The Seattle and Louisville Voluntary Integration Cases

A Primer

I. Overview

In its upcoming term, the Supreme Court will hear two cases regarding whether public school districts in Seattle and Louisville can voluntarily use race-conscious measures to avoid racial isolation and achieve racial integration in their elementary and secondary schools. Petitioners in these cases seek to prohibit school districts from voluntarily implementing race-conscious student assignment policies. The Supreme Court's decision in these cases will clarify what tools are available to school districts committed to the nation's longstanding effort to integrate elementary and secondary schools, first begun over fifty years ago with *Brown v. Board of Education.*[1]

Since the Supreme Court's unanimous decision in *Brown*, the nation has struggled to integrate its public schools and institutions of higher education. Unfortunately, *Brown's* 52-year history has been marred, first by decades of local resistance, and more recently by the termination of many court-ordered desegregation plans. The resulting withdrawal of court supervision has already led to widespread resegregation across the country: public primary and secondary schools today are more segregated than they were in 1970.[2]

In a number of school districts across the country, locally-elected school boards have recognized that because of residential segregation and other factors, a strict policy of neighborhood school assignment would result in racially identifiable elementary and secondary schools. Recognizing the educational harms of racial isolation, these school districts have undertaken voluntary steps to integrate their schools. In some instances, school districts have determined that to be effective these measures need to include the consideration of race and ethnicity as a factor in school assignment. This is the case in both Seattle, Washington (which was never ordered by a court to desegregate), and in Louisville, Kentucky (which had previously been subject to a desegregation order to remedy its formerly segregated schools). The school integration plans at issue in Seattle and Louisville are completely voluntary: they were undertaken by the school districts on their own volition. Furthermore, both plans seek to achieve racial integration by permitting parents and students to apply for or transfer to schools other than their neighborhood schools, within reasonable limits. In other words, both school districts have implemented "managed choice" programs, not "mandatory reassignment" (e.g. "forced busing") programs.

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[1] 347 U.S. 483 (1954).

[2] *See, e.g.*, Gary Orfield, *Schools More Separate: Consequences of a Decade of Resegregation,* The Civil Rights Project at Harvard University (2001), *available at http://www.civilrightsproject.harvard.edu/research/deseg/Schools_More_Separate.pdf* (tracking the resegregation of blacks in the South and the increasing segregation of Latinos, and tracing these trends to major Court decisions); Gary Orfield & Chungmei Lee, *Racial Transformation and the Changing Nature of Segregation*, The Civil Rights Project at Harvard University (2006), *available at* http://www.civilrightsproject.harvard.edu/research/deseg/Racial_Transformation.pdf (same).

Petitioners in the Seattle and Louisville cases are opposed even to this limited, voluntary consideration of race in ensuring that school assignments do not result in racially isolated schools. Petitioners instead seek to limit local control and to tie the hands of locally-elected school boards in ways that likely will result in more racially identifiable and racially isolated schools, not only in these two districts but in others as well. The Seattle and Louisville school districts are simply asking the Supreme Court to reaffirm their traditional authority over local education matters and to allow them to continue to pursue – in a limited and narrowly tailored way – *Brown*'s promise of integrated public schools.

II. Factual Background

A. The Seattle Plan

The Seattle school system is about 40% white and 60% minority (including African-Americans, Latinos, and Asian-Americans). The Seattle area is characterized by residential segregation – most minority students live in the southern part of the city, while most white students live in the northern part.

Seattle implemented an "open choice" desegregation plan ("the Seattle Plan") in the 1998-99 school year, and revised this plan for the 2001-02 school year.[3] Under the 2001-2002 version of the plan (the most recent year in which Seattle considered race as a factor), students entering ninth grade could list any of Seattle's ten high schools in order of preference. Where possible, students were assigned to their first choice. If there were more students who listed a given high school first than there were places available, the school district applied a series of "tiebreakers" to determine assignments. Under the first tiebreaker, all students with a sibling attending that school were admitted.[4] Under the second tiebreaker (known as the integration tiebreaker), the district looked to see if a high school was "racially imbalanced" – that is, whether the racial makeup of its student body differed from that of the Seattle school district as a whole by more than 15 percentage points– and, if so, the race of the applying student was considered.[5] The third tiebreaker admitted students according to distance from the school, with students who live closest being admitted first.[6] If there are any remaining seats to be filled (which is rare, because the distance tiebreaker assigns nearly all students in oversubscribed schools), a random lottery is used as a fourth and final assignment tiebreaker.

