

SUMMARY OF *AMICUS* BRIEFS  
FILED IN SUPPORT OF RESPONDENTS

PARENTS INVOLVED IN COMMUNITY SCHOOLS  
V. SEATTLE SCHOOL DISTRICT (05-908)

MEREDITH V. JEFFERSON COUNTY  
BOARD OF EDUCATION (05-915)



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.



**ASIAN AMERICAN JUSTICE CENTER, ASIAN LAW CAUCUS, ASIAN PACIFIC AMERICAN LEGAL CENTER, AND ASIAN AMERICAN INSTITUTE, ET AL (16 additional public interest and civil rights organizations)**

- *Interest of Amici*: Largest and oldest Asian American public interest legal and civil rights organizations in the country; support racial diversity in education to ensure equal education and opportunities for all students and to remedy and combat racial discrimination and prejudice.
- *Summary*: While Asian-Americans are classified as “minorities” in the Seattle program and as “non-minorities” in Jefferson County’s assignment plan, *amici* support both programs because “racial diversity is a compelling government interest that benefits all students.”
  - Cite empirical evidence supporting the proposition that racial diversity in education promotes racial understanding; particularly important to instill this quality in children at the elementary and secondary school level
  - Assert that integration improves educational performance
  - Without these assignment plans, the residential segregation present in both Seattle and Louisville would lead to racially isolated schools, depriving students of the benefits of racial diversity
  - Both assignment plans are narrowly tailored because they are “flexible and closely linked to actual demographics.”
- *Counsel of Record*: Mark A. Packman, Gilbert, Heintz & Randolph, LLP

**ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, CHINESE FOR AFFIRMATIVE ACTION, ET AL. (14 ADDITIONAL NONPROFIT ORGANIZATIONS)**

- *Interest of Amici*: Nonprofit organizations that advocate on behalf of and/or provide direct services to Asian Americans throughout the U.S. *Amici* dedicate a significant amount of time to education advocacy issues, including addressing problems rooted in lack of meaningful racial and ethnic diversity and many of them work directly with Asian American youth experiencing difficulty in accessing public education and addressing discrimination and racially-based harassment. *Amici* submit that racially integrated schools “profoundly benefit” Asian-American children, and that these students would be “materially harmed” if school districts were unable to implement voluntary integration plans such as those at issue in these cases.
- *Summary*: Although Asian-Americans are often perceived as the “model minority” with high incomes and an absence of barriers to educational achievement, in reality, the Asian American community is very diverse with differing median levels of educational achievement and socio-economic status.
  - *Amici* argue that, regardless of their socio-economic status, all Asian-Americans – indeed, all racial groups – benefit from integration. Racial integration meaningfully reduces school violence and harassment, leads to greater interracial understanding and tolerance, and fosters greater educational access and improved academic achievement

- These benefits of diversity can be obtained with the greatest ease and efficiency if local school boards are vested with broad discretion to promote integration through race-conscious school assignment policies tailored to their communities and budgets.
- *Counsel of Record:* Mark Wolinsky, Wachtell, Lipton, Rosen & Katz

## THE AMERICAN CIVIL LIBERTIES UNION, THE ACLU OF KENTUCKY, AND THE ACLU OF WASHINGTON

- *Interests of Amici:* The ACLU is a nonprofit organization “dedicated to the principles of liberty and equality embodied in the Constitution and this nation’s civil rights laws,” having appeared as direct counsel and amicus in numerous civil rights cases, including *Grutter* and *Gratz*.
- *Summary:* While “race-neutral” alternatives to race-conscious assignment plans “may sometimes have a *marginal* beneficial impact” on integrating public schools, they present “at best, only a partial solution, and at worst, exacerbate existing segregation.”
  - Relying solely on socio-economic status (“SES”) for school assignments has a limited impact on racial integration. Even those SES-based plans touted as successes have not, in fact, achieved student body diversity. SES-based plans do not therefore provide an adequate race-neutral alternative, particularly in large school districts.
  - Magnet schools programs only marginally impact the racial integration of public schools; the success of Magnet School Assistance Program (“MSAP”) grants has been mixed in reducing segregation across the district and *within* individual magnet schools.
- *Counsel of Record:* Dennis D. Parker, ACLU Foundation

## AMERICAN EDUCATIONAL RESEARCH ASSOCIATION (AERA)

- *Interests of Amicus:* Amicus is dedicated to improving the nation’s education research capacity by promoting “science based knowledge of educational systems and processes.” The AERA is concerned about the “possible misappropriation” of research evidence in these cases, including “potentially misleading analyses” in the amicus briefs submitted in support of Petitioners.
- *Summary:* *Amici* note that a wide range of studies document the benefits of racially diverse schools and the harms associated with racial isolation and the resegregation of previously desegregated systems.
  - Research demonstrates that racial diversity improves cross-racial understanding and reduces prejudice, increases student achievement, promotes a strong sense of civic engagement and willingness to live and work in diverse settings, and provides long-term benefits for students living in a diverse society. Moreover, racial isolation is associated with unequal educational opportunities and a variety of other harms, including limited educational resources, fewer qualified teachers, and inadequate access to peers who can raise achievement.
  - Research supports the assertion that these race-conscious assignment plans are narrowly tailored, given the flexible goals of each, and the fact that race-neutral policies are not as effective as race-conscious policies, and may lead to resegregation.
- *Counsel of Record:* Angelo N. Ancheta, Santa Clara University School of Law

## ALLIANCE FOR EDUCATION, MUNICIPAL LEAGUE OF KING COUNTY, MAYOR AND FORMER MAYORS OF SEATTLE, AND FORMER SEATTLE SCHOOL BOARD MEMBERS

- *Interests of Amici:* The Alliance for Education is a non-profit organization created by the business community of Seattle to ensure the success of all students in the Seattle School District, and is particularly dedicated to supporting the most highly-challenged schools, closing the achievement gap, and preparing students to thrive in the pluralistic (global) business world. The Municipal League is a volunteer civic organization dedicated to effective and responsive government in Seattle, and believes that public school diversity is vital to preparing students for democratic citizenship. The Mayors, current and former, appreciate the compelling interest in a diverse educational environment, and support the school district's efforts to reduce racial imbalance. They believe that there is no practical alternative to a race-conscious plan, but recognize the necessity of using race as narrowly as possible. The Former School Board Members all served during the period from 1963-1981, when Seattle considered and voluntarily implemented a variety of desegregation strategies, and when the District initiated litigation that affirmed the compelling interest in an integrated system of education.
- *Summary:* *Amici* believe, contrary to the Petitioner's assertion, that the "history" of the District's efforts to reduce racial isolation is an "essential context for the present dispute."
  - In support of this proposition, *amici* outline the testing of alternatives, the development of the Seattle Plan, the Initiative 350 litigation, federal Congressional and Executive encouragement of race-conscious student assignment plans, the related State Constitutional duties, and the review and narrowing of the student assignment plan(s) over time.
  - *Amici* submit that over the past 30 years, the District and the U.S. Supreme Court have consistently appreciated the compelling interest in the reduction of racial isolation and imbalance in schools.
  - The plan "could not be more" narrowly tailored. To this end, they note that the tie-breaker is not a quota and imposes limited burdens, magnet schools are not a sufficient alternative, and the local democratic process ensures narrow tailoring, because a school board accountable to the people will not excessively employ unpopular race-based measures.
- *Counsel of Record:* David J. Burman, Perkins Coie, LLP

## AMERICAN COUNCIL ON EDUCATION ("ACE") AND 20 OTHER HIGHER EDUCATION ORGANIZATIONS

- *Interest of Amici:* *Amici* are associations of colleges, universities, educators, trustees and others that collectively enroll 15 million students. While *amici* recognize that there are important differences between elementary and secondary schools and institutions of higher education, they submit that diversity is "essential" to the mission of educators at all levels. Racial and ethnic diversity at the K-12 level advances the efforts of *amici* to achieve excellence in higher education.
- *Summary:* *Amici* contend that the educational benefits of student diversity recognized in *Bakke* and *Grutter* are just as strong at the K-12 level, and local officials' efforts to achieve these benefits should be similarly entitled to deference. Moreover, an integrated elementary and secondary education system increases the pool of applicants for "desegregated" colleges, and produces students better prepared for the demands of higher education.
  - *Amici* outline the compelling governmental interest in educational diversity, noting that it results in increased academic achievement, prepares students for work in a global economy, and strengthens democratic values and civic participation.

