SUPREME COURT OF THE UNITED STATES

No. 05-908

PARENTS INVOLVED IN COMMUNITY SCHOOLS, PETITIONER
v. SEATTLE SCHOOL DISTRICT NO. 1, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
and

No. 05-915

CRYSTAL MEREDITH, *et al.*, PETITIONERS
v. JEFFERSON COUNTY BOARD OF EDUCATION, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[December 4, 2006]

JONES, Associate Justice,

These cases require us to assess the constitutionality of race-conscious public school public assignment programs. The Jefferson County Board of Education and Seattle School District No. 1 ("Respondents") have each instituted processes for the allocation of students among the public schools within their jurisdictions that are, to some degree, based on race. We are confronted therefore with the question of whether these policies are permissible under the Equal Protection Clause of the Fourteenth Amendment. We conclude they are not.

I.

A.

The relevant background in these cases can be summarized as follows. The Respondents have each instituted school assignment plans that include race as a factor under some circumstances. In Seattle, the plan applies only to high schools. It takes effect when the number of students choosing a particular school exceeds that school's capacity. When a high school is thus oversubscribed, students applying for entry in the ninth grade are admitted according to four tiebreakers. The tiebreakers are applied in the following order: First, students with a sibling attending the school are admitted. Second, if the racial make up of the school differs by more than fifteen percent from the racial make up of the Seattle public school system as a whole, and the sibling tie-breaker has not remedied the situation, the student's race controls. Given that the racial make up of the Seattle school system overall is forty percent white and sixty percent nonwhite, the racial preference comes into play where the nonwhite to white ratio of students in a school exceeds 75/25 or 45/55. The racial tiebreaker is applied to white and nonwhite students, and is not used at all if the racial make up of the school is within the fifteen percent variance.

The third tiebreaker relies on distance between a student's home and the school. Students living closer to a school are admitted first. The fourth tiebreaker is a lottery.

In Jefferson County, the contested school assignment plan requires administrators to seek black student enrollment of no less than fifteen percent and no more than fifty percent. In general, students can pick the school they wish to attend from a wide range of choices, but if the chosen school's racial make up lies at the edges of the permissible

range, that student may be denied admission to that school. Other factors that go into the school assignment determination, and arguably have greater impact on the process than race, include place of residence, school capacity, program popularity, random draw, and student choice.

B.

Parents Involved in Community Schools (PICS), Petitioner in No. 05-908, is a Washington non-profit corporation organized and run by a group of parents whose children were not, or might not be, assigned to the high schools of their choice under the Seattle Plan. The individual Petitioners in No. 05-918 are all parents of children in or formerly in the Jefferson County school system and subject or formerly subject to that school system's assignment plan. Petitioners in both cases sought relief in the district courts from the effects of the assignment plans of their respective systems.

The District Court for the District of Washington entered summary judgment for the school district. A panel of the Court of Appeals for the Ninth Circuit initially reversed, but withdrew that opinion upon granting of rehearing and certified PICS's state constitutional question to the Washington Supreme Court, which upheld the plan under state law. A majority of the Ninth Circuit panel then held that although the school district had demonstrated a compelling purpose, the plan was unconstitutional because it was not narrowly tailored to that purpose. Upon rehearing en banc the Ninth Circuit held the plan to be constitutional in all respects and affirmed the judgment of the district court.

The District Court for the Western District of Kentucky upheld the Jefferson County assignment plan, but ordered revision of those parts of the plan that applied to traditional magnet schools. The district court's memorandum opinion was thereafter

adopted in full by a panel of the Court of Appeals for the Sixth Circuit, which affirmed without separate opinion.

We granted certiorari in both cases. Because we conclude that both the Seattle Plan and the Jefferson County Plan violate the Equal Protection Clause of the Fourteenth Amendment, we now reverse the decisions of the courts below—the Ninth Circuit decision in full, and the Sixth Circuit decision to the extent it upheld the Jefferson County Plan.

II.

