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Systemic Inequality | A Call for Desegregation in Education: Examining the Strength in Diversity Act

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COMMENT

A CALL FOR DESEGREGATION IN EDUCATION: EXAMINING THE STRENGTH IN DIVERSITY ACT

*Kimberly Ayudant**

In the 1954 Brown v. Board of Education decision, the Supreme Court unanimously ruled that the concept of “separate but equal” education was unconstitutional. Yet now, more than sixty-five years after this decision, school segregation is on the rise in the United States. While school segregation is no longer enforced by the explicit prohibition of Black students and white students attending the same schools, it is instead caused by various pernicious government policies ranging from school district mapping to school funding allocations.

Historically, the federal government has remained at the outskirts of education policy as public education is held to be a state and local government responsibility. However, in February 2021, Congressman Robert C. Scott introduced the Strength in Diversity Act of 2021, thus bringing the federal government back into the public education and policy discourse. Among other things, this legislation would create a federal grant program to fund racial and economic school integration efforts across the country.

This Comment will first examine the proposals set forth by the Strength in Diversity Act and analyze how this legislation could push the needle forward in achieving greater integration. This Comment will then highlight the gaps left by the Strength in Diversity Act and set forth recommendations for future amendments to the bill.

INTRODUCTION

“Education is the most powerful weapon which you can use to change the world.”

—Nelson Mandela¹

* J.D. Candidate, 2021, Fordham University School of Law; B.B.A., 2016, Villanova University. Thank you to my loved ones, especially Fernando and Graciela Ayudant, Grace and Joe Rivetti, and Justin Javier who have always encouraged me to use my voice for change. I also want to thank the editors and staff of the *Fordham Law Review* for amplifying this message and for all of their support.

The American education system promises equal opportunity: that all students—regardless of racial and socioeconomic background—have the chance to learn, achieve, and succeed in life. It is a promise that began over six decades ago when the U.S. Supreme Court declared, in the historic *Brown v. Board of Education*² case, that “the doctrine of ‘separate but equal’ has no place” in education.³ However, as growing research regarding school segregation has demonstrated,⁴ and indeed, the COVID-19 pandemic has shown us,⁵ there are deep faults in our nation’s schools. Racial inequity and racial separation remain embedded in our education system.

At a time when our society is fractured along the lines of race, schools have the potential to take us on a better path forward. Schools should reflect the multicultural and interconnected reality of our society, rather than perpetuating racism and racial isolation. Yet, in 2018, sixty-four years since *Brown*, the percentage of Black students in predominantly nonwhite schools increased nationally from 77 percent to 81 percent, increased in the Northeast from 67 percent to 82 percent and increased in the South from 81 percent to 82 percent.⁶ The national narrative that *Brown* adequately remedied school segregation has proved to be inaccurate. Racial isolation is a key component of our education system in all parts of the country.

In the past, correcting school segregation involved efforts from the federal government as well as state and local governments.⁷ However, in recent years, federal leadership has turned away from integration efforts and left those efforts solely up to state and local governments. In turn, state and local governments have created implicitly discriminatory practices and policies that have led to a new era of racial segregation.⁸

If we are to dismantle these sweeping, harmful policies, the federal government should once again step in and signal to America that racial integration and equality must be at the forefront of American education. In

1. *Education Initiatives*, NELSON MANDELA FOUND., <https://www.nelsonmandela.org/content/page/nm100-education> [https://perma.cc/4MP4-7DT5] (last visited Mar. 24, 2021).

2. 347 U.S. 483 (1954).

3. *Id.* at 495.

4. *See infra* Part II.A.

5. *See, e.g.*, Maya King & Nicole Gaudiano, *The Pandemic Could Widen the Achievement Gap. A Generation of Students Is at Risk*, POLITICO (Sept. 23, 2020, 7:55 PM), <https://www.politico.com/news/2020/09/23/how-the-coronavirus-is-making-school-segregation-worse-420839> [https://perma.cc/V2ZY-DE7S]; Olga Correa, *At Segregated Schools, Remote Learning Is Inherently Unequal*, TEACH FOR AM. (Feb. 8, 2021), <https://www.teachforamerica.org/stories/at-segregated-schools-remote-learning-is-inherently-unequal> [https://perma.cc/32SX-AG8J].

6. A predominantly nonwhite school is a school where over 50 percent of the student population is nonwhite. GARY ORFIELD & DANIELLE JARVIE, UCLA CIV. RTS. PROJECT, BLACK SEGREGATION MATTERS: SCHOOL RESEGREGATION AND BLACK EDUCATIONAL OPPORTUNITY 28 (2020), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/black-segregation-matters-school-resegregation-and-black-educational-opportunity/BLACK-SEGREGATION-MATTERS-final-121820.pdf> [https://perma.cc/3XN4-RRUK].

