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The Availability and Viability of Socioeconomic Integration Post-*Parents Involved*

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THE AVAILABILITY AND VIABILITY OF SOCIOECONOMIC INTEGRATION POST-*PARENTS INVOLVED*[*]

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I. INTRODUCTION

In the wake of the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*,[1] many scholars and commentators have tried to answer the question, "Where do we go from here?" Although varying answers have been proposed, ranging from more magnet schools to increased funding of underperforming schools,[2] many school administrators who are committed to achieving and maintaining racially diverse student bodies have decided to expand their definition of diversity to include the students' socioeconomic status.[3] This Essay will address the constitutionality of using class as a measure of diversity under the Roberts Court's interpretation of equal protection, as well as the viability of such initiatives to achieve diversity goals.

Due to the resegregation trend currently plaguing many public schools, an astounding number of African-American and Hispanic children attend racially segregated schools. Scholars such as Charles Ogletree and Leland Ware have concluded that many schools—especially those located in urban communities—are

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1. 127 S. Ct. 2738 (2007).

2. *See* Jessica Blanchard & Christine Frey, *Schools Seek New Diversity Answers After Court Rejects Race as Tiebreaker*, SEATTLE POST-INTELLIGENCER, June 29, 2007, http://seattlepi.nwsource.com/ local/321632_race29.html.

3. *See, e.g.*, Richard D. Kahlenberg, *Socioeconomic School Integration*, 85 N.C. L. REV. 1545 (2007) (arguing for the integration of school populations by socioeconomic status and outlining methods by which schools can accomplish such integration).

more segregated today than they were prior to the *Brown v. Board of Education*[4] decision.[5] Unfortunately, as the levels of minority enrollment increase, so do the levels of student poverty. As one commentator reported, "In 87% of schools that are over 90% minority (African-American and Hispanic), over half of the students come from families living in poverty."[6] These realities are particularly disturbing when one considers the often insurmountable obstacles that students in minority- and poverty-concentrated schools must overcome to achieve academic success. Such challenges include deteriorating school facilities,[7] lack of financial resources,[8] less experienced and qualified teachers,[9] and fewer college preparatory courses.[10] Negative peer influences,[11] lowered teacher expectations,[12] and less parental involvement[13] also hinder the academic achievements of students attending such schools. Advocates, such as Richard Kahlenberg, have encouraged school administrators to pursue socioeconomic school integration to combat these challenges and to achieve racially diverse student bodies.[14]

II. THE ALTERNATIVE OF SOCIOECONOMIC INTEGRATION

Socioeconomic integration, or "class-based" student assignment plans, seek to create middle class schools by minimizing the concentration of low-income students in any given school.[15] Instead of classifying and assigning students to schools based on their race, such plans consider students' socioeconomic status—such as students' eligibility to receive free and reduced-price lunch—when making student assignment decisions.[16] For example, in the case of the Seattle plan, instead of employing a racial tiebreaker when determining students' assignments

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

5. Charles J. Ogletree, Jr., *All Deliberate Speed?:* Brown *'s Past and* Brown *'s Future*, 107 W. VA. L. REV. 625, 631 (2005) ("[P]ublic schools in many areas are more segregated [today] than they were before *Brown*."); Leland Ware, *Race and Urban Space: Hypersegregated Housing Patterns and the Failure of School Desegregation*, 9 WIDENER L. SYMP. J. 55, 65 (2002) ("[B]ecause of the trend toward hypersegregated communities, public schools in many urban communities are more segregated now than they were in the pre-*Brown* era." (citing JACOB STOWELL & DIEDRA OAKLEY, CHOOSING SEGREGATION: RACIAL IMBALANCE IN AMERICAN PUBLIC SCHOOLS 1990–2000 (2002), *available at* http://mumford1.dyndns.org/cen2000/SchoolPop/SPReport/SPDownload.pdf)).

