. This is why white children *need* multiracial schools and why efforts to integrate schools benefit white children as much as, if not more than, minorities.²⁶¹

Thomas Friedman persuasively argued that if parents want their children to succeed in the new heterogeneous economy, then they need to be good at managing and interacting with people of different races and ethnicities, though he admits that he is "not sure how you teach [this] as part of a classroom curriculum, but someone had better figure it out."²⁶² It has already been figured out—parents need only integrate schools to teach their the children skills necessary to navigate effectively in the multicultural market. Indeed, American children are uniquely situated to become cross-culturally competent because they live in one of the most diverse nations in the world. We have all the tools needed to provide our children with the critical new skills they need in their future professional lives. The question now is this: how do we provide it to them?

IV. STEPS TO ACHIEVE MULTICULTURAL COMPETENCE

White parents hold the political clout to meaningfully affect the racial composition of their children's schools. Despite the setback to

260. Amicus Brief of General Motors, *supra* note 20, at 20 (quoting Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 312 n.48 (1978) (internal quotation marks and external citation omitted)).

261. See Amicus Brief of National Parent Teacher Ass'n, *supra* note 164, at 14; see also Amici Brief of 553 Social Scientists, *supra* note 133, at 6–7.

262. FRIEDMAN, *supra* note 19, at 306.

voluntary integration plans in *Parents Involved*, it is not the law that stands in the way of racially integrating schools; it is the attitudes of white parents.²⁶³ White parents must play a critical role in the task of integrating the schools or the job cannot be accomplished. Even if white parents lack the political will to change the schools, they still possess the means to exercise school choice for their children with an eye towards diversity. While striving to change local education institutions may be too daunting a job for individual white families to tackle, their typically middle-class status means they have the financial ability to choose their schools—either by moving to a particular school district, choosing non-neighborhood schools, or selecting charter or private schools—and they should consider the racial diversity of a school when exercising that choice.

This Part explores various strategies parents can employ to develop their children's multiracial competence. But before doing so, there is one final hurdle that stands in the way of actively seeking integration: parents' limited conception of what constitutes a "good school." If parents judge schools simply based on academic factors such as standardized test scores, they will not account for the social lessons derived from education such as cross-racial competence when evaluating a school. With a circumscribed conception of the purposes of education, white parents will support education policies and select schools based exclusively on academics and lose sight of the socialization component. This limited view of what gets learned at schools is neither historically nor currently accurate.

The purpose of education throughout our nation's history, and still today, has been academic as well as social in nature; this includes the socialization of students to reflect values of racial and ethnic harmony.²⁶⁴ The Supreme Court in the mid-20th Century consistently re-affirmed the important socializing aspects of public education. It stated in *Illinois ex rel. McCollum v. Board of Education* that public schools are "the most powerful agency for promoting cohesion among a heterogeneous democratic people."²⁶⁵ The Court later re-affirmed the idea in *Brown v. Board of Education* by holding that public education was "the very foundation of good citizenship [and the] principal instrument in awakening the child to cultural values . . . and in helping

263. See Frankenberg & Le, *supra* note 64, at 1021; see also LISA CHAVEZ & ERICA FRANKENBERG, C.J. EARL WARREN INST. ON RACE, ETHNICITY & DIVERSITY, *INTEGRATION DEFENDED: BERKELEY UNIFIED'S STRATEGY TO MAINTAIN SCHOOL DIVERSITY*, at iii, 2 (2009) (explaining how Berkeley Unified School District created diverse schools despite the *Parents Involved* decision and Proposition 209 in California banning racial considerations by public institutions); Daniel Kiel, *Accepting Justice Kennedy's Dare: The Future of Integration in a Post-PICS World*, 78 *FORDHAM L. REV.* 2873, 2873 (2010) (explaining how schools can successfully integrate even after *Parents Involved*).

264. See Siegel, *supra* note 140, at 788, 823–24; see also FRANKENBERG, *A MULTIRACIAL SOCIETY*, *supra* note 71, at 11; Ryan, *supra* note 77, at 143.

