



SCHOOLS AND RACE: PICKING UP THE PIECES

BY LARRY GOSSETT AND JOHN A. POWELL
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On the last day of its term, the U.S. Supreme Court handed down its most important decision, with implications for how our nation will deal with the continuing problem of racial segregation and fulfill its promise of realizing a truly integrated society.

This lengthy, complicated decision includes five different opinions and no clear majority on the most critical issues. Understandably, initial reporting and commentary on the case focused on the fact that a majority of the court struck down the modest voluntary integration plans in Seattle and Louisville. These plans were crafted by local school boards striving to address the reality of pervasive racial segregation and isolation in their neighborhoods and schools and retain the hard-won gains of *Brown v. Board of Education*.

The ruling by the court is indeed disturbing insofar as it appears to limit the tools available to achieve racial integration and fulfill the promise of *Brown*.

What has not been widely reported is how — for the first time in its history — the majority of the court recognizes a compelling government interest not only in ending state-sponsored (de jure) segregation, as in *Brown*, or in pursuing diversity in higher education, as in the University of Michigan affirmative action case *Grutter v. Bollinger*, but also in remedying racial isolation, regardless of its cause.

Justice Anthony Kennedy cannot have spoken more plainly: "A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a district may consider it a compelling interest to achieve a diverse student population." He joins Justices Stephen Breyer, Ruth Bader Ginsburg, David Souter, and John Paul Stevens to comprise a majority on this key point.

On the issue of whether school districts may, under certain circumstances, take race into account to address the reality and ameliorate the harms of racial isolation, the same five justices again form the majority. Here, Kennedy finds Chief Justice John Roberts' insistence that race cannot be a factor in student assignments "too dismissive of the legitimate interest government has in ensuring all people have equal opportunity regardless of their race." He concludes that while a colorblind Constitution is an aspiration, in the real world, where race often matters, color blindness cannot be a universal constitutional principle.

In sum, five justices have plowed fresh legal ground, holding out hope to our nation that racial isolation, a harm to all students, can be redressed and a more inclusive democracy achieved.

The broad articulation of the compelling government interest in avoiding racial isolation, and of the permissibility of school districts taking race into account to do so, should motivate policymakers and local governments to intervene and disrupt the processes that feed segregation, a process that reaches its unfortunate and predictable conclusion in schools themselves, at which point school boards are limited in their ability to respond.

Until now, advocates have focused much of their energies in pursuing racial integration in schools because that is where the harms of segregation most critically manifest themselves. Segregated housing patterns fuel segregated classrooms and disparate educational outcomes. Low-quality public schools, in turn, reinforce segregated housing patterns due to the strong correlation between housing prices and public-school quality. These patterns result in a downward spiral of ongoing "white flight" and racial as well as economic segregation in our urban school districts.

The majority of the court has now explicitly recognized the serious harms of racial isolation in our communities and classrooms. The court also recognizes the impact of these arrangements on the promise of liberty and equality on which the nation was founded.

It is imperative that policymakers and the public not misread this case and overlook the opportunities this unprecedented acknowledgement opens up to achieve integration in our schools and neighborhoods.

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