7. *See infra* Part I.

8. *See infra* Part I.B.

February 2021, Congressman Robert C. Scott (D-VA) introduced the Strength in Diversity Act to do just that.⁹ This bill not only brings the federal government back into the discourse on integration, but also calls for action from all levels of government.¹⁰ Former presidential candidates Bernie Sanders and Elizabeth Warren, as well as current Vice President Kamala Harris, all supported a prior version of this bill.¹¹ Passing this bill would not only signal the values America should hold, it would be an important step forward in combatting the severe inequality and discrimination engrained in our school systems.

This Comment focuses on one of the most important structures in our society—the American education system—and the racial inequality that persists within it. First, this Comment provides a broad overview of how the federal government’s involvement in school desegregation efforts has evolved over the past sixty years and how this change has impacted national views on the racial divide. The Comment discusses the current status of our nationwide segregation and the harms that stem from such racial isolation. Lastly, this Comment analyzes the proposed Strength in Diversity Act—explicating how the bill could once again bring the federal government into desegregation efforts, and then touches on gaps left by this legislation.

I. THE FEDERAL GOVERNMENT (IN)ACTION

This Part examines the role the federal government played in desegregation efforts in schools following the 1954 *Brown* decision. While there are many different social structures to analyze when discussing school segregation, this Comment focuses solely on the federal government and its actions. The discussion that follows breaks down the federal government’s actions during two main eras: from the 1960s to 1970s, and from the 1970s to the present. The federal government’s role in integration efforts during these two eras stand in stark contrast to one another.

A. Federal Desegregation Efforts: 1960s to 1970s

America has had a long history of racial inequity and racial divide. This divide visibly presented itself in the Jim Crow laws—a collection of statutes that legalized racial segregation—that were enforced in the South from the late 1800s to the 1950s.¹² These laws went largely unchallenged; de jure segregation and discrimination was the accepted status quo. Then came the monumental 1954 *Brown* decision. In *Brown*, the Supreme Court concluded

9. See *infra* Part III.

10. See *infra* Part III.

11. Kayln Belsha, *What It Means When Democratic Frontrunners Say They Support the Strength in Diversity Act*, CHALKBEAT (July 11, 2019, 4:49 PM), <https://www.chalkbeat.org/2019/7/11/21121013/what-it-means-when-democratic-frontrunners-say-they-support-the-strength-in-diversity-act> [https://perma.cc/28AB-3S8T].

12. See *A Brief History of Jim Crow*, CONST. RTS. FOUND., <http://www.crf-usa.org/black-history-month/a-brief-history-of-jim-crow> [https://perma.cc/E8NS-2NNR] (last visited Mar. 7, 2021).

that de jure segregation—that is, segregation enshrined in law—in public schools was unconstitutional and held that public education “is a right which must be available to all on equal terms.”¹³ This case quickly came to symbolize a new path toward racial equality and societal cohesion. However, this hope was short lived as state and local officials resisted desegregation for more than a decade after the *Brown* decision.¹⁴

It was not until the 1960s when the federal government stepped in and took an active role in mandating local and state officials to comply with desegregation orders. This integration enforcement was a multilateral effort among all three branches of federal government. On the executive and legislative front, there were two provisions from two separate pieces of legislation which proved to be vital. First was the Civil Rights Act of 1964,¹⁵ initially proposed by President John F. Kennedy, and later signed into law by President Lyndon B. Johnson.¹⁶ Title VI of the Civil Rights Act made it illegal for school districts receiving federal funding to discriminate based on race,¹⁷ thus putting pressure on local governments to abide by the federal government’s mandates. The second important provision was Title I of the Elementary and Secondary Education Act of 1965,¹⁸ which provided, for the first time, substantial federal aid to education.¹⁹ Federal administrators threatened to withhold these Title I funds as another way of pressuring school districts to desegregate.²⁰

On the judicial front, integration enforcement came by way of the 1968 *Green v. County School Board*²¹ decision. In *Green*, the Supreme Court ruled that “freedom of choice” plans—which allowed students to choose which school to attend, independent of their race—violated *Brown*.²² Further, in its holding, the Supreme Court placed an affirmative duty on school boards to adopt more effective plans to achieve integration,²³ thereby extending *Brown*’s prohibition of segregation into a requirement of

13. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493–95 (1954).

14. See ORFIELD & JARVIE, *supra* note 6, at 10.

15. Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended in scattered sections of 42 U.S.C.).

16. See *The Civil Rights Act of 1964*, CONST. RTS. FOUND., <https://www.crf-usa.org/black-history-month/the-civil-rights-act-of-1964> [<https://perma.cc/KU6P-S6N4>] (last visited Apr. 22, 2021).