265. 333 U.S. 203, 216 (1948).

him to adjust normally to his environment.”²⁶⁶ Today, the Supreme Court is split on the role schools play in teaching social skills to our children.²⁶⁷ But make no mistake, the social education that occurs at school has always been, and will always be, just as important as the academics.²⁶⁸ Parents lost sight of the socialization component of education during the past two decades with the rise of the standards-based accountability movement. That movement culminated with the passage of the No Child Left Behind Act (NCLB), which required states to grade their schools based solely on standardized reading, math, and science test scores and graduation rates.²⁶⁹ These school “grades” are published on Web sites and annually in newspapers²⁷⁰ and have become the sole determinant for judging school quality. As a result, parents began viewing schools as mere academic factories to be judged by the academic abilities of each student produced, with little care if the students fit or worked well together. Parents forgot the important social skills that schools should impart to their children.²⁷¹

If racial integration is to occur in the schools, it is imperative that parents re-appreciate this important role of education. Parents need not recognize the civic value—the public good—of education, which is also significant.²⁷² Parents simply must recognize that the individual, private good that derives from education includes more than mere academics.

A. *Support Voluntary Integration Efforts*

Surveys show that Americans favor diverse schools over segregated

266. 347 U.S. 483, 493 (1954).

267. *Compare* Grutter v. Bollinger, 539 U.S. 306, 347 (2003) (Scalia, J., concurring in part and dissenting in part) (finding that “‘cross-racial understanding’” and “‘better prepar[ation] of] students for an increasingly diverse workforce and society’” was not the role of schools, but instead a “‘lesson of life’”), *with id.* at 330 (majority opinion) (finding that, “[S]tudent body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.” (internal quotations marks and external citations omitted)).

268. *See* Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 426 F.3d 1162, 1195 (9th Cir. 2005) (en banc) (Kozinski, J., concurring); Carl Bankston III & Stephen J. Caldas, *Majority African American Schools and Social Injustice: The Influence of De Facto Segregation on Academic Achievement*, 75 SOC. FORCES 535, 553 (1996); Hinckley A. Jones-Sanpei, *Public School Segregation and Social Capital*, 12 J. GENDER RACE & JUST. 329, 332–35, 346–47 (2009); Minow, *supra* note 55, at 639–40; Ryan, *supra* note 77, at 143. *See generally* MIKE ROSE, WHY SCHOOL? RECLAIMING EDUCATION FOR ALL OF US (2009) (describing schools’ broad purposes including students’ social, civic, and ethical development).

269. No Child Left Behind Act, 20 U.S.C. § 6311(b)(1)–(3) (2006).

270. For example, the Florida Department of Education’s Web site provides links for its annual school accountability reports. FLA. DEP’T OF EDUC., FLORIDA SCHOOL GRADES (2005), available at <http://schoolgrades.fldoe.org/reports>.

271. *See* ROSE, *supra* note 268, at x (describing how the purpose of school has been narrowed to a test score); *see also* Frankenberg & Le, *supra* note 64, at 1034–38; Garda, *supra* note 55, at 66–67, 89; Ryan, *supra* note 77, at 132, 142–44.

272. Jones-Sanpei, *supra* note 268, at 330–35.

schools,²⁷³ but our actions speak louder than our poll answers. White resistance to integration is as strong as ever:

There is a new emboldenment among the relatively privileged to isolate their children as completely as they can from more than token numbers of the children of minorities. In some cities, . . . young middle-class white families have successfully been pressuring their school boards to carve out almost entirely separate provinces of education for their children.²⁷⁴

Whites have created a virtually impenetrable boundary around their racially isolated suburban schools by opposing all means of integration—busing, transfers under the NCLB, and limiting school choice options.²⁷⁵ For example, the whites in Milton, Massachusetts and Macon, Georgia are mounting fierce opposition to plans aimed to increase racial diversity in the schools.²⁷⁶ This opposition to integration plans must end. It is harming white children's future opportunities.