Distinctions drawn between people based on their race—whether they be drawn by the federal government, state government, or local government—are immediately suspect and subject to the most intense level of judicial scrutiny. *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 305 (1978); *Korematsu v. United States*, 323 U.S. 214, 216 (1944). Because the Fourteenth Amendment is aimed at preserving the right to equal protection of the laws for *all* people, such classifications are suspect regardless of the race of the burdened group. *Croson*, 488 U.S. at 494. The equal protection of the laws guaranteed by the Fourteenth Amendment is a personal right, its protection flowing to individuals; thus our cases have held that strict judicial scrutiny is warranted whenever that individual right may be infringed by governmental classification of persons by race. *Adarand*, 515 U.S. at 227; *Croson*, 488 U.S. at 493;

This highest level of review amounts to a judicial presumption that the challenged governmental action is unconstitutional and invalid. The burden is therefore on the

government to demonstrate that the challenged action meets constitutional standards, and thereby overcome the presumption of invalidity. To satisfy this burden, our cases have adopted a test that can be broken down into two separate, though interrelated, inquiries. First, the government must demonstrate that the challenged program is necessary to further some compelling governmental interest. *See Grutter*, 539 U.S. at 326 ("[G]overnment may treat people differently because of their race only for the most compelling reasons." (quoting *Adarand*, 515 U.S. at 227)). Second, the means employed by the government must be narrowly drawn to serve that interest. *See Grutter*, 539 U.S. at 333 ("Even in the limited circumstance when drawing racial distinctions is permissible to further a compelling state interest, government is still 'constrained in how it may pursue that end: [T]he means chosen to accomplish the [government's] asserted purpose must be specifically and narrowly framed to accomplish that purpose.'" (quoting *Shaw v. Hunt*, 517 U.S. 899, 908 (1996))). As we have stated, the narrow tailoring requirement functions as an assurance that the means chosen to effect a compelling interest so tightly fit that interest as to all but foreclose the "'possibility that the motive for the classification was illegitimate racial prejudice or stereotype.'" *Grutter*, 539 U.S. at 333 (quoting *Croson*, 488 U.S. at 493). Failure on either of these points equates to a failure to rebut the presumption of unconstitutionality, and leads to the conclusion that the challenged program must fail. *Compare Grutter*, 539 U.S. at 343 (upholding admissions program of University of Michigan Law School after finding it both narrowly drawn and in service of a compelling state purpose) *with Gratz v. Bollinger*, 539 U.S. 244, 276 (invalidating admissions program at University of Michigan College of Literature, Science, and the Arts because not narrowly tailored to the same compelling purpose).

In the years since we first articulated these principles, we have been reluctant to find the governmental interests presented to us sufficiently compelling to justify classification of individuals by race. *See Freeman v. Pitts*, 503 U.S. 467, 494 ("Racial balance is not to be achieved for its own sake. It is to be pursued when racial imbalance has been caused by a constitutional violation."); *see also*, *Shaw v. Hunt*, 517 U.S. 899 (1996); *Croson*, 488 U.S. 469; *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986); *Palmore v. Sidoti*, 466 U.S. 429 (1984). Indeed, we have recognized only three such interests as compelling. First, in what are now rightly regarded as an unfortunate and misguided set of cases from the era of the Second World War, we upheld various actions of the federal government that were directed at people of Japanese ancestry on no other basis than the fact of their ancestry. The government, we reasoned, has a compelling interest during wartime to do what must be done to ensure national security. *See Hirabayashi v. United States*, 320 U.S. 81, 100 (1943) ("Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded on the doctrine of equality. . . . We may assume that these doctrines would be controlling here were it not for the fact that the danger of espionage and sabotage, in time of war . . . calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas."); *Korematsu*, 323 U.S. at 216 (stating that although "all legal restrictions which curtail the rights of a single racial group are immediately suspect" and subject to "the most rigid judicial scrutiny," such restrictions may sometimes be justified by "[p]ressing public necessity").