6. James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 273 (1999).

7. Nancy Levit, *Embracing Segregation: The Jurisprudence of Choice and Diversity in Race and Sex Separatism in Schools*, 2005 U. ILL. L. REV. 455, 497 (2005) ("Minority students in predominantly single-race neighborhood schools suffer 'substandard and deteriorating facilities, racial isolation, and concentrated poverty.'" (quoting Leland Ware, *Redlining Learners: Delaware's Neighborhood Schools Act*, 20 DEL. LAW. 14, 16 (2002))).

8. *See* John Charles Boger, *Education's "Perfect Storm"? Racial Resegregation, High Stakes Testing, and School Resource Inequalities: The Case of North Carolina*, 81 N.C. L. REV. 1375, 1382 (2003).

9. *See* Ryan, *supra* note 6, at 294.

10. *See id.* at 298.

11. *See id.* at 287–89.

12. *See id.* at 289.

13. *See id.* at 285.

14. *See* Kahlenberg, *supra* note 3.

15. *See id.* at 1551–54.

16. *See* Brief for Respondents at 41, Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 127 S. Ct. 2738 (2007) (No. 05-908), 2006 WL 2922956.

to oversubscribed schools,[17] school officials could have granted an admission preference to those students whose socioeconomic status would have helped achieve socioeconomic diversity. Similarly, in Louisville, instead of limiting African-American enrollment to at least fifteen percent and no more than fifty percent,[18] school administrators could have limited enrollment to at least fifteen percent and no more than fifty percent of low-income students.[19] To accomplish this very goal, the superintendent in Jefferson County, Kentucky, has proposed a revised student assignment plan that combines socioeconomic measures—determined by "neighborhoods that have income and education levels below the district average"—and racial diversity measures—determined by neighborhoods that have a high concentration of minority residents.[20]

By not classifying or assigning students on the basis of race, class-based measures may avoid the heightened and often fatal standards of strict scrutiny, because the Supreme Court does not presently recognize economic status or wealth as a suspect class.[21] Therefore, such measures may only have to pass rational basis review, which would require school officials to show that their use of class-based assignments is rationally related to a legitimate state interest. Arguably, using class-based measures to achieve the educational and societal benefits of socioeconomically diverse student bodies—improved educational outcomes, recruitment and retention of highly qualified teachers, greater parental involvement, and heightened educational aspirations—would meet this constitutional test.

For many proponents of race-neutral alternatives, being subject to rational basis review is a significant advantage of socioeconomic integration.[22] However, one must be mindful that although class-based plans do not utilize racial classifications, they may nevertheless be subject to strict scrutiny if found to be motivated by a

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17. *See id.* at 5–11.

18. *See* Brief for Respondents at 4–9, *Parents Involved*, 127 S. Ct. 2738 (No. 05-915), 2006 WL 2944684.

19. Antoinette Konz & Chris Kenning, *Desegregation: The New Proposal*, COURIER-J. (Louisville, Ky.), Jan. 29, 2008, at 1A, *available at* http://www.courier-journal.com/apps/pbcs.dll/article?AID=/20080129/NEWS0105/801290379.

20. *Id.*

21. *See, e.g.*, San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 29 (1973) ("[The Supreme] Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny . . . ."); Wendy Parker, *The Color of Choice: Race and Charter Schools*, 75 TUL. L. REV. 563, 582 n.85 (2001) ("When an action is neither a racial classification nor a race-neutral measure with discriminatory intent, the action is evaluated under the forgiving rational basis standard.").