One reason white parents oppose racial integration is because they believe there is a link between high minority concentrations and lower school quality. They fear that increasing minority enrollment will decrease the academic performance of their children.²⁷⁷ But race has nothing to do with the academic quality of a school. Increasing racial diversity only decreases school quality if it introduces large numbers of students of low socioeconomic status, i.e., students from families that are poor with parents who have low educational attainment and occupational status. It is the socioeconomic status of a student's peers,

273. THE CIVIL RIGHTS PROJECT, *supra* note 141, at 1; *see* KOZOL, *supra* note 69, at 233; HOWARD SCHUMAN ET AL., RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATION 103–05 (rev. ed. 1997); ORFIELD & LEE, RACIAL TRANSFORMATION, *supra* note 71, at 5; Susan Eaton, *Diversity's Quiet Rebirth*, EDUC. WK., Aug. 18, 2008, <http://www.edweek.org/ew/articles/2008/08/18/01eaton-com.html>; Erica Frankenberg & Chungmei Lee, *Charter Schools and Race: A Lost Opportunity for Integrated Education*, 11 EDUC. POL'Y ANALYSIS ARCHIVES 1, 10 (2003), available at <http://epaa.asu.edu/ojs/article/view/260> (citing Gallup Poll numbers to conclude that the public supports integration); Turner, *supra* note 59, at 329–31.

274. KOZOL, *supra* note 69, at 135; *see also*, e.g., Margaret C. Hobday, Geneva Finn & Myron Orfield, *A Missed Opportunity: Minnesota's Failed Experiment with Choice Based Integration*, 35 WM. MITCHELL L. REV. 936, 951 (2009).

275. *See* James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2051–52 (2002); *see also* KOZOL, *supra* note 69, at 30–31; Gary Orfield, *Turning Back to Segregation*, in DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF *BROWN V. BOARD OF EDUCATION* 1, 12 (Gary Orfield & Susan E. Eaton eds., 1996); Frankenberg & Le, *supra* note 64, at 1070.

276. Robinson, *supra* note 174, at 281–82; *see also* Hobday, Finn & Orfield, *supra* note 274, at 968 (describing parental opposition to the increase of minority students into the local school).

277. *See* KOZOL, *supra* note 69, at 158 (describing a predominantly white district's parents' reaction to an integration plan that the incoming students are a “low-achieving, dysfunctional, criminal bunch” (external citation omitted)).

not their race, that influences educational attainment.²⁷⁸ Even then, the academic performance of middle-class students does not decline until low socioeconomic students constitute more than 50% of the student population.²⁷⁹

In other words, it is poverty concentrations, not racial concentrations, that white parents should worry about. Sending children to schools that are all white but where more than half are from low socioeconomic status families is much worse for children's academic attainment than sending them to racially mixed schools with lower concentrations of poor students. And while there is a correlation between socioeconomic status and race, it is far from perfect. In 2006, only 10% of white students lived in poor households, whereas 33% of black students and 26% of Hispanic students lived in poor households.²⁸⁰ Forty-four percent of white students have parents with at least a bachelor's degree, in contrast to only 21% of black students and 15% of Hispanic students.²⁸¹ So while the correlation between race and low socioeconomic status exists, it is far from exact and may be weakening.²⁸² Parents should worry about poverty concentrations when selecting children's schools, not racial concentrations; the two are not one and the same.

Because court-ordered desegregation is at an end, any future integration efforts will have to be voluntary efforts by school boards.²⁸³ School boards can create diverse schools in numerous ways. They can locate schools or redraw district lines in ways to increase racial diversity. They can create socioeconomic diversity plans that assign students to schools based on income levels, which often leads to racial

278. JAMES S. COLEMAN ET AL., U.S. DEP'T OF HEALTH, EDUC. & WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 304 (1966). For more recent research regarding the link between educational performance and socioeconomic status of the student and the student's peers, see John Charles Boger, *Education's "Perfect Storm"? Racial Resegregation, High Stakes Testing, and School Resource Inequities: The Case of North Carolina*, 81 N.C. L. REV. 1375, 1412–23 (2003) and Molly S. McUsic, *The Future of Brown v. Board of Education: Economic Integration of the Public Schools*, 117 HARV. L. REV. 1334, 1355–58 (2004).

279. Richard D. Kahlenberg, *Socioeconomic School Integration Through Public School Choice: A Progressive Alternative to Vouchers*, 45 HOW. L.J. 247, 258 (2001).

280. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., THE CONDITION OF EDUCATION 2008: INDICATOR 8: ELEMENTARY/SECONDARY EDUCATION at 11 (2008) [hereinafter INDICATOR 8: ELEMENTARY/SECONDARY EDUCATION], available at <http://nces.ed.gov/pubs2008/2008031.pdf>. Non-poor families make at least 200% more than the poverty threshold. *Id.* at 12.

281. *Id.* at 11.

