

## **Busing/Anti-Busing**

The U.S. Supreme Court's landmark decision in *Brown v. Board of Education* (1954) was an important legal milestone for the burgeoning Civil Rights Movement. However, by the middle of the 1960s it was increasingly clear to proponents of desegregation of public schools and the courts that the most widely used remedies for school segregation in the South and elsewhere—generally, consolidation of formerly all-white and all-black or all-Anglo and all-Hispanic schools in mixed neighborhoods—were largely ineffective in ensuring that white and black (or, in the Southwest, Hispanic) students attended public schools side-by-side, particularly in larger cities and counties with high levels of preexisting residential segregation, where schools would largely only be integrated if the surrounding neighborhood were also integrated. A number of district courts and school boards, primarily in the South, turned to the solution of transporting students from the catchment area of one school to another school, the goal being to equalize the share of white and minority students across the school district, achieving “unitary” status. This solution turned out to be politically unpopular, particularly among whites, and was a rallying point for supporters of third-party presidential candidate George Wallace in 1968 and, to a lesser extent, Richard Nixon in the 1968 and 1972 campaigns. While the Supreme Court permitted the use of busing to desegregate schools in *Swann v. Charlotte-Mecklenburg Board of Education* (1971), busing was never required as a nationwide policy and later Supreme Court decisions limited the scope of desegregation orders to preexisting school districts, which limited the potential scope of desegregation within many larger metropolitan areas covered by multiple school districts. While Charlotte and some other, smaller southern cities have continued to make extensive use of busing with some success, many other school districts have become virtually all-minority since the 1970s, limiting the potential for busing as a remedy for school segregation.

## **Background**

During the twentieth century, the Supreme Court, prompted by legal challenges from the NAACP and by increasing racial liberalism in society, particularly outside the South, gradually chipped away at the legal foundations of racial segregation that it had ratified in *Plessy v. Ferguson* (1896). The NAACP's legal strategy focused during much of this period on the question of segregation in public education. In *Missouri v. Canada* (1938), *Sipuel v. Board of Regents of Univ. of Okla.* (1948), and *McLaurin v. Oklahoma State Regents* and *Sweatt v. Painter* (1950), the Supreme Court eroded the legal basis for the provision of “separate but equal” institutions of higher education.

However, the court left segregation in primary and secondary schools intact until its decision four years later in *Brown v. Board of Education* (1954) applied this developing logic to five school segregation cases originating from Kansas, Delaware, Virginia, South Carolina, and the District of Columbia, famously stating in a unanimous decision that “[s]eparate educational facilities are inherently unequal.” The court's ruling, however, did not specify any particular remedies for the situations in the present cases or any timetable for relief, remanding the cases to lower courts instead. The lack of relief, however, did not avoid controversy, as southern politicians denounced the decision by issuing the Southern Manifesto and calling for “massive resistance” to the court's decision. The court further backed away from promoting immediate relief a year later, when it announced in *Brown II* (1955) that desegregation should happen “with all deliberate speed,” a statement that many lower courts took to mean that desegregation did not have to be immediate or complete for school districts to “comply” with the court's ruling in *Brown*.

## **Minimal Compliance and Freedom-of-Choice Plans**

While “massive resistance” to the court's decision was only sporadic—most notably, leading to closures of schools in Little Rock after President Eisenhower's intervention at Little Rock Central High School and in Prince Edward County, Virginia, where public schools were closed for five years (1959-1964) and replaced with whites-only “academies” subsidized by the state after being ordered to desegregate—the court's decision in *Brown II* to advocate a standard of “all deliberate speed” led to another form of resistance known as “minimal compliance.”

Under the minimal compliance approach, legal barriers to cross-racial enrollment were removed but, in practice, most students remained in *de facto* segregated schools, often through legal means such as Virginia's State Pupil Placement Board or due to racially segregated residential patterns that meant that most “neighborhood schools” would be segregated. Congress' passage of the Civil Rights Act of 1964, which banned discrimination “under any program or activity receiving Federal financial assistance” in Title VI of the Act, led many southern school districts to adopt “freedom of choice” or “free transfer” plans to comply with the new law and federal regulations that required at least the appearance of nondiscrimination. However, the Supreme Court ruled in *Green v. County School Board of New Kent County* (1968) that freedom-of-choice plans were only permissible if they accomplished the goal of promoting desegregation; in practice, the court found that New Kent and other districts had not achieved that goal and that other means of accomplishing desegregation, such as zoning (using geography, not race, to assign students to schools) were required. Furthermore, the ruling in *Green* was seen as a statement by the Supreme Court that immediate action by districts was necessary to desegregate their schools.

