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SUPREME COURT OF THE UNITED STATES

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**PARENTS INVOLVED IN COMMUNITY SCHOOLS *v.*
SEATTLE SCHOOL DISTRICT NO. 1 ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 05–908. Argued December 4, 2006—Decided June 28, 2007*

Respondent school districts voluntarily adopted student assignment plans that rely on race to determine which schools certain children may attend. The Seattle district, which has never operated legally segregated schools or been subject to court-ordered desegregation, classified children as white or nonwhite, and used the racial classifications as a “tiebreaker” to allocate slots in particular high schools. The Jefferson County, Ky., district was subject to a desegregation decree until 2000, when the District Court dissolved the decree after finding that the district had eliminated the vestiges of prior segregation to the greatest extent practicable. In 2001, the district adopted its plan classifying students as black or “other” in order to make certain elementary school assignments and to rule on transfer requests.

Petitioners, an organization of Seattle parents (Parents Involved) and the mother of a Jefferson County student (Joshua), whose children were or could be assigned under the foregoing plans, filed these suits contending, *inter alia*, that allocating children to different public schools based solely on their race violates the Fourteenth Amendment’s equal protection guarantee. In the Seattle case, the District Court granted the school district summary judgment, finding, *inter alia*, that its plan survived strict scrutiny on the federal constitutional claim because it was narrowly tailored to serve a compelling government interest. The Ninth Circuit affirmed. In the Jefferson County case, the District Court found that the school district had as-

*Together with No. 05–915, *Meredith, Custodial Parent and Next Friend of McDonald v. Jefferson County Bd. of Ed et al.*, on certiorari to the United States Court of Appeals for the Sixth Circuit.

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serted a compelling interest in maintaining racially diverse schools, and that its plan was, in all relevant respects, narrowly tailored to serve that interest. The Sixth Circuit affirmed.

Held: The judgments are reversed, and the cases are remanded.

No. 05–908, 426 F. 3d 1162; No. 05–915, 416 F. 3d 513, reversed and remanded.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Parts I, II, III–A, and III–C, concluding:

1. The Court has jurisdiction in these cases. Seattle argues that Parents Involved lacks standing because its current members’ claimed injuries are not imminent and are too speculative in that, even if the district maintains its current plan and reinstitutes the racial tiebreaker, those members will only be affected if their children seek to enroll in a high school that is oversubscribed and integration positive. This argument is unavailing; the group’s members have children in all levels of the district’s schools, and the complaint sought declaratory and injunctive relief on behalf of members whose elementary and middle school children may be denied admission to the high schools of their choice in the future. The fact that those children may not be denied such admission based on their race because of undersubscription or oversubscription that benefits them does not eliminate the injury claimed. The group also asserted an interest in not being forced to compete in a race-based system that might prejudice its members’ children, an actionable form of injury under the Equal Protection Clause, see, e.g., *Adarand Constructors, Inc. v. Peña*, 515 U. S. 200, 211. The fact that Seattle has ceased using the racial tiebreaker pending the outcome here is not dispositive, since the district vigorously defends its program’s constitutionality, and nowhere suggests that it will not resume using race to assign students if it prevails. See *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 189. Similarly, the fact that Joshua has been granted a transfer does not eliminate the Court’s jurisdiction; Jefferson County’s racial guidelines apply at all grade levels and he may again be subject to race-based assignment in middle school. Pp. 9–11.

2. The school districts have not carried their heavy burden of showing that the interest they seek to achieve justifies the extreme means they have chosen—discriminating among individual students based on race by relying upon racial classifications in making school assignments. Pp. 11–17, 25–28.

(a) Because “racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification,” *Fullilove v. Klutznick*, 448 U. S. 448, 537 (STEVENS, J., dissenting), governmental distributions of burdens or benefits based

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on individual racial classifications are reviewed under strict scrutiny, *e.g.*, *Johnson v. California*, 543 U. S. 499, 505–506. Thus, the school districts must demonstrate that their use of such classifications is “narrowly tailored” to achieve a “compelling” government interest. *Adarand, supra*, at 227.