282. See Sean F. Reardon et al., *Implications of Income-Based School Assignment Policies for Racial School Segregation*, 28 EDUC. EVALUATION & POL'Y ANALYSIS 49, 56–57 (2006); see also INDICATOR 8: ELEMENTARY/SECONDARY EDUCATION, *supra* note 280, at 11 (noting the number of black and Hispanic students from poor households has decreased during the last twenty years while their parents' educational attainment has increased).

283. See Derek W. Black, *The Uncertain Future of School Desegregation and the Importance of Goodwill, Good Sense, and a Misguided Decision*, 57 CATH. U. L. REV. 947, 948 (2008).

diversity.²⁸⁴ They can accept transfers of students from failing schools in other districts pursuant to the NCLB, though few do.²⁸⁵ School boards can also still consider race-based student assignment plans, though the legal hurdles are much higher post-*Parents Involved* and few districts are planning on pursuing such plans.²⁸⁶ Any voluntary integration efforts almost necessarily must contain an interdistrict transfer component because most segregation today occurs between, not within, school districts.²⁸⁷ Such interdistrict integration plans are utilized sparingly across the country due to initial opposition, although once the plans have been implemented, white parents fight hard to preserve them because of the social benefits received by their children.²⁸⁸ For example, mere days before the *Parents Involved* decision, parents in thirteen St. Louis suburbs voted to maintain their interdistrict desegregation plan at great financial cost.²⁸⁹ Each of these measures, and any others that increase children's exposure to racial diversity, should be supported.

This Article arms parents with arguments that should persuade policymakers to pursue integration measures. If school boards and legislators are made aware of the academic and social benefits of multiracial schools for white students, they are more likely to pursue them. Indeed, in the districts with voluntary integration plans, white school board members and parents at the grassroots level played a critical role in launching the programs.²⁹⁰ Interest convergence teaches that touting only the minority benefits of integration will not persuade decisionmakers to act. It is the white interests that must be advanced, and they are significant.

White parents should also oppose amendments to state constitutions that prohibit public schools and universities from considering race in admission practices. These affirmative action prohibitions have passed

284. See generally Richard D. Kahlenberg, *Socioeconomic School Integration*, 85 N.C. L. REV. 1545, 1551–69 (2007) (describing voluntary plans for socioeconomic school integration); McUsic, *supra* note 278, at 1359–74 (describing school finance lawsuits and exclusionary zoning challenges as two possible litigation avenues for integration in education); Eboni S. Nelson, *The Availability and Viability of Socioeconomic Integration Post-Parents Involved*, 59 S.C. L. REV. 841, 841 (2008) (describing the constitutionality of using students' socioeconomic status as a measure for diversity).

285. Garda, *supra* note 55, at 34–35.

286. See Black, *supra* note 138, at 968–73 (suggesting that developing educational research may allow some racial classifications to withstand judicial scrutiny); see also Frankenberg & Le, *supra* note 64, at 1021 n.29; Robinson, *supra* note 174, at 293–94. *But see* Am. Civil Rights Found. v. Berkeley Unified Sch. Dist., 90 Cal. Rptr. 3d 789, 792 (1st DCA 2009) (holding that a Berkeley Unified School District plan that considered student diversity in assigning students did not violate Proposition 209 of the California Constitution prohibiting race-based governmental decisionmaking).

287. WELLS ET AL., *supra* note 64, at 1.

288. *Id.* at 7–8.

289. *Id.* at 20.

290. *Id.* at 12–13.

in several states and are being pushed in many more.²⁹¹ Middle-class whites typically support such prohibitions.²⁹² They oppose affirmative action in education, even though the actual numbers of whites affected is miniscule, because they believe it provides minorities a leg-up at their children's expense.²⁹³ Like the Supreme Court, researchers, and American businesses, white parents need to recognize that affirmative action in education is primarily for the benefit of white children and oppose these race-neutral amendments.

B. Consider Diversity when Choosing Neighborhoods and Schools

With the understanding that cross-cultural competence is a critical skill for children's futures, parents should obviously consider racial diversity when selecting where to live and send their children to school. White parents already make race-conscious decisions when selecting schools, but improperly view it as a negative instead of a positive. White parents perpetuate racial segregation by their choices on where to live and where to send their kids to school—decisions often made based on racial considerations.²⁹⁴ As an example, white parents in Hot Spring County, Arkansas are suing to be able to transfer out of their district that is one-third black and into schools that are 90% white.²⁹⁵ White parents improperly perceive increased racial diversity as decreased quality. This perception must be broken, and whites must recognize that their kids receive more, not less, educational benefit from multiracial schools.