17. See 42 U.S.C. § 2000d.

18. Pub. L. No. 89-10, 79 Stat. 27 (1965) (codified as amended in scattered sections of 20 U.S.C.).

19. See Cameron Brenchley, *What is ESEA?*, U.S. DEPT. OF EDUC. BLOG (Apr. 8, 2015), <https://blog.ed.gov/2015/04/what-is-esea> [<https://perma.cc/RHL9-HZRJ>].

20. RICHARD D. KAHLBERG ET AL., THE CENTURY FOUND., A BOLD AGENDA FOR SCHOOL INTEGRATION 5 (2019), https://production-tcf.imgix.net/app/uploads/2019/04/05130945/School_Integrationfinalpdf.pdf [<https://perma.cc/CKP9-4WU4>].

21. 391 U.S. 430 (1968).

22. See *id.* at 441 (declaring that the “freedom-of-choice” plan was not a “sufficient step to ‘effectuate a transition’ to a unitary system” and that the “school system remain[ed] a dual system”).

23. See *id.* at 439 (“It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation.”).

integration. This case, though based in New Kent County, Virginia, still affected schools throughout the nation as the majority of school districts were using freedom of choice plans prior to the *Green* decision.²⁴

Title VI of the Civil Rights Act, Title I of the Elementary and Secondary Education Act, and the *Green* decision were powerful federal tools used to desegregate schools and, indeed, led to a substantial decline in school segregation levels between the mid-1960s and the mid-1970s.²⁵ More importantly, these actions signaled to the American people the need for change and demonstrated the commitment from federal leadership to achieving such change. Disappointingly, these actions were the last and only serious coordinated uses of federal power to end segregated education.

B. Federal Pullback: 1970s to the Present

In the late 1970s, just twenty years after *Brown*, desegregation momentum began to fade. “Busing”—a once generic term—became politically charged and led to a major change on the legislative front. In 1975, the Senate passed an antibusing provision on appropriations legislation, prohibiting the use of federal funds for integration busing.²⁶ This provision created new and lasting obstacles for desegregation plans, as busing remains a highly controversial topic.²⁷

A new wave of significant judicial pullback bolstered this lack of federal legislative commitment to desegregation efforts. Beginning in the late 1970s, the Supreme Court began to rule on cases in a way that set forward conditions for undermining the nation’s major desegregation orders. In 1974, *Milliken v. Bradley*²⁸ limited the power of federal courts to order integration across school district boundaries.²⁹ In *Milliken*, the Supreme Court held that school districts were not obligated to desegregate unless it had been proven that the district lines were drawn with intentional discrimination.³⁰

The Court made another bold decision in the 1991 case *Board of Education v. Dowell*.³¹ The Court stressed that desegregation decrees were

24. See Will Stancil, *The Radical Supreme Court Decision That America Forgot*, ATLANTIC (May 29, 2018), <https://www.theatlantic.com/education/archive/2018/05/the-radical-supreme-court-decision-that-america-forgot/561410> [<https://perma.cc/66LR-G5NW>] (“By the late 1960s, about 90 percent of southern districts operated using something called a ‘freedom of choice’ plan.”).

25. See ORFIELD & JARVIE, *supra* note 6, at 28 tbl. 11 (showing that the percentage of Black students in predominantly nonwhite schools decreased nationally from 77 percent in 1968 to 62 percent in 1976); see also *id.* at 29.

26. See *Antibusing Measure Approved in Senate*, N.Y. TIMES (Sept. 18, 1975), <https://www.nytimes.com/1975/09/18/archives/anti-busing-measure-approved-in-senate.html> [<https://perma.cc/G9LK-QBN6>].

27. See Nicole Gaudiano, *Why School Busing Still Matters*, POLITICO (June 28, 2019, 6:52 PM), <https://www.politico.com/story/2019/06/28/busing-school-segregation-1563373> [<https://perma.cc/M3CQ-VQXU>].

28. 418 U.S. 717 (1974).

29. See *id.* at 745.

30. See *id.*

31. 498 U.S. 237 (1991).

not meant to operate in perpetuity.³² Instead, it held that district courts should determine whether school districts had complied with such desegregation efforts in “good faith” for a “reasonable” period of time and whether such efforts had eliminated the vestiges of past discrimination “to the extent practicable.”³³ This decision created the option for school districts to adopt policies and practices that produced segregation, as long as the districts claimed that the policies were in place for another purpose. In 2007, the Court decided another seminal case: *Parents Involved in Community Schools v. Seattle School District*.³⁴ There, the Court held that plans to prevent “racial isolation” in schools did not meet the Court’s strict scrutiny standard³⁵ and struck down two voluntary racial integration programs in Louisville and Seattle.³⁶ Taken together, these cases made de facto school desegregation a more appealing and palatable form of desegregation—a fact which is reflected in school policies across the nation.³⁷ With the current composition of the Supreme Court,³⁸ it is unlikely that there will be a reversal of these longstanding decisions in the near future.