- Diversity at the K-12 level contributes to excellence in higher education, as it increases the overall pool of applicants to colleges and universities, improves the college attendance rate of African-American students, and bolsters the educational aspirations of all students. Moreover, black and white students who attend diverse K-12 schools are more likely to attend desegregated colleges.
  - K-12 diversity better prepares students for college: among other things, they are exposed to and assimilate a broader range of viewpoints and experiences, and are more likely to receive higher grades in college high for higher education.
  - K-12 diversity contributes to realizing the Court’s vision of “full equality.”
- *Counsel of Record:* Robert E. Toone, Foley Hoag LLP

## **THE AMERICAN PSYCHOLOGICAL ASSOCIATION (“APA”) AND THE WASHINGTON STATE PSYCHOLOGICAL ASSOCIATION (“WSPA”)**

- *Interest of Amici:* The APA places a high priority on the amelioration of stereotypes, prejudice, and discrimination, and notes that social science studies on this subject “bear directly on the empirical claims at the heart of this matter.” The WSPA promotes reliance on scientific evidence in crafting policies that promote the mental and behavioral health of Washington citizens, and believe that such evidence supports the crafting of policies that promote diversity in K-12 education.
- *Summary: Amici* cite “a substantial body of research” that under certain conditions – and particularly at the K-12 level – interaction with persons of different races can diminish racial stereotypes and promote cross-racial understanding, empathy and mutual respect. The diversity necessary to achieve these educational benefits is unlikely to result purely from private parental choice, due to parental fear of the unknown and unfamiliar, and often unconscious racial bias and stereotypes.
  - Racial diversity at the K-12 is particularly important because absent early intervention, “normal cognitive processes” can lead to racial stereotyping, and these attitudes are difficult to abandon once adopted. Racial diversity leads to “intergroup contact,” which brings both short and long-term benefits by inhibiting the formation of stereotypes, promoting positive intergroup attitudes, reducing intergroup anxiety, and helping students to learn to work together. Students in diverse classrooms report greater feelings of self worth than students in less diverse classrooms.
  - The benefits of diversity are more likely to accrue if there is a “critical mass” of students from different racial backgrounds.
  - Meaningful intergroup contact is unlikely to occur without school district intervention, because “largely unconscious, automatic cognitive and emotional responses” lead individuals to avoid such contact. Therefore, private choice alone is unlikely to produce substantial diversity in K-12 education.
- *Counsel of Record:* John Payton, Wilmer Cutler Pickering Hale and Dorr LLP

## **AMY STUART WELLS, JOMILLS HENRY BRADDOCK II, LINDA DARLING-HAMMOND, JAY P. HEUBERT, JEANNIE OAKES, MICHAEL A. REBELL AND THE CAMPAIGN FOR EDUCATIONAL EQUITY**

- *Interest of Amici:* Individual *amici* have conducted research and written widely on the issues concerning race and education, and the Campaign is committed to promoting excellence in education and to overcoming the gap in educational access and achievement. *Amici* present a wealth of evidence regarding the “positive, long-term benefits of K-12 integration for students and society.”

- *Summary: Amici* submit that “decades of social science have vindicated” the purpose of *Brown*, and argue that school districts must be able to maintain the integrated setting that *Brown* recognized as “crucial.” Moreover, the plans at issue are not the type of race-based policies that treat students of different races differently, necessitating strict scrutiny; rather the plans represent the local, positive integration efforts expressly endorsed by the Court. However, *amici* argue that, if the Court chooses to apply strict scrutiny, *precedent* and decades of social science research support finding a compelling interest in a diverse K-12 education.
  - K-12 student diversity is even more important than higher education in fostering the intergroup relations skills necessary to function in a diverse society and global economy.
  - Both quantitative and qualitative research confirms that K-12 integration enhances students’ ability to function and succeed in a diverse workforce and society. The long-term benefits for students who attend racially-mixed public schools are “profound”; many directly attribute their success in the workplace and ability to live and work with people of different backgrounds to attending integrated K-12 schools.
  - Graduates of integrated schools learned how to interact with people of other races, and are therefore more comfortable around people of diverse racial backgrounds than those without an integrated K-12 experience. These intergroup skills carry over into the workplace, and benefit both the graduate and the employer.
  - Graduates of integrated schools believe that despite the difficulties that some experienced, attending an integrated school was “worth it.”
- *Counsel of Record:* Kenneth D. Heath, Wiggin & Dana, LLP

## ANTI-DEFAMATION LEAGUE (“ADL”) BRIEF

- *Interest of Amici:* The ADL is one of the nation’s leading civil rights organizations, and is committed to secure justice and fair treatment to all citizens alike. While in the past the ADL has *opposed* race-conscious government action, here, it does not find any constitutional harm to any affected individual and therefore no violation of the Equal Protection Clause.
- *Summary: Amici* contend that the assignment plans pass strict scrutiny, asserting that the plans aim to achieve a compelling governmental interest and that the chosen means are narrowly tailored.
  - As articulated in *Grutter*, the government has a compelling interest in the racial diversity that results from the integration of schools, and this rationale is particularly important in the context of K-12 education. Indeed, it is “difficult to conceive today of a governmental interest that is of greater legitimacy” in a world “pervaded by racial and ethnic strife.”
  - The plans satisfy the narrow tailoring requirement of strict scrutiny because the Constitution does not require that the government be color-blind when achieving desegregation, and no “individualized, holistic” assessment is required in the context of public school assignment plans.
  - Race-conscious programs that discriminate by substituting race for relevant personal characteristics raise issues of fairness and personal harm. Where “race-conscious action does not risk compromising individualized assessment” and is “otherwise necessary to fulfill governmental interests,” it passes constitutional muster.

*Counsel of Record:* Martin E. Karlinsky, Katten Muchin Rosenman LLP

## BLACK WOMEN LAWYER’S ASSOCIATION OF GREATER CHICAGO, INC. (“BWLA”)

- *Interest of Amici:* The BWLA’s mission is to provide professional support for the continued presence and participation of African-American women in the legal profession. Many of its members have been the beneficiaries of public elementary and high school programs that that used race as a factor in school assignment policies in order to desegregate schools, and many have been the beneficiaries of college and law school admissions programs designed to produce diverse applicant pools and student bodies. BWLA members’ “opportunity for full participation in the legal system will likely be determined by the outcome of this case.”
- *Summary:* *Amici* submit that America is not now, and never has been a colorblind society. “As long as race remains a factor in American life, it must remain a factor in the educational system to ensure that educational opportunities are provided to African-Americans after hundreds of years of deprivation” and to ensure that educational environments are integrated in order to “teach both whites and non-whites about each other so that we may reach the day when race no longer matters.”
  - The consideration of race in public school assignments furthers a compelling interest in educating students and eliminating the vestiges of *de jure* segregation.
  - Statistical evidence and the experiences of BWLA members demonstrate the continuing effects of *de jure* segregation and that *de facto* public school segregation is as powerful as *de jure* segregation.
  - Graduates of integrated schools value diversity in the workplace and in their communities.
  - Diversity in public schools is a necessity for successful academic and professional development in *all* students.
  - Women of color face numerous challenges in the practice of law: the lack of diversity in lower levels of the educational system affects the attendance and matriculation of African Americans at law schools as well as the hiring and retention of African Americans in law firms.
- *Counsel of Record:* Sharon E. Jones, Black Women Lawyers’ Association of Greater Chicago, Inc.

## BRENNAN CENTER FOR JUSTICE, CENTER FOR CONSTITUTIONAL RIGHTS (“CCR”), DEMOS, NATIONAL VOTING RIGHTS INSTITUTE (“NVRI”), AND PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND (“PRLDEF”)

- *Interest of Amici:* The Brennan Center “strives to ensure that public policy and institutions reflect the diverse voices and interests that make for a rich and energetic democracy.” The CCR is dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and empowering poor communities and communities of color. Demos is a non-profit, non-partisan organization dedicated to promoting a “robust and inclusive democracy,” and submits that voluntary school integration programs that strive for diversity and inclusion foster the understanding necessary for its ambitious mission. Through litigation and public education, NVRI aims to vindicate the constitutional right of all citizens to participate in the electoral process on an equal and meaningful basis, and believes that given its role in shaping democratic values, the public education system is vital to securing a robust and inclusive democracy. PRLDEF is dedicated to protecting and furthering the civil rights of Puerto Ricans and other Latinos through litigation and education.
- *Summary:* Diverse public schools play a critical role in instilling our children with civic values and in promoting the “values necessary to a multi-ethnic democracy that promise equality to all,” including racial understanding and tolerance and the certain knowledge that there is more to a person or issue than race.
  - “Racial disparities and perceived differences continue to hamper the realization of our democratic ideals”; maintaining diversity in primary and secondary schools is the most effective way to propagate and maintain our democratic values and obtain the promise of a properly functioning democracy.