When selecting schools, parents also must not overly rely on external measures of school quality, such as NCLB report cards or state assessments. These quality measures serve only a limited value in assessing the overall benefit a school will provide their children. They focus exclusively on academics with no consideration of the important social skills, such as cross-cultural competence, learned at school. White parents should certainly not send their children to racially diverse schools that are academically failing. Few want to be in those schools. White parents simply should consider, as one important factor, the racial diversity and composition of the school, and consider it as a plus. With

291. See, e.g., CAL. CONST. art. I, § 31; MICH. CONST. art. I, § 26 (2006); NEB. CONST., art. I, § 30; WASH. REV. CODE § 49.60.400 (1998).

292. See Carol M. Swain et al., *Life After Bakke Where Whites and Blacks Agree: Public Support for Fairness in Educational Opportunities*, 16 HARV. BLACKLETTER L.J. 147, 173–74 (2000); Guinier, *supra* note 47, at 150, 189–90.

293. See KOZOL, *supra* note 69, at 58; Guinier, *supra* note 47, at 150–51.

294. See Frankenberg & Le, *supra* note 64, at 1039; see also CLOTFELTER, *supra* note 63, at 81–138, 181–85 (describing “white flight” and factors determining parents’ school choice); Eboni S. Nelson, *Parents Involved & Meredith: A Prediction Regarding the (Un)Constitutionality of Race-Conscious Student Assignment Plans*, 84 DENV. U. L. REV. 293, 309–10 (2006); Roithmayr, *supra* note 47, at 198–206; Ryan & Heise, *supra* note 275, at 2091–98; Amy Stuart Wells & Erica Frankenberg, *The Public Schools and the Challenge of the Supreme Court’s Integration Decision*, 89 PHI DELTA KAPPAN 178, 184–85 (2007).

295. Ginny Laroe, *Transfer Limit Based on Race Splits Schools*, ARKAN. DEMOCRAT-GAZETTE, Jan. 25, 2009 (Northwest Arkansas section).

strong financial resources, white parents have the luxury of choosing their schools by choosing where to live. And with the myriad of options created by the school choice movement—charter schools, magnet schools, open enrollment schools, and traditional neighborhood schools—the opportunity exists as never before to exercise school choice with a view toward diversity.²⁹⁶

C. Support Residential Integration

The primary reason our schools are segregated today is because neighborhoods are segregated. Indeed, residential segregation is greater today than it was in the pre-*Brown* era and is worsening.²⁹⁷ Because districts typically assign students to neighborhood schools, the current residential segregation is the most significant factor preventing school integration.²⁹⁸

Whites are historically resistant to residential integration. While whites are willing to live with minorities, they strongly prefer same-race neighborhoods; in contrast, nonwhites prefer substantially more racially integrated neighborhoods.²⁹⁹ Based on these preferences, it is not surprising that even as minorities follow white flight out of urban centers, patterns of segregation are replicating themselves in suburbs.³⁰⁰

To stem this tide and receive the diversity benefits of integrated neighborhood schools, it is critical to support efforts to increase residential integration.³⁰¹ Because diverse neighborhoods result in diverse schools, white parents should consider the racial diversity of neighborhoods when moving. Whites avoid racially integrated neighborhoods because of neighborhood stereotyping.³⁰² Implicit racial bias leads whites to believe that even moderately diverse communities

296. A choice among public schools, apart from simply the neighborhood school, was available to nearly half of families in 2007; parents are increasingly exercising school choice options. THE CONDITION OF EDUCATION 2009, *supra* note 73, at 78.

297. See CLOTFELTER, *supra* note 63, at 80–81 (discussing an increase in segregation among cities between 1970 and 1980 and a leveling-off between 1980 and 1990); Boger, *supra* note 278, at 1401–03 (discussing that even though there has been a downward trend in residential segregation, the overall levels of residential segregation for blacks in many metropolitan areas remains very high); Ryan & Heise, *supra* note 275, at 2093.