In 2016, there was hope that federal leadership would once again prioritize school integration. President Barack Obama’s proposed 2017 fiscal budget requested funding for a grant program called “Stronger Together,” which would have supported voluntary school integration efforts.³⁹ However, Congress denied such funding.⁴⁰ In a final effort towards reprioritizing integration before the end of President Obama’s term, the then secretary of education John King helped to launch a small program for desegregation called “Opening Doors, Expanding Opportunities.”⁴¹ This \$12 million grant

32. *Id.* at 248.

33. *Id.* at 249–50.

34. 551 U.S. 701 (2007).

35. *Id.* at 732 (“Racial balancing is not transformed from ‘patently unconstitutional’ to a compelling state interest simply by relabeling it ‘racial diversity.’”).

36. *Id.* at 747–48.

37. See *infra* notes 39–41 and accompanying text.

38. See Erwin Chemerinsky, *Predicting the Supreme Court in 2021 May Be Dangerous and Futile*, ABA J. (Dec. 28, 2020), <https://www.abajournal.com/columns/article/chemerinsky-predicting-scotus-in-2021-may-be-dangerous-and-futile> [https://perma.cc/B8CB-7P7R] (describing the current Supreme Court as “the most conservative court since the mid-1930s” and noting there are “five very conservative justices”).

39. *President Obama’s 2017 Budget Seeks to Expand Educational Opportunity for All Students*, U.S. DEP’T OF EDUC. (Feb. 9, 2016), <https://www.ed.gov/news/press-releases/president-obamas-2017-budget-seeks-expand-educational-opportunity-all-students> [https://perma.cc/T5VK-CA38].

40. See ORFIELD & JARVIE, *supra* note 6, at 11; see also Belsha, *supra* note 11.

41. See Press Release, U.S. Dep’t of Educ., U.S. Education Secretary Announces Grant Competitions to Encourage Diverse Schools (Dec. 13, 2016), <https://www.ed.gov/news/press-releases/us-education-secretary-announces-grant-competitions-encourage-diverse-schools#:~:text=Opening%20Doors%2C%20Expanding%20Opportunities%20is,schools%20by%20increasing%20student%20diversity> [https://perma.cc/EE6K-LBM9]; Kayln Belsha, *Dozens of School Districts Applied to an Obama-Era Integration Program Before Trump Officials Axed It. Since Then, Many Plans Have Gone Nowhere*, CHALKBEAT (Dec. 2, 2019, 6:00 AM), <https://www.chalkbeat.org/2019/12/2/21121866/dozens-of-school-districts->

program that was created to help local districts research and develop their integration plans was cancelled early in President Donald Trump's tenure.⁴² Again, federal leadership took a back seat, communicating its unwillingness—if not indifference—to correct the racial isolation in our nation's schools.

Taken together, these federal actions over the past fifty years have signaled to the American people that racial segregation does not have the importance that it rightly merits. Moreover, while judicial decisions like *Brown* and legislation like Title VI of the Civil Rights Act have spelled the end of de jure segregation, the new era of federal inaction has allowed de facto segregation to take its place. In fact, affirmative state and local discriminatory policies—including school district mapping,⁴³ housing policies,⁴⁴ and school funding allocations—have stemmed directly from this federal action.⁴⁵ These efforts are found nationwide, in nearly all school districts, and have inevitably led to a resurgence of racial isolation.

II. THE RESULT: NATIONWIDE SEGREGATION

This Part provides a historical overview of statistics regarding racial isolation in public schools across the nation over the past sixty years. In particular, this Part draws attention to the differences, or lack thereof, between 1960 segregation statistics and 2010 segregation statistics. This Part then discusses the impact segregation can have on students. Integration in schools and federal leadership in these desegregation efforts are vital to mending the racial divide in America.

A. School Segregation Statistics: From Then to Now

A report by the UCLA Civil Rights Project notes that there has not been a significant federal program to foster school integration for nearly four decades.⁴⁶ Considering this federal inaction in desegregation efforts, it is perhaps no surprise that there has been an increase in segregation in all parts

applied-to-an-obama-era-integration-program-before-trump-officials-axed-i
[<https://perma.cc/FQ4C-9FRX>].

42. *Id.*

43. See e.g., EDBUILD, FRACTURED: THE ACCELERATING BREAKDOWN OF AMERICA'S SCHOOL DISTRICTS 16 (2019), <https://edbuild.org/content/fractured/fractured-full-report.pdf> [<https://perma.cc/Y3Q2-5VUR>] (noting that while “[i]t may no longer be legal to segregate school systems by law . . . school district secession allows states to exploit the legal loophole created by *Milliken* to resegregate . . . schools”).