22. *See* Richard Fallon, *Affirmative Action Based on Economic Disadvantage*, 43 UCLA L. REV. 1913, 1931 (1996) ("Affirmative action [based on economic disadvantage] would not trigger strict judicial scrutiny, and it would almost surely survive rational basis review in nearly any imaginable context."); Richard D. Kahlenberg, *Class-Based Affirmative Action*, 84 CAL. L. REV. 1037, 1064 (1996) ("[C]lass-based preferences provide a constitutional way to achieve greater racial and ethnic diversity, because they do not use a suspect category for decision making. Racial preferences are subject to strict scrutiny under the Fourteenth Amendment, but class preferences are not."); Eboni S. Nelson, Parents Involved & Meredith*: A Prediction Regarding the (Un)Constitutionality of Race-Conscious Student Assignment Plans*, 84 DENV. U. L. REV. 293, 327 (2006) (concluding that socioeconomic integration efforts are not subject to the potentially "fatal standard of strict scrutiny because they neither employ racial classifications nor seek to achieve racial diversity benefits"); L. Darnell Weeden, *Creating Race-Neutral Diversity in Federal Procurement in a Post-*Adarand *World*, 23 WHITTIER L. REV. 951, 967–68 (2002) ("A truly race-neutral affirmative action plan will not implicate the *Adarand* strict scrutiny test, because such plans are designed to create social and economic class-based diversity—for disadvantaged persons— . . . regardless of race, and thus are subject to the rational basis test.").

racially discriminatory purpose.[23] According to the Supreme Court's equal protection jurisprudence, a discriminatory purpose can consist of an attempt to benefit racial minority groups.[24] Therefore, although facially race-neutral, the Court may subject socioeconomic integration efforts to strict scrutiny if schools employ such efforts as a proxy for race to achieve and maintain the benefits associated with racially diverse student bodies.[25]

The possibility of strict scrutiny review, however, is unlikely when one considers Justice Kennedy's concurring opinion in *Parents Involved*.[26] Not only does Justice Kennedy recognize two additional compelling interests in the context of race and education—the avoidance of racial isolation and the achievement of a diverse student body[27]—but he also encourages school officials to employ "race-conscious measures" to pursue these interests.[28] Justice Kennedy even goes so far as to opine that race-conscious measures such as "strategic site selection of new schools" and consideration of neighborhood demographics for the purposes of drawing school boundaries likely would not evoke strict scrutiny.[29] While such measures are clearly race-conscious, they do not classify or define students on the basis of race.[30] In denouncing color-blindness as "a universal constitutional principle," Justice Kennedy recognizes the regretful truth that race still matters in our society and rejects the plurality's contention that school officials must ignore this reality when implementing educational policies.[31]

When considered in conjunction with the conclusions drawn by the four dissenting Justices in *Parents Involved*, Justice Kennedy's dicta in the case may prove to be the prevailing, majority view regarding the constitutionality of using facially race-neutral measures such as class-based student assignment plans to achieve the benefits of diversity.[32] Similar to Justice Kennedy's suggested race-conscious measures that are designed to "bring[] together students of diverse backgrounds and races,"[33] socioeconomic integration efforts attempt to achieve the educational and societal benefits of a diverse student body without classifying or

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23. *See* Lawrence v. Texas, 539 U.S. 558, 600 (2003) (Scalia, J., dissenting) ("A racially discriminatory purpose is always sufficient to subject a law to strict scrutiny, even a facially neutral law that makes no mention of race."); Boger, *supra* note 8, at 1397 ("The Supreme Court has long forbidden state actors to adopt ostensibly race-neutral criteria with the underlying intent to draw racial distinctions.").

24. *See* City of Richmond v. J.A. Croson Co., 488 U.S. 469, 493–506 (1989) (plurality opinion) (applying strict scrutiny to city-mandated minority preferences in the awarding of public construction contracts).

25. *See* Boger, *supra* note 8, at 1398 (noting that programs that emphasize socioeconomic composition do not raise equal protection concerns "unless shown to have been adopted as a mere pretext for continuing racial assignment").

26. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 127 S. Ct. 2738, 2788–97 (2007) (Kennedy, J., concurring in part and concurring in the judgment).

27. *Id.* at 2797.

28. *Id.* at 2792.

29. *Id.*

30. *Id.*

31. *Id.* at 2791–92.