### **Busing as a Remedy for Segregation**

Desegregation proponents in Charlotte, North Carolina proposed the first large-scale plan involving the use of busing as a desegregation tool in the wake of the *Green* ruling; Charlotte had already implemented a system of neighborhood schools in 1962, leading to very limited desegregation in practice, and this approach clearly would not pass muster with the Supreme Court following *Green*. The NAACP revisited its long-standing desegregation lawsuit, *Swann v. Charlotte-Mecklenburg Board of Education*, in 1968, advancing the argument that further efforts to desegregate Charlotte's schools were necessary and that the residential patterns of the city, far from being the result of private choices of individuals, reflected past government policies such as the denial of mortgage loans to residents of minority neighborhoods (“redlining”) and past court enforcement of restrictive housing covenants (the latter practice was struck down by the Supreme Court in *Shelley v. Kraemer*, 1948); given these patterns, the NAACP argued that the neighborhood schools model was fatally flawed and proposed the use of busing as a remedy.

Busing had historically been used as a tool of school *segregation* in much of the country; notably, the Supreme Court found in the *Green* case that New Kent County's school board bused white and black students extensively to maintain its dual system. However, the proposal to use busing for *desegregation* was seen as novel and led to opposition on two fronts: blacks were opposed to proposed “one-way busing” plans in which virtually all of the students bused to school would be African Americans, while whites opposed the NAACP's proposed “two-way” plan on the basis that white students would be shifted from historically better-performing (and all-white) neighborhood schools to formerly all-black schools that were perceived as inferior. In Charlotte, a cross-racial coalition of blacks and working-class whites were able to successfully press for implementation of a two-way busing solution that largely equalized schools in black and white neighborhoods, but similar coalitions did not emerge in many other cities.

During this period, the busing controversy became prominent in national politics. In the 1968 presidential campaign, Alabama governor George Wallace's third-party candidacy relied in part on white parents' opposition to desegregation busing to attract supporters, while Republican nominee Richard Nixon emphasized the simultaneous importance of compliance with the Supreme Court's desegregation orders and his opposition to "intrusive" remedies such as busing. In office, Nixon broadly continued to oppose busing while stressing his support for school desegregation in principle, a position followed by the Department of Justice under his administration.

The Supreme Court ultimately heard an appeal in *Swann*, ruling in 1971 that district court judge James B. McMillan's ruling supporting a two-way busing plan for Charlotte was constitutional, allowing other district courts to order similar plans. However, the Supreme Court stopped short of requiring busing as a remedy nationwide, instead continuing its policy dating back to *Brown II* of remanding most of the details to the discretion of district courts and local school boards. This hands-off approach by the court led to very uneven implementation of busing across the south and nationwide; for example, in Memphis, a two-way busing plan supported by the NAACP similar to that approved in Charlotte was rejected by district court judge Robert M. McRae, Jr. in the face of active local opposition.

### ***Milliken and the Limits of Single-District Solutions***

The Supreme Court dealt a further blow to busing proponents in its ruling in *Milliken v. Bradley* (1974) when it ruled in a case originating from metropolitan Detroit that courts could only order desegregation across school district boundaries when there was evidence of a "significant violation" of *Brown* in multiple districts and that actions in one district had "a significant segregative effect in another district"; while the court affirmed previous rulings that establishing new districts to circumvent a desegregation order and maintaining separate, racially-exclusive districts were unconstitutional (as in *Wright v. Council of City of Emporia*, 1972, and *United States v. Texas*, ED Tex. 1970, respectively), neither was the case in the Detroit area where many of the separate districts predated *Brown* and none had originated from the Detroit city school district.

*Milliken* effectively blocked effective court-ordered desegregation plans in much of the country, as school district boundaries in many states are tied to municipalities or otherwise fixed to limited areas that would facilitate suburban flight by more affluent, primarily white, parents to avoid desegregation plans involving extensive two-way busing. Although some states organized school districts at the county level or had already experienced city-county consolidation of schools, this was not the case nationwide and even then could lead to limited prospects for desegregation, as was the case in New Orleans, where municipal and school district boundaries had been fixed to those of Orleans Parish since the 19<sup>th</sup> century. While *Milliken* permitted states and localities to adopt voluntary integration plans that included cross-district transfers, the experience of "neighborhood schools" and freedom-of-choice plans in the 1960s demonstrated that little effective desegregation would result.

### **The Legacy of *Swann***

Even in Charlotte, the grudging consensus in favor of two-way busing gave way in the 1990s after court rulings found that the district had achieved "unitary status" and was no longer bound to use such extensive measures to promote desegregation. While Charlotte and other cities have seen limited success with optional or "magnet" schools to promote some degree of integration, today it is clear that across much of the country there is only limited public support for extensive desegregation plans and even less intrusive plans appear to have promoted suburban flight beyond the reach of these plans. Although the NAACP and busing advocates won a series of qualified legal victories, in practice it

appears that busing's opponents have carried the day.

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### **See Also**

This volume: *Brown v. Board of Education of Topeka* 1954; Civil Rights Movement; Education Policy

Other volumes: Amendment, 14<sup>th</sup> (vol. 3); Marshall, Thurgood (vol. 7); National Association for the Advancement of Colored People (vol. 5); *Plessy v. Ferguson* (vol. 5); Race Relations (vol. 7)

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