298. See Brief for Housing Scholars and Research & Advocacy Organizations as Amici Curiae Supporting Respondents at 8, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915), 2006 WL 2927078, at *8 [hereinafter Amici Brief of Housing Scholars and Research & Advocacy Organizations]; see also KOZOL, *supra* note 69, at 32; ORFIELD & LEE, HISTORIC REVERSALS, *supra* note 59, at 41; Goodwin Liu & William L. Taylor, *School Choice to Achieve Desegregation*, 74 FORDHAM L. REV. 791, 792 (2005); James E. Ryan, Brown, *School Choice, and the Suburban Veto*, 90 VA. L. REV. 1635, 1644 (2004).

299. Charles, *supra* note 151, at 2.

300. See ORFIELD & LEE, HISTORIC REVERSALS, *supra* note 59, at 40–42; Erwin Chemerinsky, *Separate and Unequal: American Public Education Today*, 52 AM. U. L. REV. 1461, 1466, 1468–69 (2003); Frankenberg & Le, *supra* note 64, at 1026–27.

301. See Charles, *supra* note 151, at 2.

302. Ingrid Gould Ellen, *Supporting Integrative Choices*, 17 POVERTY & RACE 3, 3 (2008).

will become all minority and that all-minority neighborhoods are dilapidated, crime ridden, unacceptable places to live.³⁰³ Like most stereotypes, these are simply not true, and whites are depriving their children of opportunities to develop cross-cultural competence.³⁰⁴

Whites should also strive to include minorities in their neighborhoods or, at the very least, oppose practices that prevent them from moving in. Zoning practices, such as low-density regulations prohibiting multifamily housing, private home ownership covenants, and steering, redlining, and block-busting practices by real estate agents, screen minorities out of neighborhoods.³⁰⁵ These measures should be opposed because they prevent minorities from attending white children's schools.

If white parents are unable, or unwilling, to support voluntary integration plans, choose multiracial schools, or oppose the tools of residential segregation, they should at the very least find alternative avenues for providing their children with interracial contact on equal terms. Whether it is through sports teams, afterschool activities, or religious groups, parents must develop their children's cross-cultural competence skills. These infrequent contacts are an inadequate substitute for multiracial schools, but they are better than nothing.

D. *Oppose School Tracking*

For those parents lucky enough to have their children in high-performing multiracial schools, it is imperative to oppose ability tracking. Even in a multiracial school, tracking and special education placements work to keep the races separated.³⁰⁶ For example, one Texas school tracked whites and Hispanics into separate wings for the purpose of luring more whites into the school.³⁰⁷ Tracking whites and Asians

303. *Id.*; Charles, *supra* note 151, at 5.

304. *See* Ellen, *supra* note 302, at 3–4.

305. *See* Amici Brief of Housing Scholars and Research & Advocacy Organizations, *supra* note 298, at 17–18 (explaining link between low-density zoning regulations and racial exclusion by limiting development of rental housing); *id.* at 18–19 (explaining how “steering” works to maintain residential segregation); *see also* KOZOL, *supra* note 69, at 224; Shanna Smith & Cathy Cloud, *Welcome to the Neighborhood? The Persistence of Discrimination and Segregation*, in *THE INTEGRATION DEBATE: COMPETING FUTURES FOR AMERICAN CITIES* 9, 12–18 (Chester Hartman & Gregory D. Squires eds., 2010); Dyson, *supra* note 131, at 153; Ellen, *supra* note 302, at 10.

306. *See* KENNETH J. MEIER ET AL., *RACE, CLASS, AND EDUCATION: THE POLITICS OF SECOND-GENERATION DISCRIMINATION* 22–28 (1989) (discussing segregation through tracking within diverse schools); *see also* William A. Darity, Jr. & Alicia Jolla, *Desegregated Schools with Segregated Education*, in *THE INTEGRATION DEBATE: COMPETING FUTURES FOR AMERICAN CITIES* 99, 102–10 (Chester Hartman & Gregory D. Squires eds., 2010); Minow, *supra* note 55, at 637; Nelson, *supra* note 174, at 595, 606–12 (identifying scholarship discussing voluntary racial separation within diverse schools and discussing current tracking practices that segregate races within schools).