32. Indeed, Justice Breyer's dissenting opinion notes that "five Members of this Court agree that 'avoiding racial isolation' and 'achiev[ing] a diverse student population' remain today compelling interests." *Id.* at 2835 (Breyer, J., dissenting) (quoting *id.* at 2797 (Kennedy, J., concurring in part and concurring in the judgment)).

33. *Id.* at 2792 (Kennedy, J., concurring in part and concurring in the judgment).

treating students differently on the basis of their race. Although socioeconomic integration efforts are conscious of the interrelationship between class, poverty, and race in our society,[34] they do not rely on an individual student's race when making a student assignment decision as did the plans in Seattle and Louisville.[35] Therefore, such race-neutral means should be constitutionally permissible to achieve the compelling interests sanctioned by Justice Kennedy and the dissenters in *Parents Involved.*

III. POSSIBLE SUPREME COURT REACTION TO CLASS-BASED PLANS

Despite this Essay's attempt to couch class-based measures in terms of the approved methods endorsed by Justice Kennedy, Justice Kennedy's failure to include class-based student assignment plans in his list of constitutionally permissible race-conscious measures is noteworthy.[36] Although the consideration of socioeconomic status in student assignment decisions is not a nationally widespread practice,[37] one could assume, considering the numerous articles and commentary that have been published on the subject,[38] Justice Kennedy was aware of this alternative method for making student assignments. Furthermore, at least two amicus briefs filed in support of the petitioners in *Parents Involved* referred to the consideration of socioeconomic status as a potential race-neutral alternative.[39]

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34. *See* Nelson, *supra* note 22, at 326 (noting that assignments based on socioeconomic status achieve racial diversity "because of the existing racial gaps in socioeconomic status").

35. *Parents Involved*, 127 S. Ct. at 2746 (plurality opinion).

36. *See id.* at 2792 (Kennedy, J., concurring in part and concurring in the judgment). Specifically, Justice Kennedy endorsed as constitutionally permissible the following race-conscious mechanisms: "strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race." *Id.*

37. To date, only approximately forty school districts nationwide currently employ class-based student assignment programs. *See* Robert Tomsho, *More Schools Likely to Spur Diversity via Income*, WALL ST. J. ON-LINE, June 29, 2007, http://online.wsj.com/article_email/SB118308503454552560-lMyQjAxMDE3ODIzODAyODg1Wj.html.

38. *See, e.g.*, GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY 43 (2005), *available at* http://www.civilrightsproject.ucla.edu/research/deseg/Why_Segreg_Matters.pdf ("There should be a concerted effort to avoid the creation of more concentrated poverty schools. Wherever possible there should be positive plans to use assignment and choice policies to foster more diverse schools."); Ryan, *supra* note 6, at 307–15 (listing a fourth wave of school finance litigation and school choice programs as possible means of furthering integration); James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2115–35 (2002) (advocating the expansion of school choice programs as one method to increase socioeconomic integration). Scholars have also written numerous articles discussing the consideration of class and socioeconomic status in higher education admissions decisions. *See, e.g.*, R. Richard Banks, *Meritocratic Values and Racial Outcomes: Defending Class-Based College Admissions*, 79 N.C. L. REV. 1029 (2001); Fallon, *supra* note 22; Richard D. Kahlenberg, *supra* note 22; Deborah C. Malamud, *Assessing Class-Based Affirmative Action*, 47 J. LEGAL EDUC. 452 (1997); Deborah C. Malamud, *Class-Based Affirmative Action: Lessons and Caveats*, 74 TEX. L. REV. 1847 (1996); Richard H. Sander, *Experimenting with Class-Based Affirmative Action*, 47 J. LEGAL EDUC. 472 (1997); Tung Yin, *A Carbolic Smoke Ball for the Nineties: Class-Based Affirmative Action*, 31 LOY. L.A. L. REV. 213 (1997).