In the 2001-2002 school year, five of Seattle's ten high schools were oversubscribed. In two of these schools, the integration tiebreaker was not triggered. Thus, as the Ninth Circuit

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[3] *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 426 F.3d 1162, 1169 (9th Cir. 2005) (*en banc*).

[4] The sibling tiebreaker accounts for about 15 to 20 percent of admissions to the incoming ninth grade class in oversubscribed high schools. *Id.* at 1169-70.

[5] The figure was plus or minus 10 percentage points in previous years, but in the 2001-02 school year, this was changed to 15% to soften the impact of the voluntary integration program. *Id.* at 1170. The 2001-02 desegregation plan also included the addition of a "thermostat," whereby the tiebreaker stops operating once the school comes within the 15% variance. *Id.* Before this change, once the racial isolation tiebreaker was triggered at a given school, it was used throughout the student assignment process.

[6] The distance-based tiebreaker accounts for 70-75% of all admissions to the ninth grade in oversubscribed schools. *Id.* at 1171.

pointed out, race played no role at all in student assignment in seven out of Seattle's ten high schools.[7] During the 2000-01 school year, only 10% of Seattle's ninth graders – about 300 students – were assigned to an oversubscribed high school through use of a race-conscious tiebreaker. In 2001-02, the year at issue in this case, that figure was almost certainly even lower.[8] Over 80% of incoming ninth graders attended their first-choice school; most of the rest were assigned based on proximity to the student's home.[9] Despite the modest number of students directly affected by the Seattle Plan, the Court of Appeals found that the Seattle Plan succeeded in reducing racial isolation in Seattle's schools by nudging those few schools that were racially imbalanced closer to the mix of students found in the district as a whole. NOTE: The integration tiebreaker has not been used since the 2001-2002 school year, and it is as yet uncertain whether it will be necessary to reinstate it.

Parents Involved in Community Schools, a group of parents whose children were not (or might not have been) assigned to their schools of choice under the Seattle Plan, sued the school district on the ground that the integration tiebreaker violated the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and state law. The school district prevailed in the district court.[10] A panel of the Ninth Circuit reversed the district court, holding that the Seattle Plan violated the Equal Protection Clause.[11] The Ninth Circuit then reheard the case *en banc* and reversed the panel decision, affirming the district court's judgment that the Seattle Plan was constitutional.[12] The Supreme Court granted certiorari, and the petitioners now ask the Supreme Court to overturn the *en banc* decision of the Ninth Circuit.

B. The Louisville Plan

The Jefferson County Public School district (JCPS) is a county-wide district covering all of metropolitan Louisville. The district is approximately two-thirds white and one-third black.[13] JCPS was under a court-ordered desegregation decree from 1975 until 2000, when the court declared the district unitary.[14] The 2001 voluntary plan at issue in this case ("the 2001 Plan") was established to protect the integrative gains achieved while the decree was in effect.[15]

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[7] *Id.* at 1170.

[8] *See id.* The 2001-02 figures are not in the record, but the school made changes to the Plan that would have lessened its impact (switching to 15% from 10%, and introducing the "thermostat").

[9] *See id*. at 1185 n.30.

[10] *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 137 F. Supp. 2d 1224 (W.D. Wash. 2001).

[11] *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 377 F.3d 949 (9th Cir. 2004).

[12] *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 426 F.3d 1162 (9th Cir. 2005) (*en banc*).

[13] The school district categorizes the race of its students as either "Black" or "Other" (the same terms used in the 1975 desegregation decree, described below). The district court (the only court to write a full opinion in this case) noted that because over 95% of the students in JCPS are either non-hispanic white or non-hispanic black, it is more accurate to call the "Other" students white. *McFarland v. Jefferson County Public Schools*, 330 F. Supp. 2d 834, 840 n.6 (W.D. Ky. 2004).