44. See, e.g., Sara Zeimer, *Exclusionary Zoning, School Segregation, and Housing Segregation: An Investigation into a Modern Desegregation Case and Solutions to Housing Segregation*, 48 HASTINGS CONST. L.Q. 208–09 (2020) (discussing various forms of discriminatory housing policies such as exclusionary zoning).

45. See, e.g., EDBUILD, \$23 BILLION 1 (2019), <https://edbuild.org/content/23-billion/full-report.pdf> [<https://perma.cc/H6UW-HZ9A>] (noting that school “funding works far better for some communities than it does for others. Wealthy communities can use existing laws and political power to draw borders around themselves, keeping deep pockets of money in while leaving less-privileged children out. As a result, school districts in high-poverty areas have fewer resources to pay for education.”); see also *infra* note 59 and accompanying text.

46. ORFIELD & JARVIE, *supra* note 6, at 13.

of the United States in recent years. Some recent reports even assert that the level of segregation in schools today is higher than it was before *Brown*.⁴⁷ While opinions may vary as to whether we are better off today than before 1954, one thing is certain: racially homogenous schools with unequal access to resources remain a cornerstone of American life.⁴⁸

Today, “nearly one-fifth of public schools have almost no [students] of color, while another one-fifth have almost no white [students].”⁴⁹ Another report found that more than half of American students live in school districts that are considered “racially concentrated”—that is, school districts composed of more than 75 percent of one race.⁵⁰ Racial isolation has become the new status quo, even in some of the most diverse U.S. cities. New York City, recognized globally for its diversity, is home to one of the most segregated school systems in the country for Black students.⁵¹ The average Black student in New York City attends a school where only 15 percent of the students are white.⁵² Moreover, 64 percent of Black students in New York City attend intensely racially isolated schools where 90–100 percent of students are nonwhite.⁵³

If these numbers are not shocking enough, it is useful to compare and contrast segregation levels following *Brown*. In 1968, less than fifteen years after the *Brown* decision, 64.3 percent of Black students attended intensely segregated⁵⁴ nonwhite schools.⁵⁵ At the peak of desegregation in 1988, this percentage declined to 32.1 percent.⁵⁶ Yet in 2018, that figure increased to 40.1 percent.⁵⁷ In other words, the progress that was made in the 1960s and 1970s has largely been lost. Schools in 2018 were less segregated than they were in 1968 but were still more segregated than they were at the peak of desegregation in the 1980s. It is no coincidence that levels of segregation were at their lowest and most stable levels when federal leadership was actively involved in desegregation efforts.

47. See, e.g., Emily Richmond, *Schools Are More Segregated Today Than During the Late 1960s*, ATLANTIC (June 11, 2012), <https://www.theatlantic.com/national/archive/2012/06/schools-are-more-segregated-today-than-during-the-late-1960s/258348>

[<https://perma.cc/9BBY-H7ZS>]; Beverly Daniel Tatum, *Segregation Worse in Schools 60 Years After Brown v. Board of Education*, SEATTLE TIMES (Sept. 14, 2017, 2:54 PM), <https://www.seattletimes.com/opinion/segregation-worse-in-schools-60-years-after-brown-v-board-of-education> [<https://perma.cc/RF8V-9Y3N>].

48. See ORFIELD & JARVIE, *supra* note 6, at 9, 12.

49. Stefan Lallinger, *America's Segregated Schools: We Can't Live Together Until We Learn Together*, USA TODAY (June 23, 2020, 12:30 PM), <https://www.usatoday.com/story/opinion/2020/06/23/why-segregation-still-plagues-america-schools-and-how-fix-column/3234499001> [<https://perma.cc/QL3V-ALDU>].

50. See EDBUILD, *supra* note 45, at 2.

51. ORFIELD & JARVIE, *supra* note 6, at 6.

52. *Id.*

53. *Id.*

54. *Id.* at 39 (defining “intensely segregated schools” as schools where 90–100 percent of the student body are students of color).

55. *Id.* at 29.

56. *Id.*

57. *Id.*

B. *The Impact of Segregation on All Students*

The past year has shown us how our society remains deeply divided, particularly in regard to race. Now more than ever, it is crucial to look for forward-looking solutions. One such solution could, and indeed should, stem from our nation's schools. In his dissent in *Milliken*, Justice Thurgood Marshall prophetically observed that, "unless our children begin to learn together, there is little hope that our people will ever learn to live together."⁵⁸

Research has time and again demonstrated the negative impacts of segregated schools. Multiple studies have shown that socioeconomically and racially segregated schools tend to receive less funding⁵⁹ and have fewer resources⁶⁰ and that their students are more likely to experience disciplinary action.⁶¹ Moreover, there are a multitude of lasting social harms that manifest in segregated settings. Students of color may feel inferior within their greater communities, which can greatly limit their potential for academic and professional success.⁶² For white students, attending predominantly white schools limits their exposure to nonwhite students and increases the likelihood that they will harbor racial prejudices.⁶³

On the other hand, research has demonstrated that racial integration improves opportunities for student achievement, reduces interracial prejudice, and strengthens relationships between racial groups.⁶⁴ It has been shown that attending a diverse school can help reduce racial bias.⁶⁵ Children are at risk of developing discriminatory racial stereotypes if they live and are

58. *Milliken v. Bradley*, 418 U.S. 717, 783 (1974) (Marshall, J., dissenting).