39. *See* Brief for the United States as Amicus Curiae Supporting Petitioner at 24–27, *Parents Involved*, 127 S. Ct. 2738 (No. 05-908), 2006 WL 2415458; Brief Amicus Curiae of Pacific Legal Foundation et al. in support of Petitioner at 16–17, *Parents Involved*, 127 S. Ct. 2738 (No. 05-915), 2006 WL 460622.

Why did Justice Kennedy not include class-based student assignment plans in his list of approved measures? Perhaps the answer lies in the individual classification component that often characterizes such plans.

Unlike the five race-conscious measures included in Justice Kennedy's list of permissible means to achieve diversity benefits,[40] many class-based student assignment plans require schools to individually classify and assign students on the basis of their socioeconomic status. As previously mentioned, under a class-based plan, school officials may designate that no school will have a student population that is more than fifty percent low-income, as commonly measured by students' eligibility to receive free and reduced-price lunch.[41] To achieve this goal, school officials would classify individual students as "low-income" or "non-low-income." School boards would then use these classifications or labels to determine to which schools they assign particular students. Such individual labels are not necessary when school officials decide to build a new school in a racially diverse neighborhood or when they decide to draw attendance zones based on the racial makeup of particular neighborhoods. While a particular neighborhood may be characterized as low-income or minority, the individual students are not. The student assignment decision is based on the characterization of a particular geographic area, not the characterization of a particular person.

Perhaps Justice Kennedy considers the classification of an individual student as "low-income" to be akin to school officials "[a]ssigning to each student a personal designation according to a crude system of individual racial classifications."[42] When such designations take place in the context of race, Justice Kennedy concludes that courts must employ some sort of heightened judicial scrutiny to determine the constitutionality of such decisionmaking.[43] Perhaps he thinks the same is true in the context of class. Perhaps Justice Kennedy believes that classifying and labeling children on the basis of class would not quite evoke strict scrutiny, but instead some sort of robust rational basis review or quasi-intermediate scrutiny.

Or perhaps such conclusions are reading something into nothing and a more likely conclusion to draw from Justice Kennedy's lack of discussion of class-based measures is that he simply was not very concerned about such measures or their constitutionality, or he simply chose not to specifically address them in his opinion. It is impossible to know the significance, if any, of Justice Kennedy's omission of class-based measures from his suggestions of constitutionally permissible means. However, one can conclude from the language included in his concurrence[44] that

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40. *Parents Involved*, 127 S. Ct. at 2792 (Kennedy, J., concurring in part and concurring in the judgment).

41. *See supra* text accompanying notes 16–19.

42. *Parents Involved*, 127 S. Ct. at 2792 (Kennedy, J., concurring in part and concurring in the judgment).

43. *See id.*

44. *See id.* Specifically, Justice Kennedy noted,

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

Id.

he, along with the four dissenting justices,[45] encourage and support school officials' efforts to achieve the benefits of racially diverse student bodies through the utilization of race-conscious measures that do not classify or select students on the basis of race. Because socioeconomic integration arguably fits into this category of measures, one can also conclude that these five Justices would also support class-based plans.

IV. SOCIOECONOMIC DIVERSITY VS. RACIAL DIVERSITY

When considering the viability of socioeconomic integration efforts as an effective means of achieving diversity goals, one must first identify which diversity goals she is attempting to achieve. If the goal is to increase levels of economic diversity, then limiting concentrations of low-income students will obviously help achieve this goal. Some advocates and researchers propose that schools should focus their efforts on achieving economic integration due to the fact that the socioeconomic makeup of students' families and schools, not racial diversity, are the most important predictors of academic achievement.[46] Case studies have shown that students attending schools that engaged in both racial and economic integration efforts have experienced greater academic achievement than those students attending racially diverse yet low-income schools.[47] If positive peer influences, active parental involvement, and heightened academic and career aspirations positively correlate with both academic success and socioeconomic status, then perhaps the creation of middle class schools is a goal worth pursuing. Seeking to achieve the educational and societal benefits of socioeconomic diversity could also further shield class-based plans from heightened constitutional scrutiny if school officials' actions become motivated by these benefits rather than the benefits of racial diversity.[48]

If one is attempting to increase the number of racial minority students attending a particular school, then relying on measures of class would generally not be as effective as the direct consideration of race in student assignments. Even advocates of class-based integration efforts concede that such efforts do not result in the same levels of racial diversity as racial considerations.[49] However, due to the existing

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45. *See id.* at 2811 (Breyer, J., dissenting) ("A longstanding and unbroken line of legal authority tells us that the Equal Protection Clause permits local school boards to use race-conscious criteria to achieve positive race-related goals, even when the Constitution does not compel it.").