- The assignment plans that the school districts employ to maintain racial diversity pass strict scrutiny, although it is the improper standard by which to assess these programs.
- *Counsel of Record:* Warrington S. Parker III, Heller Ehrman LLP

## CAUCUS FOR STRUCTURAL EQUITY

- *Interest of Amici:* The Caucus is a collaborative of policy-oriented non-profit organizations and legal and social science academics focused on devising strategies to help alleviate persistent racial inequality in the United States. The members of the Caucus include scholars with expertise in the structural and institutional dynamics underlying the persistent racial exclusion in the U.S., and have many years of collective experience in formulating policies that promote racial equity. These experiences give them particular insight into the importance of integration.
- *Summary:* *Amici* argue that *Brown* “marked the constitutional apotheosis of a social truth: racial segregation engenders the marginalization of racial minorities.” Since that decision, social science has amassed significant evidence in support of that proposition.
  - Integration is necessary to break down racial inequality, and race-conscious measures are necessary to achieve integration. *Brown* and its progeny did not command an end to all such measures, not did these cases require a *de jure* constitutional violation for a school district to take voluntary integration measures. Instead, these cases made clear that race-conscious means are essential to the elimination of segregation and the integration of schools.
  - The harms, causes and consequences of segregation are known, documented and specifiable, and it is within the power of school boards and districts – democratically elected and locally accountable -- to address these harms. Access to quality public education is constrained for many African American and Hispanic students due to a range of historical and contemporary policies that produced the racial segregation in schools.
- *Counsel of Record:* Daniel R. Shulman, Gray, Plant, Mooty, Motty & Bennett P.A.

## COALITION TO DEFEND AFFIRMATIVE ACTION, INTEGRATION, & IMMIGRANT RIGHTS, AND FIGHT FOR EQUALITY BY ANY MEANS NECESSARY (“BAMN”) AND UNITED FOR EQUALITY AND AFFIRMATIVE ACTION LEGAL DEFENSE FUND (“UEAALDF”)

- *Interest of Amici:* BAMN is leading the “new civil rights movement,” and has organized mass action in defense of affirmative action, integration, and immigrant rights. BAMN believes that “the continuation of all desegregation policies hangs in the balance” in these cases, and therefore it has an “immediate and direct interest” in the outcome. UEAALDF formed in reaction to the *Grutter* and *Gratz* lawsuits, and achieved intervener status in those cases. It has since and is currently representing students in various integration lawsuits in California, and is supporting voting rights and affirmative action issues in Michigan.
- *Summary:* Achieving integration in education requires conscious action. *Amici* cite *Brown*, *Keyes*, and *Swann* and suggest that the programs at issue in this case “did no more – and in fact far less – than this Court said was permissible in *Swann*.” Integration of the public schools is the only way to achieve equal education for the nation’s fast-growing and diverse minority populations.
  - Separate can never be equal, and the school boards acted properly to prevent the segregation or resegregation of their school districts.

- Petitioners offer no basis for subjecting the assignment plans to strict scrutiny. Moreover, petitioners wrongly assert that the compelling interest in diversity does not apply to K-12 education and that school boards may not attempt to achieve racial diversity. In addition, they wrongly resurrect arguments from *Plessy v Ferguson*
- *Counsel of Record*: George B. Washington, Scheff & Washington

## **COLLABORATIVE OF CATHOLIC LEADERS AND ORGANIZATIONS**

- *Interest of Amici*: *Amici* believe that “the parameters of Catholic Social Thought help illuminate the proper resolution of these cases within the parameters of American constitutional law.” *Amici* are committed to promoting the “dignity and basic rights” of all members of society and therefore seek solutions to the outstanding problems of our time, one of which remains the segregation of public schools.
- *Summary*: “Given (the) Catholic and American understanding of justice, (*amici*) urge the Court to acknowledge as compelling the two interests fostered by respondents – parental choice and integration – pursued in a mutuality that is narrowly tailored to ameliorate two entrenched evils: the marginalization of the opportunity-poor family and the perpetuation of racial segregation.”
  - *Amici* argue that the assignment plans “maximize parental choice,” a compelling state interest that keeps with the principles of “subsidiarity” and the “preferential option for the poor” embodied in Catholic Social Thought. Moreover, “the common good and solidarity balance the larger community’s needs with individual interests to maximize parental choice.”
  - In addition, *amici* submit that the assignment plans foster integration, a compelling government interest that is in keeping with Catholic Social Thought, as it fosters the dignity of the human person.
  - Finally, *amici* assert that judicial deference to school districts is appropriate and in keeping with Catholic Social Thought, as it is justified by the principles of “subsidiarity” and “common good.”
- *Counsel of Record*: Terrence J. Fleming, Lindquist & Venum, P.L.L.P.

## **COUNCIL OF THE GREAT CITY SCHOOLS, MAGNET SCHOOLS OF AMERICA, PUBLIC EDUCATION NETWORK, UNITED STATES CONFERENCE OF MAYORS, AND SAN FRANCISCO UNIFIED SCHOOL DISTRICT**

- *Interest of Amici*: *Amici* are school districts and national organizations committed to providing high quality and equal educational opportunities for all schoolchildren, and to that end, are committed to preserving for their members the flexibility to make race-conscious student assignment policies to maintain racially diverse student bodies.
- *Summary*: *Amici* argue that, unless school districts can take account of race in student assignments, residential segregation will result in segregated schools. School districts have a compelling interest in preventing racial isolation because it cannot be separated from the racial achievement gap, and because integration is essential to training students to be citizens of a multi-cultural democracy. The school districts have permissibly – in a narrowly tailored manner – taken race into consideration in the assignment plans, and should not be expected to explore race-neutral alternatives that do not provide a workable solution to the problem of racial isolation.
  - School districts have a compelling interest in integrated schools, as racially isolated schools do not provide equal educational opportunities. The federal government has recognized this deficiency, and

*amici* assert that it is essential to the mission of public schools to equalize educational opportunities via integrated classrooms.

- The use of race as one of many factors in school assignments is a narrowly tailored measure properly employed to further a compelling governmental interest in integrated schools. Race-neutral alternatives are insufficient to achieve this interest.

- *Counsel of Record:* Julie Wright Halbert, Council of the Great City Schools

**BRIEF FOR FORMER DEPARTMENT OF DEFENSE OFFICIALS: HON. CLIFFORD J. ALEXANDER, JR., LT. GEN. JULIUS W. BECTON, JR., HON. LOUIS E. CALDERA, ADM. ARCHIE CLEMINS, HON. WILLIAM S. COHEN, HON. JOHN H. DALTON, HON. RUDY F. DELEON, HON. F. WHITTEN PETERS, HON. JOE R. REEDER, AND HON. TOGO D. WEST, JR.**

- *Interest of Amici:* *Amici* are former high-ranking leaders of the Department of Defense (DoD) and the armed forces, who are interested in these cases because voluntary integrative measures have been critical to the military's fulfillment of its "core missions," and also because the military's experience with its own highly integrated schools has shown the significant benefits that accrue to children educated in a racially integrated environment.
- *Summary:* Segregation is incompatible with a successful military and the American ideals that it represents. Since WWII, the military has implemented voluntary integrative policies that have achieved a level of diversity that is largely unparalleled elsewhere in society. One of these measures is the DoD schools, which are among the most racially integrated in the country, and have the highest levels of achievement for minority children.
  - The history and experience of the US military shows the importance of voluntary measures to promote integration in public education. It has engaged in such measures in order to integrate its ranks and the education of its dependent children.
  - DoD schools, which are fully integrated and among the most racially diverse of any school system in the country, demonstrate the benefits of an integrated education. Among other things, the educational achievement of students attending DoD schools, and particularly minority students, is extremely high, notwithstanding the significant challenges often faced by these students.
  - As demonstrated by DoD schools, promoting racial integration at the K-12 level is a compelling governmental interest. In particular, achieving integration of public schools is no less compelling than the recognized interest of increasing diversity in the officer corps.

- *Counsel of Record:* Jonathan S. Franklin, Fulbright & Jaworski L.L.P.