307. Kent Fischer, *Parents Say Preston Hollow School Not Segregated*, DALL. MORNING NEWS, Nov. 19, 2006, at 1A.

into advanced classes and Hispanic and black students into lower-level and special education placements disproportionately occurs, regardless of ability or disability, and limits intergroup contact.³⁰⁸

Parents must be mindful that mere numeric diversity alone is insufficient to create the social benefits that derive from integrated schooling. Rather, diversity experiences and interracial contact benefit the students.³⁰⁹ As stated by Patricia Gurin, an expert witness in the *Gratz and Grutter* cases, “[s]tructural diversity is essential but, by itself, usually not sufficient to produce substantial benefits; in addition to being together on the same campus, students from diverse backgrounds must also learn about each other in the courses that they take and in informal interaction outside of the classroom.”³¹⁰ Merely sending children to a racially diverse school does not guarantee they will experience the interracial interactions necessary to attain cross-cultural competence. To ensure this occurs, white parents must oppose ability tracking and encourage their children to create interracial friendships. Eliminating curricular stratification by creating mixed-ability classrooms is already successfully occurring in many schools.³¹¹

CONCLUSION

The interracial and cross-cultural contact white children need to successfully navigate the diverse marketplace they will experience upon graduation will not be found in their all-white schools. It will also not be found among a token number of minorities, who feel more pressure to assimilate in white culture rather than express their own. It will only be found in multiracial schools where individual cultures flourish rather than subordinate, assimilate, or segregate. White parents can no longer afford to harbor their unfounded fear of racial integration. They must embrace multicultural schools. White students must incorporate, learn, and understand the diverse cultures around them, and not continue to exclusively seek out same-race or same-culture relationships.

This Article presumed that by convincing whites of the benefits of integration, their interests would converge with minority interests and multiracial schools would multiply. But minorities may no longer want

308. Amici Brief of 553 Social Scientists, *supra* note 133, at app. 11.

309. See *Parents Involved in Cmty. Schsv. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 768–70 (2007) (Thomas, J., concurring) (describing how increased interracial exposure in school does not automatically lead to improved racial attitudes and relations); *Pidot*, *supra* note 47, at 767–68.

310. Patricia Gurin, *Evidence for the Educational Benefits of Diversity in Higher Education*, UNIV. OF MICH. (May 20, 2003), <http://www.umich.edu/~urel/admissions/research/pgurin-nas.html> (internal quotation marks and external citation omitted).

311. CAROL C. BURRIS, KEVIN G. WELNER & JENNIFER W. BEZOZA, UNIVERSAL ACCESS TO A QUALITY EDUCATION: RESEARCH AND RECOMMENDATIONS FOR THE ELIMINATION OF CURRICULAR STRATIFICATION (2009), available at http://epicpolicy.org/files/Epic-Epru_LB-UnivAcc-FINAL.pdf (describing three case studies in schools that abolished curricular stratification).

to be educated with whites. Many African-Americans “have become integration weary”³¹² and no longer support integration.³¹³ Numerous scholars, black and white, believe that integration harms minority children and advocate for racially identifiable schools.³¹⁴ This is understandable considering the opposition whites mounted to integration and the promise of equal school financing (through finance litigation) and equal school outcomes (through the NCLB).³¹⁵ Rather than pursue integration as the best means to ensure educational equality, the nation has pursued school improvement plans, school choice, equal school funding and standards-based accountability to ensure minorities receive a high-quality education.³¹⁶ But whether minorities desire racial integration in schools or not, and whether minority and white interests actually align, white parents should still vigorously pursue a multiracial education for the benefits it bestows on their children.

This Article has also assumed that convincing whites that multiracial

312. SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM*, at xxi (2004).

313. Chester Hartman & Gregory D. Squires, *Integration Exhaustion, Race Fatigue and the American Dream*, in *THE INTEGRATION DEBATE: COMPETING FUTURES FOR AMERICAN CITIES* 1, 2–3 (Chester Hartman & Gregory D. Squires eds., 2010).