59. *See, e.g.*, EDBUILD, *supra* note 45, at 4 ("Nationally, predominantly white school districts get \$23 billion more than their nonwhite peers, despite serving a similar number of children. White school districts average revenue receipts of almost \$14,000 per student, but nonwhite districts receive only \$11,682. That's a divide of over \$2,200, on average, per student.").

60. *See, e.g.*, U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-345, K-12 EDUCATION: BETTER USE OF INFORMATION COULD HELP AGENCIES IDENTIFY DISPARITIES AND ADDRESS RACIAL DISCRIMINATION 20 (2016), <https://www.gao.gov/assets/680/676745.pdf> [<https://perma.cc/F6HJ-CEUE>] (noting that only 48 percent of high-poverty, majority-Black or -Hispanic high schools offer AP courses, compared to 72 percent of low-poverty, majority-white high schools).

61. *See, e.g.*, *Fact Sheet: Strength in Diversity Act of 2019*, H. COMM. ON EDUC. & LAB., <https://edlabor.house.gov/imo/media/doc/2019-05-16%20Strength%20in%20Diversity%20Act%20Fact%20Sheet.pdf> [<https://perma.cc/5Z4P-WQMZ>] (last visited Apr. 22, 2021) ("In the 2015-16 school year, Black students accounted for 15 percent of all students, but 31 percent of referrals to law enforcement and school-based arrests. White students accounted for 49 percent of the population, but only 36 percent of referrals to law enforcement and school-based arrests.").

62. *See* Richard D. Kahlenberg, *The Fall and Rise of School Segregation*, AM. PROSPECT (Dec. 10, 2001), <https://prospect.org/article/fall-and-rise-school-segregation> [<https://perma.cc/E6TG-VPGC>] ("To separate black children . . . from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954))).

63. Erika K. Wilson, *The New School Segregation*, 102 CORNELL L. REV. 139, 156 (2016).

64. *See id.*

65. KAHLBERG ET AL., *supra* note 20, at 2.

educated in racially isolated environments.⁶⁶ By contrast, when school environments include students from multiple racial and ethnic groups, students become more comfortable with people of other races.⁶⁷ Students who attend integrated schools are also more likely to seek out integrated personal and professional environments later in life.⁶⁸ According to one study, “students who attend racially diverse high schools are more likely to live in diverse neighborhoods five years after graduation.”⁶⁹

It is also important to note that, for integration to have its intended effects, students cannot simply be placed into new and unwelcoming environments.⁷⁰ Integration is not just throwing students together. It must be a comprehensive process, one which focuses on how to create an equitable environment where everybody is respected and where conversations about race are thoughtfully constructed.

III. A NEW WAY FORWARD: THE STRENGTH IN DIVERSITY ACT

This Part sheds light on a new bill, the Strength in Diversity Act, that could support national efforts to dismantle school segregation. More importantly, this piece of legislation symbolizes an important step forward for federal involvement in desegregation efforts. This Part provides an overview of the Strength in Diversity Act, as well as a discussion on how the bill’s policies can reduce school segregation levels. Finally, this Part notes the gaps left by the bill and how future amendments may strengthen its overall effect.

A. *The Strength in Diversity Act*

The Strength in Diversity Act of 2021 comes after multiple failed attempts to get the same or a similar bill passed by both the House and the Senate. First was the Stronger Together School Diversity Act of 2016, introduced by Congresswoman Marcia Fudge (D-OH) and Senator Christopher Murphy (D-CT),⁷¹ which sought to amend the Elementary and Secondary Education Act of 1965 to establish the Stronger Together Program.⁷² However, the bill did not receive a vote and died in Congress.⁷³ In 2018, the bill was rebranded and transformed into the Strength in Diversity Act of 2018.⁷⁴ Again, the bill

66. *Id.*

67. *Id.* at 2–3.

68. *Id.*

69. *Id.*

70. See Liz Mineo, *Making American Schools Less Segregated*, HARV. GAZETTE (July 14, 2020), <https://news.harvard.edu/gazette/story/2020/07/how-to-make-american-schools-less-segregated> [<https://perma.cc/FL7Y-JQLJ>].