**BRIEF OF FORMER UNITED STATES SECRETARIES OF EDUCATION AND SECRETARIES OF HEALTH, EDUCATION, AND WELFARE WHO SERVED FIVE FORMER PRESIDENTS: DAVID MATTHEWS, JOSEPH A. CALIFANO, JR., SHIRLEY M. HUFSTEDLER, LAURO FRED CAVAZOS, AND RICHARD W. RILEY**

- *Interest of Amici:* *Amici* were nominated by different presidents from different political parties, and have differences of opinion with respect to some educational policies, but are in "complete accord" that "reduction of racial isolation in public schools constitutes a compelling national interest." While in office, each supported national policies encouraging States and localities to take steps to reduce racial isolation in public schools. *Amici* argue that petitioners and *amici* in support of petitioners either ignore or improperly diminish the virtually unwavering support that the national government has long provided to voluntary local actions to reduce and eliminate

racial isolation, with the consideration of race being sometimes necessary to achieve that goal.

- *Summary:* The U.S. Department of Education has, for decades, deliberately supported voluntary efforts to reduce racial isolation and promote integration in schools. As the federal agency primarily responsible for encouraging state and local governments to desegregate public schools, the Department of Education has particular expertise and knowledge about the effects of both *de jure* and *de facto* segregation.
  - Over the last forty years, the Department of Education has consistently and properly considered the governmental interest in reducing racial isolation and promoting integration as compelling, and concluded that children of all races, and society as a whole, benefit from voluntary integration of school districts.
  - The use of race to further this interest can be appropriate, even if the racial isolation did not result from proven intentional discrimination. The use of race to address racial isolation is consistent with the Department's interpretation of Title VI of the Civil Rights Act; indeed, in 1973, the Title VI regulations were specifically amended to express, and have been long implemented to reflect, the view that race could be considered to remedy racial isolation, regardless of whether it resulted from proven intentional discrimination.
  - The Department of Education – consistent with Presidential and Congressional pronouncements – has long deferred to local efforts to eliminate racial isolation, including through the use of race-based mechanisms. “[T]he primary public responsibility for education is reserved respectively for the States and the local school systems.”
- *Counsel of Record:* Drew S. Days, Morrison & Foerster LLP

## HISTORIANS

- *Interest of Amici:* *Amici* are 60 scholars devoted to the study of Reconstruction-era history, abolitionism, race relations, and civil rights, who have a professional interest in ensuring that the Court is fully informed about the historical context surrounding the passage and early implementation of the Fourteenth Amendment. *Amici* believe that the race-conscious measures at issue in these cases are “fully consistent with the original purpose of the Fourteenth Amendment.”
- *Summary:* It is a “deep misunderstanding” of the Framers’ aims to suggest that “integration and segregation are equally offensive to the Fourteenth Amendment insofar as they involve any consideration of race.” Moreover, there is no evidence suggesting that the Framers intended for the 14th Amendment to limit the type of voluntary, race-conscious integrative measures at issue in these cases.
  - The Reconstruction Congress supported deliberate efforts by states and localities to integrate schools, even funding race-conscious school integration plans.
  - The primary purpose of the Reconstruction Amendments was inclusionary - to incorporate blacks into the civic, economic, and political mainstream of American society. As such, no Congressional or Constitutional objection was made to voluntary efforts to integrate schools.
  - Moreover, the Reconstruction Congress consistently and widely used race-conscious means to implement the goals of the Reconstruction Amendments, in clear contradiction to the assertion of *amici* in support of petitioners that the original intent of the Reconstruction Amendments was to establish color-blind government.
- *Counsel of Record:* Jack Greenberg, Columbia Law School

## HISTORIANS OF THE CIVIL RIGHTS ERA: WILLIAM H. CHAFE, DAVISON DOUGLAS, CHARLES PAYNE, TOMIKO BROWN-NAGIN, KENNETH MACK, RISA GOLUBOFF, KEVIN KRUSE, AND MATT LASSITER

- *Interest of Amici:* *Amici* are historians and law professor, who specialize in U.S. Civil Rights history, including the desegregation of American schools, and who seek to provide the Court with a historical context for the development of the assignment plans.
- *Summary:* “Context matters” when interpreting the Equal Protection Clause, and the policies at issue should be considered in terms of the nation’s development of universal public education and its long struggle to overcome the legacy of racially segregated schools. The assignment plans are consistent with the Court’s education and desegregation jurisprudence, which has emphasized the importance of local, politically accountable control of schools and of the role of states as laboratories of social experimentation in the field of education.
  - *Amici* describe public schools as “engines of democracy and opportunity,” and trace their history, from the development of universal public education to *Brown* and the resistance to desegregation to the current retrenchment and return to racial isolation.
  - The challenged policies reflect a “democratic consensus” in support of integrated schools after years of discrimination and resistance to desegregation in both Louisville and Seattle. Public support for quality, integrated education in Seattle and Jefferson County mirrors national public opinion – more than 90% of Americans support racially integrated public schools.
  - These policies are a “logical outgrowth” of the Court’s education and desegregation jurisprudence, as the Court has repeatedly recognized the importance of local control and deference to ‘educational experimentation. It would be “ironic, indeed perverse” if the Court were to stymie voluntary efforts to achieve student diversity that mark the success of the Court’s *Brown* decision.
  - Finally, the policies reflect the school boards’ determination that all students benefit from a diverse learning environment, and are themselves lawful “de minimus” efforts to reform education similar to voluntary desegregation programs recently upheld by federal courts.
- *Counsel of Record:* Theodore V. Wells, Jr., Paul, Weiss, Rifkind, Wharton & Garrison

## HOUSING SCHOLARS AND RESEARCH AND ADVOCACY ORGANIZATIONS

- *Interest of Amici:* *Amici* include research and advocacy organizations, law professors, sociologists, historians, and other scholars who have devoted significant time to studying the causes and harms of residential segregation. Given the persistence of residential segregation in the U.S., *amici* believe that schools should be able to implement voluntary school desegregation programs.
- *Summary:* Since the 1970s, if not before, the Court has recognized the reciprocal relationship between residential and school integration, and social science has confirmed this connection. Housing markets, distorted by private discrimination and government policy, are incapable of creating the residential integration that would make voluntary school integration programs unnecessary. Schools will not become integrated unless school districts take affirmative steps to promote integration. School districts also have a compelling interest in undertaking voluntary efforts to integrate their schools due to the strong, positive impact school integration has on residential integration in the short and long term.
  - Seattle and Louisville are both residentially segregated and have an ugly history of racial exclusion and discrimination in their housing markets, with continuing effects today.
  - Historical practices by state and private actors have resulted in significant residential segregation,

hindering the emergence of public schools. These discriminatory practices include the development of the American suburb, urban renewal and public housing programs, and the Low Income Housing Tax Credit.

- School integration is “unlikely to occur naturally” because of private discriminatory practices that “continue to skew the housing market,” including “steering,” mortgage lending and insurance discrimination.
- Americans are increasingly willing to live in integrated communities, and the positive impact of school integration on this phenomenon underscores school districts’ compelling interest in combating school segregation.

- *Counsel of Record:* Michael B. de Leeuw, Fried, Frank, Harris, Shriver & Jacobson

## HOWARD LAW SCHOOL CIVIL RIGHTS CLINIC

- *Interest of Amici:* *Amici* are faculty members at Howard University School of Law supervising attorneys and student attorneys of the Civil Rights Clinic at the Law School, and faculty members at law schools throughout the country. Howard University, while usually regarded as a historically black university, is one of the most integrated institutions of higher education in the country, and has achieved significant racial and ethnic diversity in its student body and faculty since its inception.
- *Summary:* *Amici* submit that the very existence of these cases demonstrates that *Brown’s* purposes and goals have yet to be realized. The voluntary school integration plans are consistent with *Brown’s* vision and represent the “natural evolution and necessary continuation” of that decision. Indeed, these cases place before the Court the question whether *Brown* will continue as a viable precedent, and whether *Brown’s* fundamental goal of meaningful racial integration and diversity in primary and secondary schools will remain a valued public good.
  - *Brown* “contemplated actual, effective integration of public schools, not merely the abrogation of *de jure* segregation,” and the Court has long supported that goal.
  - Integrated education is particularly important because of the correlation between access to educational opportunities and effective citizenship. The equal exercise of citizenship, which is in the national interest, cannot be obtained in racially isolated schools
  - *Amici* cite the Court’s “longstanding deference” to school districts in remedying the harms of racial isolation, and the wealth of support for the voluntary integration plans implemented for this purpose, including that of the federal courts and the U.S. Dep’t of Education.
  - Several school districts have adopted voluntary integration plans that use narrowly-tailored race-conscious measures, and these plans are the “last best chance” of achieving *Brown’s* promise.
- *Counsel of Record:* Aderson Bellegarde Francois, Howard University School of Law

## THE UNIVERSITY OF MINNESOTA HUMAN RIGHTS CENTER, HUMAN RIGHTS ADVOCATES, THE MIDWEST COALITION FOR HUMAN RIGHTS, THE CENTRE ON HOUSING RIGHTS AND CONVICTIONS (COHRE), AND PROFESSOR GEORGE E. EDWARDS

- *Interest of Amici:* The U. of Minnesota Humans Rights Center is a national leader in human rights advocacy and research, and has submitted amicus briefs in several significant cases, including *Grutter*, *Lawrence v. Texas*, and *Roper v. Simmons*. Human Rights Advocates “endeavors to ensure that the most basic protections are afforded to everyone” and has submitted amicus briefs in other cases where individual and group rights are at issue. The Midwest Coalition for Human Rights is a network of 32 advocacy organizations and academic centers dedicated

to protecting human rights in the U.S. and around the world. COHRE is an international human rights organization, and Prof. Edwards is the Director of the Program in International Human Rights Law at Indiana University School of Law.