[14] The Louisville and Jefferson County school districts historically maintained dual systems of *de jure* segregated white and black schools. A federal desegregation lawsuit filed in 1973 resulted in a 1975 court order that forced JCPS (by then a single district as a result of a voluntary merger) to integrate. A judge directly supervised the desegregation effort from 1975 to 1981; the school board then continued to desegregate its schools, but modified the student assignment plan in 1984, 1991 and 1996. In 1998, after a group of parents filed a lawsuit alleging that their children were being denied admission to Central High School, a magnet school, based on their race, the district court held that the 1975 desegregation decree was still in effect. *Hampton v. Jefferson County Board of Education*, 72 F.

JCPS operates three types of public (K-12) schools: regular comprehensive schools, magnet schools, and alternative schools. The vast majority (117 schools) are regular comprehensive schools; there are also 13 magnet schools and a small number of alternative schools. The 2001 Plan provides that all schools (except preschool and kindergarten classes, self-contained special education units, alternative schools and four exempt magnet schools) [16] will have a black student enrollment of between 15% and 50%. The Plan achieves this goal through a system of "managed choice."

The district court upheld virtually every aspect of the 2001 Plan.[17] The Sixth Circuit affirmed in a *per curiam* opinion. That is the holding now before the Supreme Court: whether JCPS's limited consideration of race in the comprehensive schools and the non-exempt, traditional magnet schools is permitted by the Constitution. The school assignment process at the four exempt magnet schools offering "unique programs" – the subject of the prior *Hampton* litigation[18] –is no longer at issue in this case.

The 2001 Plan works as follows:

Initially, every middle and high school student is assigned to her/his "resides school" – that school whose geographic attendance area includes the parent's address.[19] In 2002-2003,

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Supp. 2d 753, 774 (W.D. Ky. 1999) ("*Hampton I*"). The parents then moved to lift the desegregation decree, which the court did in 2000. *Hampton v. Jefferson County Board of Education*, 102 F.Supp.2d 358, 376 (W.D. Ky. 2000) ("*Hampton II*"). The court then ordered the school board not to utilize measures equivalent to racial quotas at Central High School or any other magnet school that, like Central, offered programs not available at another school in the district. *Id*. at 381. For a full account of the history of desegregation in Louisville, see *McFarland*, 330 F. Supp. 2d at 840-41; *Hampton I*, 72 F. Supp. 2d at 754-67.

[15] *See McFarland*, 330 F.Supp.2d at 841-42.

[16] As noted above, the district court in *Hampton II* held that the school district could not use measures equivalent to racial quotas at magnet schools that offered special programs. The school district subsequently determined that three other magnet schools, in addition to Central High School, came within this ruling -- one elementary school, one high school, and one school that provides K-12 classes in one building. *See McFarland*, 330 F. Supp. 2d at 841.

[17] The only relief granted to the petitioners by the district court was an order that JCPS change its process for selecting the students who attend several magnet schools that offer a "traditional program." After the court in *Hampton II* ended the consideration of race at the magnet schools that offered unique programs, JCPS continued to consider race at the "traditional program" magnet schools, because JCPS did not consider that program to be unique. Admission to those schools is by lottery, and JCPS kept separate lists of applicants by race and gender. *See McFarland*, 330 F. Supp. 2d at 847. The district court ruled that JCPS must end the use of separate lists; the court concluded that this process was unnecessary to achieve the objective of integration, because it would be possible for JCPS to achieve racial integration at those schools by using a single application list. *Id.* at 863-64. Under the district court's ruling, JCPS would be free to apply the 2001 Plan, including the racial guidelines, at the "traditional program" magnet schools in the future. (The District Court noted: "Were the traditional [magnet] school assignment process to function under the same broad racial guidelines and operational principles as [at the comprehensive schools], it would be entirely permissible." *Id*. at 862. See also *id*. at 864.) Thus, JCPS did not appeal. Likewise, the plaintiff parents of the applicants to the "traditional program" magnet schools, including named plaintiff David McFarland, did not appeal. Only petitioner Crystal Meredith, who complained that her child was denied admission to his "neighborhood" elementary school on the basis of race, remains in the case.

[18] *See* notes 14 and 16, above.

