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## U.S. SUPREME COURT HOLDS THAT SCHOOL DISTRICTS' VOLUNTARY INTEGRATION PLANS VIOLATE THE EQUAL PROTECTION CLAUSE

On June 28, 2007, the U.S. Supreme Court ruled in *Parents Involved In Community Schools v. Seattle School District*, that two school districts' race-based voluntary integration plans violated the Equal Protection Clause. 2007 WL 1836531 (U.S. June 28, 2007).

### Facts

The Seattle School District and the Jefferson County School District have voluntary integration plans that use race in determining which schools students may attend. Among other means to achieve diversity, the Seattle School District classifies students as white or nonwhite as a second tiebreaker in determining who will attend an oversubscribed high school. The Jefferson County School District classifies students as black or "other" to determine whether students may attend certain elementary schools and in deciding transfer requests.

Parents Involved in Community Schools ("Parents Involved") is a nonprofit corporation composed of parents of children who have been, or could be, denied assignment to a specific high school because of their race. *Parents Involved* sued the Seattle School District. In a second case, a parent whose child was denied admission based on race to two different elementary schools, and not allowed to transfer to another school, sued the Jefferson County School District.

### Court's Analysis

The Court was highly divided in this opinion and only received a plurality (when some sections of an opinion receive less than five votes). The plurality opinion included Justices Roberts, Alito, Scalia and Thomas. The dissenting opinion included Justices Steven, Breyer, Souter and Ginsburg. Justice Kennedy wrote a concurring opinion. The Majority determined strict scrutiny should be the standard used in evaluating whether the voluntary integration plans violated the equal protection clause. Strict scrutiny requires (1) a "compelling governmental interest" (2) "narrowly tailored" to that interest.

Justice Kennedy served as the pivotal vote in this case because his vote with the dissenters made a majority. Five Justices (the dissenters and Justice Kennedy) found that racial integration and diversity are compelling governmental interests. However, five Justices (Roberts, Alito, Scalia, Thomas and Kennedy) found that the voluntary integration plans in the present case were not narrowly tailored.

In finding that racial integration and diversity are compelling governmental interests, Kennedy stated “it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition.”

However, Justice Kennedy found that the plans in this particular case were not narrowly tailored for the following reasons: (1) the schools could have used race-neutral means to achieve their goals; (2) the categories used to assign students to schools did not achieve diversity or racial integration; and (3) the districts failed to explain the decision-making process, including oversight and racial considerations in assigning students to schools.

Although Kennedy found that race could be a “component” of assigning students to schools, he stated that racial classifications should be permitted only “as a last resort.” Justice Kennedy supported *race-neutral* measures that were *race-conscious* without directly classifying students based on their race. “If school authorities are concerned...with the student-body compositions of certain schools...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.” The race-neutral measures Kennedy suggested were “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.”

Recommended Action

- Confer with legal counsel to identify and articulate a compelling government interest.
- Consider other methods besides race-based classifications to achieve diversity.
- Confer with legal counsel to determine whether the district is using race-neutral approaches that are race-conscious.