

Testimony of John C. Brittain
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Brown v. Board of Education at 65: A Promise Unfulfilled
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Good Morning, Chairman Scott and Ranking Member Foxx. My name is John C. Brittain, and I am a professor at the David A. Clarke School of Law at the University of the District of Columbia. I appear today as an expert on educational equity with 50 years of experience in the law. And, I am a representative of the National Coalition on School Diversity (NCSA), a network of national civil rights organizations, organizations, university-based research centers, and state and local coalitions working to expand support of government policies that promote school diversity and reduce racial and economic isolation in elementary and secondary schools. We also support the work of state and local school districts and practitioners. Our work is informed by an advisory panel of scholars and academic researchers whose work relates to issues of equity, diversity and desegregation/integration.

In preparation for this testimony, I selected excerpts of published materials on the topic, “A Promise Unfulfilled” by *Brown*.

May 17, 2019 marks the 65th anniversary of the Supreme Court’s decision in *Brown*. I begin with remarks by Sherrilyn Ifill, President and Director Counsel of the NAACP Legal Defense Fund, at the 60th anniversary that is still relevant today. She wrote, *Brown* represents “.....the constitutional moment that compelled our country to reckon with its history and confront

the unfulfilled promise of equality first articulated in our founding documents. *Brown* literally changed America. It is a mid-20th century course correction that ushered in a modern America that must grapple honestly with the promise of equality and opportunity for all of its citizens. At its core *Brown* marks the beginning of the end of legal apartheid in this country. This would be enough to celebrate. But *Brown* is also a powerful example of how change can happen and the important role that law plays in shaping the very character of our country.

Brown was the culmination of a strategy first conceived of by the brilliant, visionary Howard Law Dean and scholar Charles Hamilton Houston and counsel to the NAACP. With his protégée Thurgood Marshall, who went on to become the first Director-Counsel of NAACP LDF and first African American Supreme Court justice, Houston began challenging Jim Crow in education in 1935 with a successful challenge to racial segregation at the University of Maryland School of Law. They moved through the South, challenging Jim Crow in graduate schools and law schools before ending up where they always wanted to be in the United States Supreme Court with a dream team of lawyers arguing that segregation in K-12 education violates the United States Constitution.

Their argument was clear. The 14th amendment to the Constitution guarantees equal protection of the laws. Racial segregation violates that principle. The lawyers marshalled expert witnesses to prove what most of us take for granted today, that state-enforced racial segregation in education “deprives [black children] of equal status in the school community....destroys their self-respect, denies them full opportunity for democratic social development [and].... stamps [them] with a badge of inferiority.” Although this conclusion never made it into the Supreme Court’s decision, it’s worth noting that *Brown*’s star expert, Dr. Kenneth

Clark had also warned that segregation “twisted the personality development of white children.”

Writing for a unanimous Supreme Court, Chief Justice Earl Warren issued the powerful statement about education that resonates just as poignantly today:

Today education is the most important function of state and local governments....It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days it is doubtful that any child can be reasonably expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”¹

Next, the NCSd sets forth the clearly persuasive research on the benefits of school diversity and integration.

- Students attending socio-economically, and racially diverse schools have better test scores and higher college attendance rates than peers in more economically and racially segregated schools.
- Racial diversity in schools also carries long-term benefits. These include subsequent reduced segregation in neighborhoods, colleges and workplaces, higher levels of social cohesion, and a reduced likelihood of racial prejudice.

Despite these benefits, 25% of public-school students attend schools in which more than 75% of students are eligible for free and reduced-price lunch; and in urban areas, nearly half of all students attend high-poverty schools. These trends have been getting worse over the past decade. The Government

¹ Sherrilyn Ifill, *A Reflection on the 60th Anniversary of Brown v. Board of Education*, NAACP LEGAL DEFENSE & EDUCATIONAL FUND, <https://www.naacpldf.org/ldf-celebrates-60th-anniversary-brown-v-board-education/reflection-60th-anniversary-brown-v-board-education> (last visited Apr. 26, 2019).

Accountability Office (GAO) recently found that the percentage of K-12 public schools with high poverty and African-American or Hispanic students increased from 9% in 2000-01 to 16% in 2013-14. The Stronger Together School Diversity Act of 2016 would empower communities to counter the encroaching re-segregation we are facing.²

As a result of these research findings, the NCSd supported The Stronger Together School Diversity Act of 2016. The bill was first introduced in both the House of Representatives and the Senate in 2016 and reintroduced in 2018 as the Strength in Diversity Act. It authorizes \$120 million for a competitive grant program that promotes racial and socioeconomic diversity within our schools.

- The program is completely voluntary, and diversity plans would be locally developed.
- Applicants for funds would have to demonstrate strong family and community involvement in plan development.
- Grants are available for both planning and implementation.
- Up to \$6 million would be available for National Activities, which would include technical assistance and evaluation.³

To fulfill the promise of *Brown*, the fight for quality school integration must continue. For example, the NCSd policy agenda for 2019 addressed this goal.

“Across the nation, there are numerous examples of states and local communities engaging in thoughtful discussion, planning, design and implementation of policies and programs to reduce racial and poverty concentration and achieve meaningful integration in elementary and

² *The Stronger Together School Diversity Act of 2016: Why Promoting Racial and Socioeconomic Diversity in our Public Schools is Vitaly Important*, NATIONAL COALITION ON SCHOOL DIVERSITY, https://school-diversity.org/pdf/Stronger_Together_School_Diversity_Act_of_2016_two-pager.pdf (last visited Apr. 26, 2019).