46. *See, e.g.*, Molly S. McUsic, *The Law's Role in the Distribution of Education: The Promises and Pitfalls of School Finance Litigation*, *in* LAW AND SCHOOL REFORM: SIX STRATEGIES FOR PROMOTING EDUCATIONAL EQUITY 88, 129 & 157 n.202 (Jay P. Heubert, ed., 1999) (suggesting that a poor student residing in a home of uneducated parents will perform better academically if that student enrolls in a school where income and education levels of fellow students' parents are at least middle class status).

47. *See id.* at 129 n.202 (listing social science research documenting positive influences class integration has on test scores, graduation rates, college entrance, and access to jobs and housing markets for students from poor homes that enroll in a school populated by middle class students); Kahlenberg, *supra* note 3, at 1557 ("[N]o significant achievement gains were found in places . . . where low-income white students were integrated with low-income black students.").

48. *See supra* notes 23–25 and accompanying text.

49. *See, e.g.*, Martha R. Mahoney, *Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases*, 76 S. CAL. L. REV. 799, 851 (2003) ("Race-neutral programs assisting low-income individuals . . . do not address issues of class advancement in the way that race-conscious

racial gaps and disparities related to socioeconomic status,[50] assigning students to schools based on their socioeconomic status often does disproportionately affect minority students and result in racial diversity—albeit less racial diversity than that achieved under race-based plans.[51]

Proponents of race-based measures argue that educating students in less racially-diverse learning environments will greatly hinder schools' attempts to achieve the societal and democratic benefits that are often associated with racial integration.[52] Students learning in racially isolated environments are not afforded opportunities for cross-racial or cross-cultural understanding[53] and are not adequately prepared to function as global citizens in our increasingly diverse society.[54] Despite these laudable benefits of racial diversity, school officials are wise to pursue other measures, such as socioeconomic integration, that are less subject to constitutional and political attack.

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affirmative action addresses the complex questions of increasing access for racially subordinated communities."); Richard H. Sander, *Experimenting with Class-Based Affirmative Action*, 47 J. LEGAL EDUC. 472, 473 (1997) (noting that class-based integration has only "mixed success in preserving racial diversity").

50. *See, e.g.*, Deborah C. Malamud, *Assessing Class-Based Affirmative Action*, 47 J. LEGAL EDUC. 452, 464 (1997) ("Minority-group status . . . *in general* correlate[s] with economic disadvantage . . . ."); John A. Powell, *The Race and Class Nexus: An Intersectional Perspective*, 25 LAW & INEQ. 355, 396–97 (2007) ("Race and class are mutually constitutive. They developed in a mutual trajectory despite their distinctiveness.").

51. *See* Fallon, *supra* note 22, at 1947–48 ("[T]here is strong reason to doubt that [class-based integration plans] would preserve all the forms of minority presence established under race-based affirmative action programs . . . ."); Michael J. Kaufman, PICS *in Focus: A Majority of the Supreme Court Reaffirms the Constitutionality of Race-Conscious School Integration Strategies*, 35 HASTINGS CONST. L.Q. 1, 17 (2007) ("[T]here is no doubt that the use of socio-economic status is less tailored to achieve the goal of meaningful racial diversity than the use of racial diversity itself.") .