Second, we have recognized the validity of the use of racial classifications in government programs designed to remedy past acts of discrimination. This is the

principle represented most notably by our decisions regarding school desegregation. *See, e.g., Freeman*, 503 U.S. at 494. The governmental programs that came into being as a result of those decisions, the "forced integration" programs as some have called them, necessarily defined the relevant group of school age children according to race, in order to give life to our holding in *Brown* that separate schools for white and black children, regardless of the relative equivalence of the physical plant, are "inherently unequal" and that such segregation of school children deprives the students of the equal protection of the laws afforded them under the Fourteenth Amendment. *Brown v. Bd. of Educ. of Topeka, Kan.* (*Brown I*), 347 U.S. 483, 495 (1954). We heard further arguments in that case in order to better formulate a ruling that would assist the district courts in adopting orders and decrees with the purpose of facilitating the admission of children "to public schools on a *racially nondiscriminatory* basis." *Brown v. Bd. of Educ. of Topeka, Kan.* (*Brown II*), 349 U.S. 294, 301 (1955)(emphasis added).

The third and most recent instance in which we found the government to have a compelling interest justifying the narrowly tailored use of race classifications was in the context of higher education. Justice Powell first expressed the idea that state institutions of higher education have a compelling interest in attaining a racially and ethnically diverse student body. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 311-12 (1978). Though the precedential weight to be accorded to Justice Powell's *Bakke* opinion was a matter of some debate and speculation because of our splintered opinions in that case, we brought such speculation to a close just a few Terms ago when a majority of this Court expressly adopted and elaborated upon Justice Powell's position. *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003); *Gratz v. Bollinger*, 539 U.S. 244, 268 (2003).

In *Grutter* we were asked to recognize a compelling state interest in "'the educational benefits that flow from a diverse student body.'" *Grutter*, 539 U.S. at 328 (quoting Brief for Respondent Bollinger at i). We accepted the stated interest as compelling given the "special niche" that "universities occupy . . . in our constitutional tradition," *id*. at 329, and considering the real benefits to cross-racial understanding, the need for a well-rounded and diversified professional corps, and the need in today's world for skills that can "only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Id*. at 330. As education is "the very foundation of good citizenship" and plays a "fundamental role in maintaining the fabric of society," we stated that "the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity." *Id*.

We then considered whether the University of Michigan Law School's admissions process was sufficiently fitted to the purpose. In so doing, we recognized several "hallmarks" of narrow tailoring in this context. Foremost, the plan must not amount to a quota system; it must consider race or ethnicity only as a plus factor in each applicant's file. *Id*. at 334. Additionally, we noted the importance of flexibility to allow individualized consideration of each applicant. *Id*. at 337. The presence in the plan of diversity factors other than race, consideration of workable race-neutral alternatives, and the absence of undue harm to members of racial groups not favored by the plan are also important indicators of narrow tailoring. *Id*. at 338-41. Finally, narrow tailoring requires that the policy be limited in time. *Id*. at 342.

Ultimately, the Fourteenth Amendment was intended to "do away with all governmentally imposed discrimination based on race." *Grutter*, 539 U.S. at 342

(quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984)). As such, "any person, of whatever race, has the right to demand that any government actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest of judicial scrutiny." *Gratz*, 539 U.S. at 270 (quoting *Adarand*, 515 U.S. at 224).

III.

With these postulates in mind, we turn to the cases before us. Respondents here essentially ask us to find a compelling state interest in student body diversity at the elementary and high school levels. Correspondingly, they assert that their respective school assignment plans are narrowly drawn to fulfill this purpose. Petitioners contend that the compelling interest we recognized in *Grutter* and *Gratz* should not be extended beyond the context of higher education, and that, even if so extended, the assignment plans at issue constitute impermissible quota systems or seek racial balancing for its own sake. As stated by counsel at oral argument, Petitioners contend that there is no meaningful constitutional distinction between government programs to segregate public schools and government programs to integrate public schools. We address each of these school districts in turn and conclude that both of the assignment plans at issue, even if they serve a compelling state interest, are not narrowly drawn to fit that interest and are therefore unconstitutional.

A.