³ *Id.* at 1.

secondary schools. Their visions of integration are broad, bold and multi-faceted.

The passage of Every Student Succeeds Act (ESSA) in 2015 gave rise to a policy environment that actively encourage educators to design and implement education reform strategies that are tailored to their unique context, developed in constructions with parents, students and community leaders. ESSA invited states districts, and school communities to take the time and create the space to tackle some of their most vexing education challenges.

Alongside this emerging flexibility, we have also witnessed an unfortunate retreat from school integration at the federal lever in the Trump Administration. This has included removing racial and socioeconomic diversity as priorities in Department of Education competitive grant programs, cancelling a school integration grant program after school districts had already applied, and withdrawing guidance to school districts issued during the Obama Administration that provided a roadmap for school districts to lawfully consider race in student assignments.

There are a variety of ways to pursue racial integration in elementary and secondary school, which can be broken down into ... [several] buckets:

Legislative

- Recalibrate the Title I funding formula so it does not penalize school districts or schools that seek to pursue integration.
- Create a federal grant program that provides financial support for districts like the Strength in Diversity Act that was introduced in the 115th Congress).
- Encourage multiparty collaboration and strong eligibility criteria in formulating such grant competitions.

Regulatory

- Reinstate priorities for socioeconomic and racial diversity for competitive grant programs in the Department of Education, which were in place during the Obama Administration.
- Reinstate 2011 guidance letters that explained how school districts could lawfully pursue racial diversity.⁴

And the final source of reference for this important topic about *Brown* at 65 is from the Century Foundation. In an article published in the “Atlantic Magazine,” researchers added their analysis of the post-Brown era, and the proposals to fulfill the promise of *Brown* to achieve equal educational opportunities.

“In the face of white backlash against school desegregation, however, Congress and the courts lost their nerve. In the early 1970s, a bipartisan group of legislators—including then-Senator Joe Biden—voted to prohibit the use of federal funds for transportation to achieve integration. Richard Nixon appointed conservative Supreme Court justices who cut back on the possibility of urban-suburban desegregation plans. Starting in the 1980s, the Reagan administration and its successors put little pressure on schools to desegregate.”

In the years since, efforts to integrate schools have also been hampered by segregation in the housing market. The federal government’s investment in addressing this problem, too, has been exceedingly modest. The 1990s Moving to Opportunity program, which allowed low-income families to move to higher-opportunity neighborhoods, was funded at just \$70 million. It ran into trouble when Senator Barbara Mikulski, a Maryland Democrat, killed an

⁴ A *School Integration Policy Agenda for 2019 and Beyond*, NATIONAL COALITION ON SCHOOL DIVERSITY, https://school-diversity.org/wp-content/uploads/2018/07/Policy-Handout_Draft6.pdf (last visited Apr. 26, 2019).

expansion of the program due to resistance from suburban-Baltimore constituents.

Again and again, federal efforts to promote integration have been whittled down almost to nothing. The result for children has been predictable: increasing school segregation by race and class. According to a 2016 Government Accountability Office report, the percentage of schools in which more than three-quarters of students were low-income and black or Hispanic grew from 9 percent in 2000–01 to 16 percent in 2013–14. This is bad for our democracy, which is fractured along the fault lines of race, ethnicity, and religion. It is bad for social mobility, which used to be a defining feature of American life. And it is bad for middle-class and white students, who are deprived of the deeper learning that occurs when students bring different life experiences to classroom discussion.

Washington is still capable of doing much more. In a newly released Century Foundation report, we outline several ideas for reinvigorating the federal role in school integration in 2020 and beyond. As a first step, Congress could pass the Strength in Diversity Act, introduced by Representative Marcia Fudge of Ohio and Senator Chris Murphy of Connecticut, which would provide \$120 million in new competitive grants to districts to support voluntary local efforts to reduce school segregation. Even bolder, Congress could make money available—perhaps \$500 million or more—to all districts that wish to take more steps toward integration.

Because 75 percent of students attend neighborhood public schools, housing policy can also play a critical role in integrating schools. The United States needs an Economic Fair Housing Act—as a supplement to the 1968 Fair Housing Act. The new legislation would reduce discriminatory zoning policies that effectively exclude low-income and minority families from certain schools

by banning apartment buildings and other multifamily units in nearby neighborhoods.

There are many other steps Washington could take: mandating a federal review of efforts by wealthy and predominantly white school jurisdictions to secede from integrated school districts; ending the federal prohibition on using funds to transport students for integration; and making diversity a priority in charter-school programs.

A generation ago, the federal government briefly took the lead on promoting school diversity, and the nation greatly benefited. Restoring that commitment has proved exceedingly difficult.

Congress after Congress has decided that integration isn't worth the fight. But especially at a moment of profound political division and growing inequality, the United States should be working harder than ever to bring children of different backgrounds together in high-quality integrated schools.”⁵

I end with this quote by Nelson Mandela, "Education is the most powerful weapon which you can use to change the world.

⁵ Richard Kahlenberg, Halley Potter & Kimberly Quick, *Segregation Is Preventable. Congress Just Isn't Trying*, ATLANTIC MAGAZINE (April 18, 2019), <https://www.theatlantic.com/ideas/archive/2019/04/school-integration-over-compensatory-education/587407/>.