- *Summary: Amici* note that the United States is considered a world leader in human rights, and assert that it is obligated to interpret the 14th Amendment in a manner consistent with the international treaties it has accepted. As such, the constitutionality of voluntary integration programs designed to combat *de facto* segregation should be upheld.
  - International and comparative law are relevant to the issues before the Court, which has often drawn upon international treaties in cases where U.S. human rights obligations are implicated.
  - The treaty obligations of the U.S., including the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant of Civil and Political Rights (“ICCPR”) support the “compelling” nature of the nation’s interest in using race as a factor in school assignments. The Human Rights Committee, established under ICCPR, recently expressed concern about “reports of *de facto* racial segregation in public schools, reportedly caused by discrepancies between racial and ethnic composition of large urban districts and their surrounding suburbs.”
  - International law supports school districts’ taking affirmative steps to assure equality.
- *Counsel of Record:* David Weissbrodt, Prof. of Law, Univ. of Minnesota Law School

## HUMAN RIGHTS CLINICS AND ORGANIZATIONS

- *Interest of Amici: Amici* include the Human Rights Clinics at Columbia, Yale, George Washington, and the University of Virginia Law Schools. These clinics provide students with first-hand experience in human rights advocacy. Amicus Global Rights – Partners for Justice is a non-profit organization of human rights and legal professionals engaged in advocacy, litigation, and training around the world. Its central focus is promoting the use of international human rights law and standards to promote women’s rights and combat racial discrimination. The National Economic and Social Rights Initiative (NESRI) works with education advocates to promote policy change in public education using human rights standards and strategies. The U.S. Human Rights Network seeks to promote U.S. accountability to international human rights standards, and in this vein, believes the nation has an obligation to remedy discrimination and promote equality.
- *Summary:* Comparative and international law are relevant to the Court’s consideration of these cases. International treaties endorse the kind of assignment programs at issue in this case, and
  - Other nations have upheld the use of race-conscious policies to benefit underrepresented minorities and supported comparable race and gender-conscious measures. The European Court of Justice endorsed programs that consider gender as a factor to remedy gender discrimination in employment; and the Constitutions, case law and legislation in Canada, Germany, South Africa, and India, among other countries, support governmental measures to promote equality and redress past discrimination.
  - *Amici* cite ICCPR and CERD, noting that these treaties “make clear that race-conscious policies designed to create diversity are not discriminatory,” and that the managed choice programs at issue are consistent with the obligations of the U.S. under these treaties.
  - *Amici* assert that “self-execution” is not an issue when, as here, treaties are used as interpretive support and guidance in support of particular programs.
- *Counsel of Record:* Cynthia J. Larsen, Orrick, Herrington & Sutcliffe LLP
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## JOSEPH E. BRANN, DANIEL J. COULOMBE, EDWARD F. DAVIS, RONALD DAVIS, AND DARREL STEPHENS

- *Interest of Amici:* *Amici* are former and current law enforcement officials who, based on their collective professional experience in leading police departments nationwide, conclude that high school dropouts are far more likely to commit crimes than high school graduates. Programs that increase educational opportunity – such as those at issue here – promote high school graduation and thus reduce crime.
- *Summary:* *Amici* have found that many of the children they arrest have dropped out of school. Modest integration programs have the potential to reduce crime by lowering the dropout rate of minority children. As *amici* have witnessed firsthand the devastating effects of crime on society as a whole, they urge the Court to uphold policies that have the potential to keep students in school and reduce crime.
  - Minority students that attend racially integrated schools have much higher graduation rates than those that attend segregated schools.
  - The connection between the dropout rate and crime is particularly strong for minority students. According to a 1997 study, 44% of African-American state prison inmates and 53% of Latino inmates had not graduated from high school or obtained a GED, as compared to 27% of white inmates.
  - Policies that increase the high school graduation rate contribute significantly to a reduction in crime.
- *Counsel of Record:* Robert N. Weiner, Arnold & Porter, LLP

## LATINO ORGANIZATIONS

- *Interest of Amici:* *Amici* are 16 organizations with roots in the Latino community and whose missions include serving the interests of the Latino community. *Amici* have concluded that decreasing racial isolation and promoting diversity in K-12 education is important to the success of the Latino community.
- *Summary:* Latino students have, both before and after *Brown*, consistently languished in segregated educational settings with drastically limited opportunities. Decreasing racial isolation will lead to improved academic opportunities and increased civic and political participation for Latinos. In addition, combating Latino isolation will benefit children of other races, as they must learn the values of tolerance and cross-racial understanding in an increasingly diverse society, of which Latinos comprise a substantial segment.
  - *Amici* submit that the Latino educational experience has been marked by persistent segregation. At the beginning of the 20th century, Latinos were channeled into segregated and significantly under-resourced “Mexican” and “migratory” schools.” Over time, Latinos have become the largest and most segregated minority group in K-12 public schools. In addition, Latinos experience significant segregation by language, in addition to race, and are the racial group most concentrated in high-poverty schools.
  - While a number of court rulings, even prior to *Brown*, addressed the segregation of Latino students, the applicability of *Brown* to Latino students was not settled until nearly two decades after the *Brown* decision.
  - The government has a compelling interest in reducing racial isolation and maintaining diverse classrooms, to foster the democratic values of tolerance and cross-racial understanding for children of all racial groups. Integrated schools also enhance learning and access to higher education, therefore increasing life opportunities.
  - School officials must be given the latitude to implement flexible approaches to combat racial isolation.
- *Counsel of Record:* Shaheena Ahmad Simons, Mexican American Legal Defense and Educational Fund

## LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA

- *Interest of Amici:* The Lawyers' Committee is a civil rights and legal services organization dedicated to ensuring equal access to education for all schoolchildren. Lawyers' Committee acted as counsel to the NAACP in its desegregation suit against the San Francisco Unified School District, and therefore has a "unique interest" in assuring that the Court is accurately informed about the use and impact of race-conscious remedies in San Francisco and California generally, where an eighth of the nation's children are educated.
- *Summary:* *Amici* assert that integrated schools are essential to create good citizens in our increasingly diverse society, and argue that states must be given the autonomy to adopt varying measures to achieve integration. *Amici* are particularly concerned about the inaccurate way in which the dissenting opinion in the Seattle case and the petitioner's *amici* have portrayed California's experience.
  - California has not experienced a wholesale abandonment of race-conscious student assignment policies statewide in the wake of Proposition 209. Nor has there been a related statewide change in minority academic achievement.
  - Racial integration and minority student achievement deteriorated in San Francisco after it eliminated racial criteria from its student-assignment plan. During the 2001-2002 school year, prior to the 2002 policy change, 30 schools were severely segregated (60% of more students of one race/ethnicity) at one or more grade levels. By December of 2005, 50 schools were resegregated at all grade levels. A federal district court found that "over one in three San Francisco public schools is resegregated" largely as a result of the shift to a race-neutral assignment plan. Moreover, the district court found a "close relationship between resegregation and the disparity in academic achievement" between Black and Latino, as compared to white and Chinese-American students. This was in marked contrast to the progress the city made from 1983-1999, when, using a race-conscious plan, San Francisco "largely desegregated its schools and provided academic excellence throughout the district."