Although remedying the effects of past intentional discrimination is a compelling interest under the strict scrutiny test, see *Freeman v. Pitts*, 503 U. S. 467, 494, that interest is not involved here because the Seattle schools were never segregated by law nor subject to court-ordered desegregation, and the desegregation decree to which the Jefferson County schools were previously subject has been dissolved. Moreover, these cases are not governed by *Grutter v. Bollinger*, 539 U. S. 306, 328, in which the Court held that, for strict scrutiny purposes, a government interest in student body diversity “in the context of higher education” is compelling. That interest was not focused on race alone but encompassed “all factors that may contribute to student body diversity,” *id.*, at 337, including, *e.g.*, having “overcome personal adversity and family hardship,” *id.*, at 338. Quoting Justice Powell’s articulation of diversity in *Regents of the University of California v. Bakke*, 438 U. S. 265, 314–315, the *Grutter* Court noted that “it is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups, that can justify the use of race,” 539 U. S., at 324–325, but “a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element,” *id.*, at 325. In the present cases, by contrast, race is not considered as part of a broader effort to achieve “exposure to widely diverse people, cultures, ideas, and viewpoints,” *id.*, at 330; race, for some students, is determinative standing alone. The districts argue that other factors, such as student preferences, affect assignment decisions under their plans, but under each plan when race comes into play, it is decisive by itself. It is not simply one factor weighed with others in reaching a decision, as in *Grutter*; it is *the* factor. See *Gratz v. Bollinger*, 539 U. S. 244, 275. Even as to race, the plans here employ only a limited notion of diversity, viewing race exclusively in white/nonwhite terms in Seattle and black/“other” terms in Jefferson County. The *Grutter* Court expressly limited its holding—defining a specific type of broad-based diversity and noting the unique context of higher education—but these limitations were largely disregarded by the lower courts in extending *Grutter* to the sort of classifications at issue here. Pp. 11–17.

(b) Despite the districts’ assertion that they employed individual racial classifications in a way necessary to achieve their stated ends, the minimal effect these classifications have on student assignments

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suggests that other means would be effective. Seattle’s racial tie-breaker results, in the end, only in shifting a small number of students between schools. Similarly, Jefferson County admits that its use of racial classifications has had a minimal effect, and claims only that its guidelines provide a firm definition of the goal of racially integrated schools, thereby providing administrators with authority to collaborate with principals and staff to maintain schools within the desired range. Classifying and assigning schoolchildren according to a binary conception of race is an extreme approach in light of this Court’s precedents and the Nation’s history of using race in public schools, and requires more than such an amorphous end to justify it. In *Grutter*, in contrast, the consideration of race was viewed as indispensable in more than tripling minority representation at the law school there at issue. See 539 U. S., at 320. While the Court does not suggest that *greater* use of race would be preferable, the minimal impact of the districts’ racial classifications on school enrollment casts doubt on the necessity of using such classifications. The districts have also failed to show they considered methods other than explicit racial classifications to achieve their stated goals. Narrow tailoring requires “serious, good faith consideration of workable race-neutral alternatives,” *id.*, at 339, and yet in Seattle several alternative assignment plans—many of which would not have used express racial classifications—were rejected with little or no consideration. Jefferson County has failed to present any evidence that it considered alternatives, even though the district already claims that its goals are achieved primarily through means other than the racial classifications. Pp. 25–28.

THE CHIEF JUSTICE, joined by JUSTICE SCALIA, JUSTICE THOMAS, and JUSTICE ALITO, concluded for additional reasons in Parts III–B and IV that the plans at issue are unconstitutional under this Court’s precedents. Pp. 17–25, 28–41.

1. The Court need not resolve the parties’ dispute over whether racial diversity in schools has a marked impact on test scores and other objective yardsticks or achieves intangible socialization benefits because it is clear that the racial classifications at issue are not narrowly tailored to the asserted goal. In design and operation, the plans are directed only to racial balance, an objective this Court has repeatedly condemned as illegitimate. They are tied to each district’s specific racial demographics, rather than to any pedagogic concept of the level of diversity needed to obtain the asserted educational benefits. Whatever those demographics happen to be drives the required “diversity” number in each district. The districts offer no evidence that the level of racial diversity necessary to achieve the asserted educational benefits happens to coincide with the racial demograph-

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ics of the respective districts, or rather the districts' white/nonwhite or black/"other" balance, since that is the only diversity addressed by the plans. In *Grutter*, the number of minority students the school sought to admit was an undefined "meaningful number" necessary to achieve a genuinely diverse student body, 539 U. S., at 316, 335–336, and the Court concluded that the law school did not count back from its applicant pool to arrive at that number, *id.*, at 335–336. Here, in contrast, the schools worked backward to achieve a particular type of racial balance, rather than working forward from some demonstration of the level of diversity that provides the purported benefits. This is a fatal flaw under the Court's existing precedent. See, e.g., *Freeman*, *supra*, at 494. Accepting racial balancing as a compelling state interest would justify imposing racial proportionality throughout American society, contrary to the Court's repeated admonitions that this is unconstitutional. While the school districts use various verbal formulations to describe the interest they seek to promote—racial diversity, avoidance of racial isolation, racial integration—they offer no definition suggesting that their interest differs from racial balancing. Pp. 17–25.