[19] The boundaries of some of the geographic attendance areas include noncontiguous areas, which take racial demographics into account. *Id*. at 842. All the facts in this description of the Louisville 2001 Plan come from the district court's opinion.

about 58% of all students attended their "resides school."[20] All JCPS elementary schools are grouped into 12 "clusters" of schools, with each cluster as a whole having a racially balanced student population. Each elementary student can rank in order of preference the schools within the cluster in which his/her resides school is located. Nearly all elementary school students – between 95% and 96% – are assigned either to their first- or second-choice school within their cluster.[21]

Students who prefer a school other than their "resides" middle or high school or "cluster resides" elementary school have two options. First, students in all grades can apply to either a magnet school (magnet schools have no geographic attendance area and admit students from across the county), or to a magnet program within a resides school other than his/her own resides school (magnet programs are operated by many resides schools, but interested students must apply for admission to magnet programs, even if the program is being offered at their resides school). The magnet schools and programs conduct their own admissions processes generally based upon criteria such as grades, test scores, recommendations, or a work sample or audition.

Second, in addition to the magnet school and magnet program applications, students can apply to transfer to any other school in the JCPS system. The majority of such transfer applications are granted. The district court noted that students can transfer for "a variety of reasons, including day care arrangements, medical criteria, family hardship, student adjustment problems, and program offerings. In addition, school capacity, a student's attendance record, behavior, grades and the racial guidelines all may play a role."[22] Rising ninth graders, in addition to the choice opportunities described above, also have an opportunity to make an "open enrollment" application to any non-magnet high school in the system.

Thus, in all grades, students have three sets of choices: attend their "resides" school or one of their "cluster resides" schools, apply to a magnet school or magnet program, or apply to transfer to any other school in the JCPS system. For the most part, the racial guidelines play a modest role in student assignment: JCPS takes racial integration into account in drawing the attendance boundaries for "resides" schools, and in then grouping elementary schools together into "clusters." As the district court noted, "[e]ven where race does 'tip' the balance in some cases, it does so only at the end of the process, after residence, choice and all the other factors have played their part."[23] Compared to the long history of mandatory reassignment of students to achieve desegregation in Louisville and elsewhere, the 2001 Plan achieves remarkable results: it successfully avoids extreme racial segregation, while at the same time both (a) preserving the right to attend "resides" schools for the majority of students who choose them, and (b) allowing all students a broad range of options if they prefer to attend a school other than their "resides" school.

[20] *See McFarland*, 330 F. Supp. 2d at 842 n. 10.
[21] *Id*. at 845 n.18.
[22] *Id*. at 844 n.15.
[23] *Id*. at 862.

III. Legal Context

A. Dismantling Desegregation

In landmark desegregation cases following *Brown*, the Supreme Court held that any K-12 school district that once maintained intentionally segregated ("*de jure*") schools *must* eliminate segregation "root and branch." Yet the Supreme Court found many race-neutral remedial efforts, such as "freedom of choice" plans, ineffective.[24] In almost all cases thereafter, the lower courts ordered race-conscious remedial measures in an effort to produce desegregated schools that were no longer racially identifiable.

After a brief period of progress toward integration, a number of Supreme Court decisions retreated from *Brown*'s promise. In *Milliken v. Bradley* (1974), the Supreme Court refused to integrate the predominantly black student population in Detroit with the predominantly white student population in the Detroit suburbs, citing principles of "local control."[25] The Supreme Court's refusal to order inter-district remedies seriously undermined desegregation efforts. Later, in a series of important court decisions in the early 1990s, the Supreme Court made it easier for school districts to show that they had achieved "unitary status" and to terminate their desegregation orders, even if the school districts immediately returned to neighborhood schools that were largely segregated.[26]

B. Voluntary Integration

Even in these decades of retrenchment and resegregation, the Supreme Court assumed, and sometimes stated explicitly, that if localities themselves *chose* to integrate, on their own initiative rather than on a court's order, they would surely be allowed to do so. As the Court explained in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*:

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities.[27]

The Supreme Court understood that districts possess the authority to desegregate voluntarily, "quite apart from any constitutional requirements."[28] In the companion case to *Swann*, *McDaniel v. Barresi*, the Supreme Court upheld a voluntary integration program very similar to those being challenged in Seattle and Louisville.[29] The Supreme Court found that the