*Counsel of Record:* Steven A. Hirsch, Keeker & Van Nest, LLP

## NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.

- *Interest of Amici:* LDF is a non-profit legal organization dedicated to preserving the civil and constitutional rights of African Americans and other people of color. For six decades, LDF has worked to dismantle racial segregation and ensure equal educational opportunity, and has acted as counsel or *amici* in landmark school desegregation litigation, from *Brown v. Board of Education* to the cases now before the Court.
- *Summary:* The Court should not apply strict scrutiny in K-12 voluntary school desegregation cases, as the context of this litigation should be distinguished from that of affirmative action cases, in which the distribution of burdens and benefits raises distinct Equal Protection concerns. The Court's desegregation jurisprudence has affirmed the importance of local control and deference to school boards and emphasized that local school officials can go beyond constitutionally required remedies in order to alleviate *de facto* segregation.
  - The Court has never applied strict scrutiny to determine whether K-12 student assignments intended to achieve integration are motivated by constitutionally illegitimate purposes; rather, the Court has "repeatedly expressed approval" of voluntary K-12 school integration efforts. Indeed, voluntary integration is consistent with the Court's emphasis on local control and deference to school boards.
  - *Amici* submit that the Court should instead apply a "rigorous rational basis" scrutiny standard, to take appropriate account of the relevant differences between K-12 assignments, university admissions, and "true" affirmative action cases.
  - Race-conscious public school assignment policies are analytically and contextually distinct from "racial

preferences” in affirmative action cases, as they do not involve the distribution of a limited good or benefit.

- Instead, K-12 assignment policies must strike a careful balance between complex educational objectives and the practical considerations that legitimately relate to and interact with the goal of racial integration.

- *Counsel of Record:* Theodore M. Shaw, NAACP Legal Defense and Educational Fund, Inc.

## **LEADERSHIP CONFERENCE ON CIVIL RIGHTS (“LCCR”) AND THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUCATION FUND (“LCCREF”)**

- *Interest of Amici:* LCCR is a coalition of more than 180 organizations committed to the protection of civil rights, and its members have played major roles in school desegregation litigation and the implementation of court orders since *Brown*. The LCCREF is the coalition’s research, education, and communications arm. *Amici* strongly support the voluntary use of race-conscious measures to ensure that children are educated in a diverse environment, as they believe that early exposure to diversity is the best way to prepare children to participate in the diverse workplace and civic life of our nation.
- *Summary:* Local school boards are seeking to voluntarily “advance the values that animated this Court’s landmark decisions” in *Brown* and its progeny. “Well-settled constitutional principles” and the Court’s own statements support the school boards’ efforts.
  - The Court (with whom Courts of Appeals have unanimously agreed) has recognized that the state has a compelling interest in providing children with a diverse educational environment; Congress has similarly long recognized that interest.
  - Moreover, desegregation of schools serves the national interest by fostering national unity and the effective participation of all citizens in the civic life of the nation and today’s diverse business environment.
  - Petitioner’s argument that voluntary race-conscious measures are never permissible would lead to the “absurd result” that a school districts that wish to retain some or all of the race-based measures used to achieve unitary status may do so only if it remains under federal court supervision.
  - The Seattle and Louisville plans are narrowly tailored to achieve the compelling interest in educating children in a diverse environment. Individualized holistic assessment is not required nor appropriate in the K-12 context. Instead, the school board must demonstrate that it did not “unnecessarily” consider race to achieve the compelling interest.
  - Finally, the narrow tailoring analysis must be applied in a way that preserves the traditional discretion to local authorities in crafting school policy.

- *Counsel of Record:* Andrew J. Pincus, Mayer, Brown, Rowe, & Maw, LLP

## **LOS ANGELES UNIFIED SCHOOL DISTRICT (“LAUSD”)**

- *Interest of Amici:* LAUSD is the nation’s second largest school system. Since 1981, pursuant to court order and the state Constitution, LAUSD has administered a Magnet Program and the Permits With Transportation (“PWT”) Program to remedy *de facto* segregation within the city’s public schools. These policies were upheld by the Supreme Court, asserting a “greater right to desegregation than exists under the Federal Constitution.” LAUSD is uniquely situated because it is subject to a desegregation plan imposed by order of the California state court in the absence of a Fourteenth Amendment violation.

- *Summary: Amici* contend that due to residential segregation and the fact that fewer than one in eleven of its students is Anglo, it would be impossible for it to meet its obligations under state law absent the limited use of race in its desegregation plan.
  - In *Crawford v. Los Angeles Board of Education*, 458 U.S. 527, 542 (1982), the Court properly endorsed LAUSD’s obligation under California law to remedy *de facto* segregation.
  - If the Court now prohibits the use of race except to remedy *de jure* segregation, the desegregation plan that the *Crawford* order required would be invalidated, and much of the funding for magnet schools and programs would be eliminated. LAUSD would be thus prevented from fulfilling its *Crawford* obligations.

*Counsel of Record:* Peter W. James, Baker & Hostetler LLP

## **LOUISVILLE AREA CHAMBER OF COMMERCE D/B/A/ GREATER LOUISVILLE INC. (“GLI”) AND LOUISVILLE METRO MAYOR JERRY E ABRAMSON**

- *Interest of Amici:* GLI functions as the chamber of commerce and economic development agency for Louisville. It has a deep interest in public education – and therefore the school district’s policies – believing that an educated workforce is essential to the community’s prosperity. Mayor Abramson has an interest in this case because it will affect the city’s efforts to foster quality public education and thereby attract new business and promote the growth in the area.
- *Summary:* Louisville’s student assignment plan should be considered in the context of Louisville’s history, which “underscores the importance of racial diversity and healthy racial relations for fostering economic growth of the city.” This history includes a period in the 1960’s and ‘70’s when the city was adversely affected by societal unrest, an economic downturn, and a shrinking population. However, since then, Louisville has “transformed” its economy and the nature of its racial relations.
  - *Amici* submit that JCPS has a compelling interest in integrated schools because they prepare students for a racially diverse workplace and thereby contribute to the local community’s economic development.
  - In addition, JCPS should be permitted to formulate an assignment plan to satisfy its interests without interference from a federal court, particularly when a locally accountable school board arrives at the plan after “diligent study, solicitation of views from the community, and the informed advice of school administrators and teachers.”

- *Counsel of Record:* John K. Bush, Greenbaum Doll & McDonald PLLC

## **THE MASSACHUSETTS ASSOCIATION OF SCHOOL SUPERINTENDENTS (“MASS”) AND THE MASSACHUSETTS ASSOCIATION OF SCHOOL COMMITTEES, INC. (“MASC”)**

- *Interest of Amici:* Massachusetts has pioneered school desegregation efforts since *Brown*. MASS is a statewide organization dedicated to enhancing the educational opportunities of Massachusetts’ schoolchildren, and believes that a diverse educational community enhances these opportunities. Therefore, MASS supports the use of voluntary integration plans and believes that these plans have positively impacted Massachusetts’ schools. MASC endeavors to support school officials and provide guidance in policy development. It believes it is important for

school committees to have the ability to use voluntary integration plans to foster diversity, which enhances the educational experience.

- *Summary: Amici* note that, despite the court-ordered desegregation efforts of the last several decades, Horace Mann’s vision of a “diversified ‘common school’ remains unrealized.” Voluntary integration programs are a vital tool in achieving this vision and have had a “striking record of success.” Voluntary integration efforts have rich social benefits as well, in developing young minds and the social fabric of our nation.
  - *Amici* argue that public schools have a compelling interest in providing an integrated education, and assert that diverse classrooms help to eliminate harmful racial isolation and stereotyping. Integrated K-12 schools are the “model proving grounds for meaningful intergroup contact.” Voluntary integration programs are integral to achieving the benefits of integration, as they provide the necessary “critical mass” of minority students.
  - Residential segregation necessitates voluntary desegregation plans.
  - Voluntary desegregation plans are narrowly tailored, because they do not perpetuate racial stigmas nor unduly harm third parties.
- *Counsel of Record:* Joseph Leghorn, Nixon Peabody, LLP