2. If the need for the racial classifications embraced by the school districts is unclear, even on the districts' own terms, the costs are undeniable. Government action dividing people by race is inherently suspect because such classifications promote "notions of racial inferiority and lead to a politics of racial hostility," *Crosby*, *supra*, at 493, "reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin," *Shaw v. Reno*, 509 U. S. 630, 657, and "endorse race-based reasoning and the conception of a Nation divided into racial blocs, thus contributing to an escalation of racial hostility and conflict," *Metro Broadcasting, Inc. v. FCC*, 497 U. S. 547, 603 (O'Connor, J., dissenting). When it comes to using race to assign children to schools, history will be heard. In *Brown v. Board of Education*, 347 U. S. 483, the Court held that segregation deprived black children of equal educational opportunities regardless of whether school facilities and other tangible factors were equal, because the classification and separation themselves denoted inferiority. *Id.*, at 493–494. It was not the inequality of the facilities but the fact of legally separating children based on race on which the Court relied to find a constitutional violation in that case. *Id.*, at 494. The districts here invoke the ultimate goal of those who filed *Brown* and subsequent cases to support their argument, but the argument of the plaintiff in *Brown* was that the Equal Protection Clause "prevents states from according differential treatment to American children on the basis of their color or race," and that view prevailed—this Court ruled in its remedial opinion that *Brown* required school dis-

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tricts “to achieve a system of determining admission to the public schools *on a nonracial basis.*” *Brown v. Board of Education*, 349 U. S. 294, 300–301 (emphasis added). Pp. 28–41.

JUSTICE KENNEDY agreed that the Court has jurisdiction to decide these cases and that respondents’ student assignment plans are not narrowly tailored to achieve the compelling goal of diversity properly defined, but concluded that some parts of the plurality opinion imply an unyielding insistence that race cannot be a factor in instances when it may be taken into account. Pp. 1–9.

(a) As part of its burden of proving that racial classifications are narrowly tailored to further compelling interests, the government must establish, in detail, how decisions based on an individual student’s race are made in a challenged program. The Jefferson County Board of Education fails to meet this threshold mandate when it concedes it denied Joshua’s requested kindergarten transfer on the basis of his race under its guidelines, yet also maintains that the guidelines do not apply to kindergartners. This discrepancy is not some simple and straightforward error that touches only upon the peripheries of the district’s use of individual racial classifications. As becomes clearer when the district’s plan is further considered, Jefferson County has explained how and when it employs these classifications only in terms so broad and imprecise that they cannot withstand strict scrutiny. In its briefing it fails to make clear—even in the limited respects implicated by Joshua’s initial assignment and transfer denial—whether in fact it relies on racial classifications in a manner narrowly tailored to the interest in question, rather than in the far-reaching, inconsistent, and *ad hoc* manner that a less forgiving reading of the record would suggest. When a court subjects governmental action to strict scrutiny, it cannot construe ambiguities in favor of the government. In the Seattle case, the school district has gone further in describing the methods and criteria used to determine assignment decisions based on individual racial classifications, but it has nevertheless failed to explain why, in a district composed of a diversity of races, with only a minority of the students classified as “white,” it has employed the crude racial categories of “white” and “non-white” as the basis for its assignment decisions. Far from being narrowly tailored, this system threatens to defeat its own ends, and the district has provided no convincing explanation for its design. Pp. 2–6.

(b) The plurality opinion is too dismissive of government’s legitimate interest in ensuring that all people have equal opportunity regardless of their race. In administering public schools, it is permissible to consider the schools’ racial makeup and adopt general policies to encourage a diverse student body, one aspect of which is its racial composition. Cf. *Grutter v. Bollinger*, 539 U. S. 306. School authori-

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ties concerned that their student bodies' racial compositions interfere with offering an equal educational opportunity to all are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion based solely on a systematic, individual typing by race. Such measures may include strategic site selection of new schools; drawing attendance zones with general recognition of neighborhood demographics; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race.

Each respondent has failed to provide the necessary support for the proposition that there is no other way than individual racial classifications to avoid racial isolation in their school districts. Cf. *Richmond v. J. A. Croson Co.*, 488 U. S. 469, 501. In these cases, the fact that the number of students whose assignment depends on express racial classifications is small suggests that the schools could have achieved their stated ends through different means, including the facially race-neutral means set forth above or, if necessary, a more nuanced, individual evaluation of school needs and student characteristics that might include race as a component. The latter approach would be informed by *Grutter*, though the criteria relevant to student placement would differ based on the students' age, the parents' needs, and the schools' role. Pp. 6–9.

ROBERTS, C. J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III–A, and III–C, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined, and an opinion with respect to Parts III–B and IV, in which SCALIA, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment. STEVENS, J., filed a dissenting opinion. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.