71. Press Release, U.S. Dep’t of Educ., Murphy, Fudge Introduce Stronger Together School Diversity Act of 2016, (July 12, 2016), <https://www.ed.gov/news/press-releases/murphy-fudge-introduce-stronger-together-school-diversity-act-2016> [<https://perma.cc/V4K6-WAFY>].

72. Stronger Together School Diversity Act of 2016, H.R. 5738, 114th Cong. (2016).

73. H.R. 5738 (114th): *Stronger Together School Diversity Act of 2016*, GOVTRACK, <https://www.govtrack.us/congress/bills/114/hr5738> [<https://perma.cc/X6PV-4FTQ>] (last visited Apr. 22, 2021).

74. Strength in Diversity Act of 2018, H.R. 6722, 115th Cong. (2018).

did not receive a vote and died in Congress.⁷⁵ In a third attempt to bring forth desegregation legislation, Congresswoman Fudge—who has since become the secretary of housing and urban development—and Senator Murphy introduced the Strength in Diversity Act of 2020.⁷⁶ Rather than amend the Elementary and Secondary Education Act of 1965 to create a grant program, this bill directed the Department of Education to award grants.⁷⁷ At last, on September 15, 2020, the House of Representatives passed the Strength in Diversity Act of 2020 by a considerable margin, 248–167.⁷⁸ But once again, the bill did not advance, as Congress adjourned before further action could take place in the Senate.

However, the bill continues to live on in a new form: the Strength in Diversity Act of 2021, which Congressman Scott introduced in the House of Representatives on February 2, 2021.⁷⁹ The Strength in Diversity Act reflects much of the language found in its predecessor bills, and while it is a fairly modest proposal overall, it is indeed a great start to dismantling the systemic barriers to education equality. First and foremost, the creation and persistence of this legislation signals that school segregation is a national problem and advances the idea that the federal government should play a role in fixing it. Further, as John King, the former secretary of education, noted, “a federal program of this kind [] reinforces that we as [a] country value racial and socioeconomic diversity.”⁸⁰

In its current form, the bill would create a federal grant program to fund racial and economic school integration efforts across the country.⁸¹ It would allow school districts to apply for one-year planning grants or multiyear implementation grants to start their integration efforts.⁸² The funds from the planning grants could be used to collect data, explore different integration approaches, and create a community engagement plan.⁸³ The funds from the implementation grants could be used to try out an existing integration model or create a new one.⁸⁴

The planning grants are of particular importance as the funds would allow grantees to adopt creative, tailored, evidence-based solutions to segregation. Grantees may gather evidence for a variety of purposes: to study segregation within their region, evaluate current policies, revise school boundaries, create

75. H.R. 6722 (115th): *Strength in Diversity Act of 2018*, GOVTRACK, <https://www.govtrack.us/congress/bills/115/hr6722> [<https://perma.cc/AUQ3-DFZ3>] (last visited Apr. 22, 2021).

76. Belsha, *supra* note 11.

77. Strength in Diversity Act of 2021, H.R. 729, 117th Cong. (2021).

78. ORFIELD & JARVIE, *supra* note 6, at 13–14.

79. H.R. 729.

80. Belsha, *supra* note 11.

81. *Fact Sheet: Strength in Diversity Act of 2021*, H. COMM. ON EDUC. & LAB., <https://edlabor.house.gov/imo/media/doc/2021-02-02%20Strength%20in%20Diversity%20Act%20Fact%20Sheet.pdf> [<https://perma.cc/M5JR-MP6Q>] (last visited Apr. 22, 2021).

82. H.R. 729 § 4(c).

83. *Id.* § 6(a).

84. *Id.* § 6(b).

and expand innovative school programs, and recruit and train teachers.⁸⁵ That is, grantees will be given federal funds to study and develop plans to eliminate many of the school segregation policies⁸⁶ that state and local governments have used in place of de jure segregation. Moreover, the legislation encourages busing—one of the greatest hurdles to integration across district lines—as it allows for federal aid for transportation initiatives.⁸⁷

The language of the Act itself makes multiple references to “family” and “community.” By utilizing these terms, the Act underscores and fortifies its commitment to thoughtful integration that extends beyond the immediate vicinity of the classroom and into the greater community. For instance, when applying for grants, prospective grantees must show in their applications that they have: “conducted, or will conduct, robust parent and community engagement”; “consult[ed] with . . . community entities, including local housing or transportation authorities”; and engaged in “outreach to parents and students . . . and consultation with students and families in the targeted district or region that is designed to ensure participation.”⁸⁸ The end result of this language is the creation of community engagement plans that produce meaningful and lasting integration, not just temporary solutions.