52. *See* Boger, *supra* note 8, at 1415 ("[A] pupil's achievement is strongly related to the educational backgrounds and aspirations of the other students in the school . . . . Thus . . . if a minority pupil from a home without much educational strength is put with schoolmates with strong educational backgrounds, his achievement is likely to increase." (alteration in original) (quoting JAMES S. COLEMAN ET AL., U.S. DEP'T OF HEALTH, EDUC. & WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 22 (1966)) (internal quotation marks omitted)); Eboni S. Nelson, *What Price* Grutter*? We May Have Won the Battle, but Are We Losing the War?*, 32 J.C. & U.L. 1, 26 (2005) (noting that minorities must overcome the "perceived devaluation of education in minority communities" in order to further their educational opportunities).

53. *See* MICHAL KURLAENDER & JOHN T. YUN, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., THE IMPACT OF RACIAL AND ETHNIC DIVERSITY ON EDUCATIONAL OUTCOMES: CAMBRIDGE, MA SCHOOL DISTRICT 6 (2002), *available at* http://www.civilrightsproject.ucla.edu/research/diversity/cambridge_diversity.pdf (quoting a high school senior from an integrated school who had "'conquered many fears that I had about people from different racial and ethnic groups'"); Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools*, 81 N.C. L. REV. 1513, 1527–28 (2003) ("Blacks who attended desegregated schools . . . are more likely to live and work in an integrated environment and to express less interracial hostility and fear of whites.").

54. *See* KURLAENDER & YUN, *supra* note 53, at 7 ("Students [from an integrated school] credit their school experiences as contributing to their ability to work with and understand people from different backgrounds."); Leroy D. Clark, *The Future Civil Rights Agenda: Speculation on Litigation, Legislation, and Organization*, 38 CATH. U. L. REV. 795, 806 (1989) ("Young people in ghetto neighborhoods confront peers who devalue education and who may rely on crime and violence to solve problems.").

V. CONCLUSION

Although this Essay hypothesizes that a majority of the current members of the Court would uphold class-based plans that seek to achieve the benefits of racial diversity,[55] no one knows who the future members of the Court will be or if they would follow Justice Kennedy's assessment of the constitutionality of certain race-conscious plans.[56] We also do not know Justice Kennedy's views on the use of class-based measures that classify students on the basis of socioeconomic status.[57] In light of these uncertainties, this Essay would cautiously advise school officials, scholars, and researchers to create student assignment measures that neither classify nor select students on the basis of race or class. Instead, student assignment plans should classify neighborhoods based on their socioeconomic status and draw school boundaries accordingly to achieve the educational and societal benefits of socioeconomic diversity.

Pressing forward, school officials should be mindful that as our society increasingly stratifies on the basis of race and class, the ability to achieve meaningful levels of any kind of diversity—absent extreme and widely unpopular measures such as busing—will become more and more difficult. The unfortunate result will be increased concentrations of minority and poor students in all-too-often failing schools. Many school districts throughout the country have already experienced this tragic reality.[58] As schools pursue their diversity goals, they must not abandon the needs and interests of students who find themselves in primarily low-income and minority schools. Schools should employ system-wide measures that go beyond the pursuit of diversity to ensure that all students are provided equal educational opportunities notwithstanding the racial or socioeconomic makeup of their schools.

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55. *See supra* notes 44–45 and accompanying text.

56. *See* Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 127 S. Ct. 2738, 2792 (2007) (Kennedy, J., concurring in part and concurring in the judgment).

57. *See supra* text accompanying notes 36–45.

58. *See* GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT, HARVARD UNIV., *BROWN AT 50: KING'S DREAM OR PLESSY'S NIGHTMARE?* 20 & tbl.8 (2004), *available at* http://www.civilrightsproject.ucla.edu/research/reseg04/brown50.pdf (noting a "decade of increasing segregation" between 1991 and 2001); Mickelson, *supra* note 53, at 1556 ("[The] student assignment plan [enacted in the Charlotte-Mecklenburg schools in 2002] is likely to resegregate a *majority* of the schools within the next few years." (emphasis added)).

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