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How To Keep *Brown* Alive

Use income level, instead of race, to integrate the schools.

By Richard Kahlenberg

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In the wake of yesterday's Supreme Court decision striking down voluntary racial integration plans in Seattle and Louisville, Ky., how can districts diversify schools without facing legal jeopardy? There is a way, though it's not the one that many people are talking about.

Lawyers have quickly coalesced around the idea that Justice Anthony Kennedy's concurring opinion in the cases is akin to Justice Lewis Powell's famous opinion in the 1978 *Bakke* decision, which closed the door on racial quotas but allowed race as "a factor" in university admissions. Playing Powell's role as swing vote, Kennedy struck down the Seattle and Louisville plans, which classified individual students by their race, but in the controlling opinion said it was permissible for school districts to use "general policies to encourage a diverse student body." Kennedy declared kosher such practices as "strategic site selection of new schools" and "drawing attendance zones with general recognition of the demographics of neighborhoods." And, in a nod to *Bakke* and its 2003 successor, *Grutter v. Bollinger*, Kennedy said that as a "last resort," districts could look at "student characteristics that might use race as a component."

Educators, however, are skeptical that this is the loophole the lawyers seem to think. Whereas Powell's "race as a factor" formulation provided an enormous opportunity for universities to use race in admissions, Kennedy's approval of "generalized policies" is mostly unworkable at the elementary- and secondary-school level.

For one thing, because most residential areas are heavily segregated by race, districts can only accomplish so much integration by gerrymandering district lines. That's why, until yesterday, most integration plans instead allowed families to choose public schools in a different neighborhood, and then used race as a factor in deciding whose choices are honored—precisely what Kennedy outlawed. So, too, the practical problem for districts with putting new schools in diverse neighborhoods is that most diverse neighborhoods are not truly integrated but instead are in transition from one race to another.

Furthermore, redistricting infuriates parents and, unlike public-school choice and magnet-school programs, gives middle-class white families little to like. The great lesson of the busing crisis of the 1970s was that backlash follows from gerrymandering school lines and giving families no say in the matter of where their children attend schools. Kennedy's call for "generalized policies" boxes districts into the very types of integration plans least likely to fly politically.

Finally, Kennedy's call to use race as a last resort at an individual level, so long as it is one factor of many, is impractical at the elementary and secondary level. The analogy to college admissions, where officers look closely at the qualities of individual candidates to judge their merit, falls apart when applied to large public-school systems that assign thousands of students each year for reasons that have nothing to do with the complex calculations of selective admissions in higher education.

In sum, if all districts are left with is Kennedy's loophole, given the political headaches of redistricting and difficulty of threading his legal needle, they are likely to avoid efforts to integrate their student bodies. So, have we witnessed the death of *Brown v. Board of Education*?

Not at all. Today, about 40 school districts across the country use socioeconomic status as a factor in

student assignment. (Estimates of the number using race range from a few hundred to nearly 1,000, according to the *New York Times*.) [As Stuart Taylor noted on Thursday in *Slate*](#), a notable example is Wake County, N.C., which for years integrated its schools by race and then in 2000 switched. Wake County now caps at 40 percent the number of students in each school eligible for federally subsidized lunches and at 25 percent the share of students performing below grade level.

Districts like Wake County shifted to socioeconomic integration in part to produce healthy racial integration indirectly, without running afoul of the Constitution. And now they look prescient. The courts have long held that distinctions based on income are permissible: The progressive income tax, for example, which imposes a higher marginal tax rate for the wealthy, presents no constitutional problem, while a tax system that imposed a higher marginal rate on whites than blacks would likely be struck down. Even the Bush administration has said that income-based school integration is perfectly legal.

And integration based on income can yield racial integration. African-American and other minority students are almost three times as likely to be low-income as white students. For example, among fourth-grade students nationally in 2005, 24 percent of whites were eligible for federally subsidized lunch, compared to 70 percent of African-Americans and 73 percent of Latinos. Furthermore, poor blacks in particular are more likely to attend high-poverty schools than poor whites. The Civil Rights Project at Harvard University found that in the 2003-04 school year, 76 percent of schools with minority rates at or above 90 percent were high poverty, compared with only 15 percent of schools with minority populations at 10 percent or lower.

In the higher-education arena, some poorly crafted income-based affirmative action plans have failed to produce sufficient racial diversity. That's in part because low-income whites tend to achieve at higher levels than low-income blacks. But at the K-12 level, the achievement gap between racial groups can actually be used to *increase* the racial dividend of income-based programs. Wake County's plan to avoid concentrations of low-income students *and* low achieving students has yielded almost as much racial diversity in schools as its old race-based integration plan. One study found that under Wake County's old policy, 64.6 percent of schools were racially desegregated in 1999-2000. Two years later, under the new socioeconomic integration policy, 63.3 percent of schools remained racially desegregated.

Significantly, however, income-based integration isn't just a clever proxy for racial integration. For 40 years, researchers have found that the single most important thing you can do to raise the achievement of low-income students is to send them to attend a middle-class school, where classmates tend to have big dreams and make good peers, parents in the community actively volunteer in the school and hold school officials accountable, and good teachers teach based on high expectations.

Indeed, education research has long suggested that the economic mix of a school matters more than the racial mix in promoting the academic achievement of students. UCLA professor Gary Orfield, a strong proponent of racial desegregation, notes that "educational research suggests that the basic damage inflicted by segregated education comes not from racial concentration but the concentration of children from poor families." This is a better way to further the promise of *Brown*—and one that the Supreme Court won't lay a glove on.

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