B. Areas of Improvement

The Strength in Diversity Act is undoubtedly an important first step in the path towards greater federal integration support. However, the bill is not a comprehensive plan to address school segregation. In its current form, planning and implementation grants are limited to communities that opt to apply and participate.⁸⁹ While this is a logical requirement, it also has the potential to leave out communities that need these grants the most. These communities may be too overwhelmed to apply for such funds or perhaps do not realize the severity of the segregation within their districts.

There are two ways to fill the gap left by this voluntary requirement. One would be to implement provisions in the Act itself that would encourage a larger number of school districts to apply for the grants. However, it is difficult to imagine what incentives could be offered other than monetary incentives, which ultimately would reduce the available grant money. Therefore, a more viable option would be to look to another bill that has also been introduced in Congress: the Equity and Inclusion Enforcement Act of 2021.⁹⁰ The Equity and Inclusion Enforcement Act authorizes private civil causes of action for disparate impact violations under Title VI of the Civil Rights Act of 1964,⁹¹ such that families in school districts that do not

85. *See id.* § 6.

86. *See supra* notes 39–41 and accompanying text.

87. *See* H.R. 729 § 6(b)(2)(C).

88. *Id.* § 5.

89. *Id.*

90. Equity and Inclusion Enforcement Act of 2021, H.R. 730, 117th Cong. (2021).

91. *Id.* § 2.

volunteer to participate in the Strength in Diversity Act grant programs may still bring disparate impact claims against schools. Through this legislation, families would not only be able to take action into their own hands, but school districts themselves would also be more likely to take preventive action and choose to apply for a planning or implementation grant rather than face litigation.

Another gap left by the current language of the Strength in Diversity Act is the dollar amount attached to this legislation. While section 3 indicates caps on the reservation of funds, no minimum investment has been established. This is particularly important because previous versions of this bill included a dollar amount: \$120 million.⁹² As discussed earlier, this amount was substantially reduced when the 2016 Stronger Together School Diversity Act did not pass Congress, and the Opening Doors Expanding Opportunities grant program took its place.⁹³ The Opening Doors Expanding Opportunities grant program offered just 10 percent of the original funds proposed, \$12 million.⁹⁴ In comparison to the billions of dollars allocated to the Department of Education each year, this \$12 million figure was a blip on the radar. If the federal government is to commit itself to creating meaningful grant programs, then it too must commit itself to establishing clearer guidelines surrounding monetary resources. Thus, the legislation should replace the current language in section 9⁹⁵ with a minimum dollar amount that will be devoted to the desegregation grants.

Perhaps the greatest hurdle facing the Strength in Diversity Act is its lack of visible support. While the Act has had several predecessors, it has never, in any of its forms, garnered national attention. The Strength in Diversity Act made an appearance during the 2020 presidential debates⁹⁶ and was publicly endorsed by several Democratic presidential candidates.⁹⁷ It is also backed by a number of organizations including the American Federation of Teachers; Center for Educational Equity, Teachers College, Columbia University; Civil Rights Project/Proyecto Derechos Civiles at UCLA; Charles Hamilton Houston Institute for Race and Justice, Harvard Law School; and the National Coalition on School Diversity.⁹⁸ However, this piece of legislation is largely left out of national headlines. As such, it is the Author's hope that the information and data presented here will encourage readers to reach out to their representatives and senators and push for the implementation of the Strength in Diversity Act.

92. Strength in Diversity Act of 2018, H.R. 6722, 115th Cong. § 4558 (2018); Stronger Together School Diversity Act of 2016, H.R. 5738, 114th Cong. § 4558 (2016).

93. *See supra* notes 39–42 and accompanying text.

94. *See supra* notes 39–42 and accompanying text.

95. In its current form § 9 of the Strength in Diversity Act of 2021 broadly states, “There are authorized to be appropriated to carry out this Act such sums as may be necessary for fiscal year 2021 and each of the 5 succeeding fiscal years.” Strength in Diversity Act of 2021, H.R. 729, 117th Cong. § 9 (2021).

96. *See* Belsha, *supra* note 11.

97. *Id.*

98. *See Fact Sheet: Strength in Diversity Act of 2021, supra* note 81.

CONCLUSION

The promise of equal education for all as proclaimed in *Brown v. Board of Education* has quietly slipped away, replaced by gradually more segregated schools and a trend toward federal disinterest. It remains all too common for children of different backgrounds and cultures to be isolated from each other inside and outside the classroom. Yet, if public education pursues larger goals, such as developing respectful citizens who are prepared for a multicultural and interconnected society, then the peer environment in schools should be a major consideration for federal leadership. It is time for the federal government to play an active role in desegregation efforts once again. While imperfect, the Strength in Diversity Act affords the federal government this opportunity. It is an opportunity that is long overdue and should be pursued to the fullest extent possible.