## COMMONWEALTH OF MASSACHUSETTS

- *Interest of Amici: Amici* note that Massachusetts state law encourages public schools to voluntarily eliminate segregation, and reference the legal challenge to the race-conscious integration program in Lynn, MA, for which the Supreme Court denied certiorari in December 2005. Massachusetts has a strong interest in retaining the ability to implement race-conscious assignment policies with the goal of reducing racial isolation and achieving integration.
- *Summary:* The history of the Lynn, MA, school system and its voluntary integration plan provides powerful support for the compelling interest and narrow tailoring determinations of the Sixth and Ninth Circuits in these cases.
  - The lower courts correctly applied *Grutter v. Bollinger* in concluding that JCPS and Seattle have a compelling interest in racially diverse schools. Integration – which in some cases is only possible through race conscious measures – is vital to public schools’ core educational mission, and the benefits that flow from it are even more compelling at the K-12 level than in the higher education context.
  - *Amici* reference the record in Lynn, which itself demonstrates school districts have a compelling interest in educational diversity. Lynn’s record established that children receive “fundamentally important education, citizenship, and race relation benefits” from learning in integrated schools. Today, by all measures, Lynn’s school system is thriving.
  - School districts have compelling school safety and intergroup relations interests in racially diverse schools. Racial isolation bred hostilities between white and nonwhite students. Because of integration, Lynn schools are now safe; race relations among students are highly positive, with extraordinarily low levels of student conflict, crime and violence.
  - The assignment plans at issue are narrowly tailored, as residential segregation forces some school districts to use race in student assignments to provide an integrated educational environment. Voluntary, race-conscious measures that use percentage ranges do not constitute quotas or unconstitutional racial balancing; rather, voluntary measures are constitutional when they take into account students’ race only as necessary to achieve educational benefits, and to the extent possible, to prevent the harms of

racial isolation. The requirement of individualized consideration dictated by *Grutter* does not apply in this context. Finally, “when implemented effectively, race conscious integration plans do not reinforce racial stereotypes or cause stigmatic harm.”

- *Counsel of Record*: Richard W. Cole, Office of Attorney General

## MEDIA AND TELECOMMUNICATION COMPANIES

- *Interest of Amici*: *Amici* are committed to the “fundamental proposition:” that it is “vitaly important to the future of American businesses that there be a well-educated, diverse pool of potential employees who have not learned the racial biases that are fostered in segregated schools and who have instead learned the skills of valuing and communicating with people of different backgrounds and skin colors.”
- *Summary*: *Amici* argue that racial integration of education is “crucial to the future of American democracy and our ability to compete in the global market.” The benefits to *amici* of hiring employees from diverse backgrounds with the skills necessary to work together are substantial and quantifiable. The global economy forces American businesses to cultivate a heterogeneous workforce – skilled in cross-cultural communication and tolerance – and appeal to an increasingly diverse customer base.
  - A heterogeneous workforce is more creative and better at problem-solving than a homogenous one. In addition, a diverse workforce offers an advantage in marketing and customer relations, both domestically and globally.
  - Integrated K-12 schools teach the core values of cross-cultural communication and tolerance at the age when those skills are best learned.
  - America’s minority children will be vital to the future workforce, and to that end, our nation has a compelling interest in increasing the achievement level of these groups.
  - Finally, *amici* argue that “forcing educators to ignore race in making school assignments would exact a tremendous toll on the future of American businesses and democratic institutions.”
- *Counsel of Record*: Elizabeth G. Taylor, Zuckerman Spaeder LLP

## NAACP

- *Interest of Amici*: The NAACP is the nation’s oldest civil rights organization, which has, since its inception, been dedicated to advancing the political, social, educational, and economic status of minority groups and eliminating racial prejudice and discrimination. In the educational context, the NAACP is dedicated to confronting unequal educational outcomes and eliminating school segregation. To that end, the NAACP has been active in monitoring and litigating issues of racial inequality in Florida, the subject of one of petitioner’s *amici* briefs.
- *Summary*: Amicus argues that the Court should reject the Florida Governor’s suggestion that academic achievement is the only legitimate state function with respect to integration. K-12 schools play an important role in inculcating social values, including racial and ethnic harmony and appreciation for diverse, plural experiences. Schools should be able to use reasonable race-conscious means to inculcate these values.
  - Even if achievement were the sole purpose of education, in Florida “significant racial disparities” exist in this area. These disparities are evident in the rates of high school completion and retention, as well as the type of diplomas awarded to those that do graduate – and the gaps between black and white students are widening. Disparities also exist in black and Latino access to gifted programs. Such disparities belie Florida’s contention that race-neutral approaches have adequately maximized student achievement.

- Florida’s race-neutral accountability system has failed to benefit all races equally. Florida’s African-American students are now underrepresented with respect to virtually every positive indicator, and overrepresented with respect to most negative indicators of student academic achievement.
- *Counsel of Record:* Dennis Courtland Hayes, NAACP

## NATIONAL LAWYER’S GUILD

- *Interest of Amici:* The National Lawyer’s Guild is the oldest integrated national bar association in the United States, and has struggled for “genuine, not merely legal, equality for people of color.” The Guild supports full implementation of all international conventions, particularly those that support affirmative action. In recent years, the Guild has added far more people of color to its membership and to its leadership positions, a “graphic demonstration of the importance of diversity, represented by a critical mass of non-whites, in enabling a society to overcome historic prejudice and discrimination.”
- *Summary:* Pursuant to international human rights conventions, the nation is obligated to promote racial equality, and has an additional compelling interest in doing so.
  - Given the country’s legacy of discrimination, the government is not only justified, but compelled to promote true racial equality in our public school system.
- *Counsel of Record:* Zachary Wolfe, People’s Law Resource Center

## NATIONAL PARENT TEACHER ASSOCIATION (“PTA”)

- *Interest of Amici:* The PTA is a non-profit organization consisting of parent and teacher members of 26,000 local PTAs from every state in the nation. The PTA is dedicated to supporting and speaking on behalf of children in public schools, assisting parents in developing the skills necessary to raise children, and encouraging parent and public involvement in public schools. In the century since its inception, the PTA has championed the importance of equal opportunity for all children, and has recognized that “our democracy and our communities suffer if our children do not learn together.”
- *Summary:* The integration plans at issue are a reflection of the will of the communities of Louisville and Seattle, taking account of the fact that “no educational decision garners universal support.” In addition, “these cases concern the fundamental values of equal opportunity to education, local control, and the benefits of education in a multiracial setting.”
  - Children educated in diverse settings are best able to work and play with people of different races, master necessary academic skills, engage in critical thinking, learn “life lessons” and aspire to their full potential.
  - The Court has long championed the principle of local autonomy in the context of education. Here, the school districts concluded that the interests of the children were best served by school assignment plans that included as one factor among many the value of integrated learning. It is often necessary for schools to pay attention to the racial composition of schools to ensure that they do not become racially homogenous.
  - Schools and communities are interdependent: strong schools cannot be created without parent and community support. For this reason, voluntary race-conscious student assignment plans play a dramatically different role than those adopted by court order – voluntary programs reflect local governance with community support.

- Amicus also points out that these cases do not involve the division of scarce resources, but the government’s attempts to provide an excellent education to all children.
- *Counsel of Record*: Rachel D. Godsil, Seton Hall University School of Law

## NATIONAL SCHOOL BOARDS ASSOCIATION (AND SEVEN NATIONAL EDUCATION ORGANIZATIONS)

- *Interest of Amici*: Amici are eight organizations deeply committed to ensuring that all children receive a high-quality education that fully prepares them to succeed as productive citizens in our society. Amici strongly support the efforts of local school boards to take measures that foster the educational benefits of a racially diverse learning environment.
- *Summary*: Amici note that local control of schools is deeply engrained in our country’s history, and that courts have generally deferred to the education policy judgment of local school boards. This deference should apply to race-conscious measures employed in student assignments, which are “worlds apart” from constitutionally forbidden systems of racial segregation – and also markedly different from affirmative action programs. These policies do not amount to racial balancing, and are not concerned with “diversity for diversity’s sake.” Even if strict scrutiny is applied, the judgment of local school boards should be accorded deference, and the assignment plans should pass constitutional muster.
  - Local control of public education places the primary responsibility for charting the educational course on school boards, and this promotes innovation, accountability, and sound education policy. Context matters: education policy is not a monolith in America and one-size-fits-all prescriptions are rare. School choice plans, such as Respondents’, that seek to maximize choice while integrating the schools are increasingly commonplace.
  - Local school boards are better situated than federal authorities, including the judiciary, at determining what is best for a public school district at a particular point in time. According to a recent survey, 93% of local school boards are popularly elected by voters in local school districts. More than 90% serve terms of no more than 4 years.
  - Student assignment policies that seek to produce a racially diverse learning environment are the antithesis of *de jure* racial segregation once administered by school boards: they seek to sow racial unity, not to breed racial fissures; eradicate, not spawn, the stigma of racial inferiority; break down, not build racial stereotypes; and celebrate, instead of condemn our nation’s racial diversity.
  - Amici condemn the United States’ treatment of the narrow tailoring test, as it is “not supported by this Court’s precedents and would compromise local control of education.” Narrow tailoring does not require “exhaustion of every conceivable race-neutral alternative” but “serious, good faith consideration of workable race-neutral alternatives.” The United States presented no evidence that their proposed alternatives might be workable to the Court. The student assignment policies do not fit the Court’s definition of a quota because they seek to achieve diversity within a range, and as the Court noted in *Grutter* “a range [is] inconsistent with a quota.” Finally, the policies have undergone frequent review and refinement.
- *Counsel of Record*: Thomas C. Goldstein, Akin Gump Strauss Hauer & Feld LLP