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[24] *Green v. County School Board of New Kent County*, 391 U.S. 430, 437-38 (1968)
[25] *Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974).
[26] *Bd. of Educ. of Oklahoma City v. Dowell*, 498 U.S. 237 (1991); *Freeman v. Pitts*, 503 U.S. 467 (1992). *See also Missouri v. Jenkins*, 515 U.S. 70 (1995).
[27] *Swann v. Charlotte-Mecklenburg Bd. of Ed.* 402 U.S. 1, 16 (1971).
[28] *North Carolina Bd. of Ed. v. Swann*, 402 U.S. 43, 45 (1971).
[29] 401 U.S. 39 (1971).

district "properly took into account the race of its elementary school children in drawing attendance lines. To have done otherwise would have severely hampered the board's ability to deal effectively with the task at hand."[30]

Even then Justice Rehnquist, among the strongest critics of both school desegregation cases and race-conscious government action, declined to interfere with a desegregation order entered by California's highest court, stating that "[w]hile I have the gravest doubts that the Supreme Court of California was *required* by the United States Constitution to take the action that it has taken in this case, I have very little doubt that it was *permitted* by that Constitution to take such action."[31] Indeed, Congress enacted legislation during this period with the explicit purpose of helping schools address the problems of *de facto* as well as *de jure* segregation. As President Nixon noted in proposing one such piece of legislation,

> This Act deals specifically with problems which arise from racial separation, whether deliberate or not, and whether past or present. It is clear that racial isolation ordinarily has an adverse effect on education. Conversely, we also know that desegregation is vital to quality education – not only from the standpoint of raising the achievement levels of the disadvantaged, but also from the standpoint of helping all children achieve the broad-based human understanding that increasingly is essential in today's world.[32]

C. The Higher Education Affirmative Action Cases

Many commentators, along with the petitioners in the Seattle and Louisville cases, have viewed these cases through the lens of the 2003 Supreme Court decisions on affirmative action in university admissions, *Grutter v. Bollinger* and *Gratz v. Bollinger*.[33] In *Grutter*, the Supreme Court upheld the University of Michigan Law School's affirmative action program, as narrowly tailored to further the compelling interest in diversity. In *Gratz*, the Court struck down Michigan's undergraduate affirmative action program, holding that its practice of awarding points to minority applicants was not sufficiently narrowly tailored.

The Seattle and Louisville cases are not affirmative action cases. These cases are about traditional K-12 school assignment, not admission to competitive, elite magnet schools or colleges.[34] As in the vast majority of K-12 public schools, there is no competitive admissions process or attempt to evaluate students' "merit" in determining student assignment. Second, the plans under attack apply equally to and benefit children of all races. Finally, every student will be assigned to a school within the district; the only question is which children will be educated

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[30] *Id.* at 41. Although *McDaniel* involved a dual school system, this was a voluntary integration case in which no court had entered a decree ordering desegregation.
[31] *Bustop, Inc. v. Bd. of Educ.*, 439 U.S. 1380, 1381 (1978) (emphasis added).
[32] This statement was quoted in House and Senate reports on the Emergency School Aid Act of 1972. *E.g.*, H. Rep. 92-576, at 3 (1971).
[33] *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003).
[34] Louisville no longer considers race in applications to magnet schools that offer unique programs. See discussion below.

together. Specifically, the choice is whether to pursue integration in student assignment through voluntary transfers and other mechanisms, or whether to permit racially isolated schools to exist or persist.

In spite of these distinctions, these cases do bear some relationship to the challenges to affirmative action in the Michigan suits. The petitioners' claims in both lawsuits rest on a distorted reading of the Fourteenth Amendment that ignores its original aims and a distortion of *Brown*, which demanded integrated schools to remedy the harms of *de jure* segregation. Since the 1970s, opponents of race-conscious school assignment policies have wrongly claimed that the Fourteenth Amendment and *Brown* stand for the principle of colorblindness, and mistakenly presume that taking account of race to pursue integration – as the Court itself demanded in *Green* and many other cases – is just as bad as taking account of race to maintain segregation.[35]

IV. The Seattle and Louisville Plans are Narrowly Tailored to Serve a Compelling Interest

The lower courts in these cases both applied a "strict scrutiny" analysis to the voluntary integration plans at issue, and held that they meet this exacting standard because they are narrowly tailored to serve a compelling government interest. In his concurring opinion in the Ninth Circuit's *en banc* decision, Judge Kozinski argued that strict scrutiny should *not* apply in the voluntary integration context, because the assignment plans at issue did not deny any student access to the school system, and did not benefit or burden any particular group.[36] Despite the strength of this argument, the Supreme Court is likely to apply strict scrutiny and the key legal questions will be whether the Seattle and Louisville plans serve a compelling government interest and are narrowly tailored to achieve that interest.