The school assignment plan adopted by the Seattle School District (the Seattle Plan) seeks to correct statistical imbalances between white and nonwhite students in Seattle's high schools. Through its open choice plan and series of tiebreakers, the

District wishes to bring the racial make up of each high school within fifteen percentage points of the racial make up of the school system as a whole. To the extent racial classifications are used in this process, the District asserts their use is necessary to further the government's compelling interest in fostering cross-racial understanding and securing the educational benefits of diversity for students. Assuming for the moment that this asserted purpose is a compelling one in this context, we nevertheless think it clear that the Seattle Plan is not narrowly tailored to achieve that goal, and must fail.

While we are mindful that "context matters" in our strict scrutiny analysis, this phrase cannot be used as a path to avoid searching inquiry. While the context of public high schools is different than that of public universities, our duty in each case remains the same, and our analysis will necessarily have some common elements. One of these common elements is the focus on individualized consideration as a hallmark of narrow tailoring. *See Grutter*, 539 U.S. at 337.

The Fourteenth Amendment protects individual rights and therefore any inquiry must focus on the individual to ensure that his or her rights are not being infringed when the government makes classifications based on race. From this perspective, the most glaring flaw in the Seattle Plan is that it in no way allows for the consideration of students as individuals. Rather, they are either "white" or "nonwhite."

In circumstances where the racial tiebreaker comes into play, a student will be either admitted or excluded from a particular school for no other reason than his or her classification into one or the other of those categories. While, to be sure, no student is excluded from education entirely, common sense suggests, and the record below bears out, that some schools are better than others. The Seattle School District cannot make a

student's equal chance to partake of that government benefit turn on the student's racial classification. However many other tiebreakers may be used, the fact remains that the racial tiebreaker in the Seattle Plan, where it does operate, becomes determinative and precludes the flexibility necessary to ensure individual evaluation as required under our precedents. *Grutter*, 539 U.S. at 336-37 ("The importance of this individualized consideration in the context of a race-conscious admissions program is paramount.").

We do not suggest, of course, that the District cannot consider race at all, we simply reiterate that no plan can be narrowly tailored if it makes the racial classification the determinative factor. When the racial tiebreaker is employed under the Seattle Plan, the non-racial tiebreakers become so much window-dressing. Students are admitted or excluded from schools because of their skin color. For over fifty years we have repudiated such systems. *See Brown II*, 349 U.S. at 301 (granting the district courts jurisdiction to oversee school systems' conversion to a process of "determining admission to the public schools on a nonracial basis" and admonishing them to enter all necessary and proper orders to admit schoolchildren on a nondiscriminatory basis).

B.

The Jefferson County Plan falls for similar reasons. Though we think this plan comes closer to being narrowly tailored, it nevertheless categorizes schoolchildren as either black or white and, under certain circumstances, assigns or excludes them from a particular school for no other reason than this classification.

The district court and respondents emphasize other factors influencing school assignment. We are told that these other factors have far more impact on the distribution of Jefferson County schoolchildren than race. While this may be so as a broad

proposition, it nevertheless remains the case that children who seek admission to schools that happen to be on the fringes of the County's permissible range of black to white students, will have their school assignment determined by their racial classification. This, the district court found, constitutes a permissible "tipping factor." We disagree. For the affected children race constitutes the only factor. If, at the point where the racial distinction is currently applied, the County were to engage in a holistic evaluation of the student that also included race, then it could properly be called a tipping factor. As it stands, however, the County's consideration of race, in the circumstances in which it applies, goes far beyond tipping the scales. It more accurately drops a safe on them.

Under the Fourteenth Amendment classifications by race are odious to a free nation. We must guard against such classifications with a sharp eye. While we think it not impossible for school districts like the ones before us to assert a sufficiently compelling interest to begin to justify their racial classifications, it is unnecessary for us to decide that question today. Even assuming a compelling interest has been stated, for the foregoing reasons, the plans at issue must fail.

The decision of the Court of Appeals for the Ninth Circuit is REVERSED. The decision of the Court of Appeals for the Sixth Circuit is REVERSED to the extent it upheld the Jefferson County Plan. The cases are REMANDED with instructions to the district courts for entry of judgment in favor of Petitioners and the granting of appropriate relief.

IT IS SO ORDERED.