314. See, e.g., DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES OF RACIAL REFORM* 196 (2004); CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION* at xi (2004); Bell, *The Unintended Lessons*, *supra* note 47, at 1064 (describing how educators and parents are looking past education as an essential component of a good school and working to provide black children with effective schooling based on their needs); Nelson, *supra* note 174, at 617 (“If the positive academic outcomes experienced by minority students in diverse learning environments are more related to the beneficial resources available in those environments rather than the racial composition of the student body, could we not replicate those resources in racially identifiable schools to improve the educational outcomes for a greater number of minority students?”); Sonia R. Jarvis, *Brown and the Afrocentric Curriculum*, 101 *YALE L.J.* 1285, 1286–87 (1992) (discussing some educators’ promotion of the adoption of an Afrocentric curriculum); Minow, *supra* note 55, at 609, 621 (describing commentators’ reassessment of full integration and the return of racially separate schools and the decline of the integrationist ideal); Nunn, *supra* note 47, at 724 (discussing how the Supreme Court’s rationale has placed a stigma on minority community members); see also Garda, *supra* note 55, at 49 (discussing modern anti-subordination theory’s endorsement of voluntary racial separation in schools). But see Michelle Adams, *Radical Integration*, 94 *CAL. L. REV.* 261, 278–85 (2006) (arguing that integration benefits minority children); Robinson, *supra* note 174, at 327–36 (same).

315. See KOZOL, *supra* note 69, at 229 (discussing how many black leaders have given up integration because of the struggle over mandatory busing programs to achieve desegregation); see also Garda, *supra* note 55, at 62–67 (explaining why the standards-based accountability movement culminating in the NCLB will increase racial isolation in schools); Ryan, *Schools, Race, and Money*, *supra* note 57, at 315–16 (explaining how finance litigation is a “costly distraction” that “unwittingly” legitimizes *de facto* segregation); James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 *N.Y.U. L. REV.* 932, 934 (2004) (explaining how the NCLB creates incentives for racially isolated schools).

316. See KOZOL, *supra* note 69, at 191–95 (arguing that whites use school improvement plans to resist efforts to integrate); WELLS ET AL., *supra* note 64, at 1.

schools will benefit their children will inevitably lead whites to integrate schools. The sad reality may be that conscious racism and prejudice will always prevent whites from integrating schools, even if it is in their children's best interests. Conscious racism is still a powerful and ever-present fact even in the allegedly new "post-racial" world. I find hope in the fact that white self-interest overcame a much stronger, more visceral and unabashed racism in the 1960s and 1970s following *Brown* and should be able to do so again.

In this Article, I advanced the white benefits in integration not only because I believe they exist and are significant, but also because I firmly believe it is the only means to achieve educational equality.³¹⁷ A legitimate criticism of this approach is that doing the right thing (integrating schools) for the wrong reasons (white interests) may in fact harm minorities. If schools are integrated on the foundation of white benefit, then it will end once whites no longer benefit.³¹⁸ This is why *Brown's* reach was curtailed in the 1970s and again in the 1990s. But this critique assumes that white interests will once again diverge from minority interests, which seems unlikely. The country and the world are becoming, and will forever be, racially and culturally diverse and interlinked. Cross-cultural skills will not benefit whites for merely a decade but into the foreseeable future. If convincing whites that integration benefits our children leads to multiracial schools in this generation, then it will also lead to multiracial schools for generations to come.

Another worthy critique of this position may be that it simply advances white supremacy and hegemony in the marketplace and atop the corporate ladder. Critics might claim that advancing white interests merely ensures that whites maintain power over minorities in the forthcoming diverse world.³¹⁹ The argument in this Article, taken to its logical extreme, could be premised on guaranteeing that whites continue to be the managers and leaders of a diverse workforce and market in the future.³²⁰ Any time white interests are advanced, this criticism finds solid footing. But I do not advocate for cross-cultural competence to ensure white-supremacy: primarily because I do not believe in it, but also because I believe our increasingly multiracial society will make it a thing of the past—at some point. Whites need to integrate schools not to ensure their children's superiority over minorities but to better fit in and work with minorities in an extraordinarily diverse marketplace.

The free market demands interracially competent participants due to globalization and an increasingly diverse society. White parents should not wait to develop the cross-cultural competence of their children until

317. Garda, *supra* note 55, at 42–90.

318. See, e.g., Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 373–74 (1992).

319. See Lawrence, *Unconscious Racism*, *supra* note 144, at 934, 936 (discussing white supremacy as the impetus for government structures and policies); see also Lawrence, *The Id*, *supra* note 152, at 326 (same).

320. See Wilkins, *supra* note 196, at 1592.

it is too late. Hopefully this Article persuades white parents that they should pursue racially integrated schools for our children immediately because it is in their best interests.