A. Compelling Interest

Integration is as compelling an interest today as it was the day *Brown* was decided in 1954. While *Brown* dealt with *de jure* segregation, it emphasized the compelling importance of integration and the harms of segregation, whether or not by force of law. Over the past fifty years, the compelling benefits of integration in public and secondary schools has been evidenced in extensive social science research, and by the experience of students from all racial backgrounds who are testament to the value of an integrated education as the "very foundation of good citizenship."[37]

Today, we can state the compelling interest in integration either in terms of the powerful educational benefits of integrated schools, or the vital importance of preventing resegregation

[35] *See* Reva Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles Over Brown*, 117 Harv. L. Rev. 1470 (2004).
[36] *Parents Involved,* 426 F.3d at 1194-96 (Kozinski, J., concurring); *see also Comfort v. Lynn Sch. Comm.*, 418 F.3d at 27 (Boudin, J., concurring).
[37] *Brown v. Bd. Of Ed.*, 347 U.S. 483, 493.

and racial isolation. First, social scientists have empirically demonstrated that integrated schools offer significant educational benefits, including:[38]

- Breaking down stereotypes and prejudices, and producing students who are more tolerant and capable of cross-racial friendship. This bolsters students' ability to live and work effectively in a multi-racial society: students who attend integrated K-12 schools are more likely to attend integrated colleges, work in diverse environments, live in integrated neighborhoods, favor integrated schools for their own children, and participate in civic affairs.

- Promoting minority students' ability to attend selective colleges, earn higher-status jobs, and connect to elite business and social networks.[39]

- Substantial improvements in academic achievement for black and Latino students, with no achievement loss for white students. Diverse schools improve critical thinking skills for students of all races.

- Providing compelling social benefits, including higher graduation rates and college attendance, reduced poverty, crime, and teen-aged pregnancy, and a more educated workforce. Additionally, eliminating racially identifiable schools increases community support for, and investment in, local public school systems.

Second, social scientists have also produced strong empirical evidence of the harms of the segregation and racial isolation that would result if petitioners' legal arguments prevailed. Research has demonstrated that racially isolated schools consign many minority students to schools having student bodies characterized by concentrated poverty, isolation, and limited opportunity. Such racially isolated schools tend to offer limited resources, and their students tend to have poor academic outcomes. The only way to prevent these harmful outcomes is to preserve integrated school environments.

B. Narrow Tailoring

To achieve racial integration and prevent racial isolation, school districts must have the ability to consider race. Because we live in a society with deep residential segregation and students often attend schools close to home, completely race-blind plans have consistently failed to produce the same degree of racial integration as plans that include some consideration of race.

Narrow tailoring is necessarily the kind of inquiry in which, as the Supreme Court noted in *Grutter*, "context matters."[40] To be "narrowly tailored," therefore, the Seattle and Louisville

[38] The Civil Rights Project at Harvard University is preparing a social science statement that will include more extensive discussion of the findings noted here.

[39] *Cf. Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (emphasizing that separate law school for African-American students was not equal to the University of Texas Law School because of the exposure students at the latter institution had to leaders of the Texas Bar, Texas Courts and state and local governmental agencies and units).

integration plans need not mirror the affirmative action plan in *Grutter*. By any reasonable measure, both Seattle and Louisville have found a way to operate their programs that is flexible and narrowly tailored. As described above, both school districts avoid quotas or the mandatory assignment of students to distant schools. Instead, they rely on voluntary mechanisms that leave parents and students with choices about which school to attend, including the opportunity to attend a school near their home. This flexibility is at the heart of the narrow tailoring analysis: the plans do not provide a greater burden on parents than necessary, and indeed, do not unduly burden the members of any particular group. Thus, the Court should hold that these programs are narrowly tailored to serve the compelling interest in integration.

[40] *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) ("Not every decision influenced by race is equally objectionable and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context.")