## **NATIONAL WOMEN’S LAW CENTER AND THE NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES ET AL. (AND 19 ADDITIONAL CIVIL RIGHTS ORGANIZATIONS)**

- *Interest of Amici:* *Amici* are twenty-one organizations that share a longstanding commitment to civil rights for all Americans, with a particular interest in eradicating discrimination against women. Their interest is aligned with the closely related goal of eliminating discrimination based on race.
- *Summary:* In the wake of the *Brown* decision that public school districts could not segregate based on race, many recalcitrant school districts sought to limit *Brown*’s effects by segregating students by sex. These districts used sex segregation as a tool to resist integration.
  - Sex, like race, has long been a basis for stereotyping, which robs women of their individuality, and segregating students by sex perpetuated stereotypes about white women and women of color. Both Seattle and Jefferson County have a compelling interest in creating an educational environment for students that helps combat pernicious stereotypes.
  - Racially integrated public schools – like in Jefferson County and Seattle – provide an environment that challenges students and helps them reject stereotypes and stereotypical thinking.
- *Counsel of Record:* Walter Dellinger, O’Melveny & Myers LLP

## **NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”) AND NATIONAL BASKETBALL RETIRED PLAYERS ASSOCIATION (“NBRPA”)**

- *Interest of Amici:* The NCAA is the largest collegiate athletic association in the world, and is committed to excellence in both academics and athletics, as well as enhancing opportunities for both minorities and women. The NCAA relies on primary and secondary schools to develop students qualified to succeed at the college level, and asserts that voluntary integration programs like those at issue are necessary for student-athletes to attain the highest levels of achievement. Student-athletes from racially integrated schools exude higher levels of teamwork, racial tolerance, and achievement. The NBRPA is a charitable organization consisting of racially diverse retired basketball players from the NBA, the American Basketball Association, and the Harlem Globetrotters. The vast majority of its members attended NCAA member institutions, and a significant number attended integrated K-12 schools.
- *Summary:* K-12 integration has an “enormous positive impact” on the academic and professional success of student-athletes and on the attitudes of student-athletes and the millions of viewers of college sports towards persons of other racial backgrounds. Student-athletes serve as role models to many in American society, so it is critical that they exemplify the type of positive interracial relations and experiences that characterize a unified yet diverse citizenry. Integration in college sports has had an overwhelmingly positive effect on American society as a whole.
  - School desegregation ushered in a significant change to the racial makeup of both college and professional sports.
  - Integrated K-12 education provides innumerable benefits to future college student athletes, by instilling children with racial understanding and tolerance. In turn, integrated sports programs at the K-12 level have “tremendous potential to unify racial groups and promote cross-racial understanding.”
  - Racial identity and racial perspectives are formed at an early age and those perspectives tend to be perpetuated at the higher education level and beyond.
  - Integration at the K-12 level has had an enormously positive impact on students’ academic and profes-

sional success, and indeed increases opportunities for success.

- The Court has recognized the promotion of racial diversity as a compelling state interest, and should defer to the determinations of JCPS and the Seattle School District as to the best way to promote that interest.

- *Counsel of Record:* Margaret A. Keane, LeBoeuf, Lamb, Greene & MacRae LLP

## **THE NATIONAL EDUCATION ASSOCIATION (“NEA”), THE AMERICAN FEDERATION OF LABOR – CONGRESS OF INDUSTRIAL ORGANIZATIONS (“AFL-CIO”), THE AMERICAN FEDERATION OF TEACHERS (“AFT”), AND PEOPLE FOR THE AMERICAN WAY (“PFAR”)**

- *Interest of Amici:* The NEA is a nationwide organization whose 3.2 million members are employed by public school districts, colleges and universities. The NEA operates through a network of state and local education organizations, including affiliates in Louisville and Seattle. The NEA believes that a racially diverse population is “essential” because it promotes racial acceptance, improves academic performances, and encourages a robust exchange of ideas. The AFL-CIO consists of 53 national and international unions representing nine million members. The AFT, an affiliate of AFL-CIO, represents 1.3 million members who work in urban public schools. The AFL-CIO and AFT recognize that “virtually every” graduate of the public schools will enter the workforce, where they will be expected to abide by a “fundamental set of public policies,” including that they not discriminate on the basis of race. An integrated education provides students with the opportunity to interact with students of other races, making them better citizens and more productive members of society. PFAR is a non-partisan education-oriented institution established to promote civil and constitutional rights, and strongly believes in the value of an integrated classroom.
- *Summary:* America is becoming more racially diverse, as the nation’s public schools are becoming more racially segregated. Racial classifications continue to play a large role in our society, dividing opportunities inequitably and distorting perceptions with stereotypes and prejudice.
  - A school district’s educational policy judgment that considering race in student assignments in order to achieve racially integrated public schools should be accorded judicial deference. The Court should not “second guess” JCPS and the Seattle School District’s determination that considering race in student assignments will allow them to fulfill their “dual mission” of instilling our society’s values in all children, and providing children with the skills and knowledge necessary to reach their full potential.
  - A “substantial body of empirical evidence” demonstrates that racially integrated K-12 schools serve a compelling governmental interest by providing significant societal and educational benefits to children of all races.
- *Counsel of Record:* Robert H. Chanin, National Education Association

## **THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK (“ABCNY”)**

- *Interest of Amici:* Amicus is a professional association of approximately 22,000 attorneys, and is concerned with political, legal, and social reform, including the struggle for equality of opportunity. It has addressed issues involving educational opportunities and resources, and believes that combating “rampant *de facto* segregation” is one major step in this struggle.
- *Summary:* The “vast majority” of urban schools will be *de facto* segregated without some intervention from school officials, and forbidding voluntary integration programs like those employed in JCPS and Seattle will “allow the

evil that *Brown* condemned to replicate itself.” Although New York City eliminated *de jure* segregation long ago, its public schools are among the most segregated in the nation, providing an “archetype” of what happens in urban schools when nothing is done to counteract the effects of residential and social segregation. The negative effects of segregation that the *Brown* court observed are exemplified fifty years later in the city’s *de facto* segregated school system.

- *Brown* and its progeny set forth a compelling government interest in integrated schools, recognizing that to prevent integration of schools and promote segregation is not only unconstitutional, but also wrong. The voluntary consideration of race in school assignment by school districts that are in the best position to judge local facts and local needs, is constitutional, and advances the principles set forth by *Brown* and its progeny.
- New York City illustrates what a school system may look like, absent the ability to consider race to avoid *de facto* segregation in the public schools - New York City’s schools are among the nation’s most racially segregated institutions. Moreover, minority children in New York experience first-hand the negative effects of segregated schools.
- Courts should defer to local school boards in their determination of what means to use to address *de facto* segregation. The affirmative methods employed by JCPS and Seattle provide models for other school districts struggling with *de facto* segregation.

*Counsel of Record:* Jonathan I. Blackman, Cleary Gottlieb Steen & Hamilton LLP

## **PRICHARD COMMITTEE FOR ACADEMIC EXCELLENCE**

- *Interest of Amici:* Amicus is a non-partisan volunteer group dedicated to improving education at all levels throughout Kentucky. Amicus participated in a 1989 Kentucky Supreme Court case in which the state’s system of school funding was held to be unconstitutional. This led to the passage of the Kentucky Education Reform Act (“KERA”), a process in which amicus played a vital role.
- *Summary:* Amicus outlines the desegregation history of the Louisville school system, and argues that the current assignment plan balances the state’s compelling interest in fostering diversity with the requirement to use racial considerations in a narrowly tailored manner. The Plan represents the “culmination of a long, unique history of attempting to provide an adequate and equal public education within Jefferson County.” Race is used only as a “last resort,” to effectuate the goals of a diverse learning environment, and the Plan does not confer any sort of “prize” on any student, since the schools in JCPS are “fungible.”
  - A diverse classroom is a “necessary component” to a modern education, as one of the missions of public schools in Kentucky is to prepare students to be members of a diverse society. The history of race relations and school desegregation in Jefferson County makes this interest all the more compelling.
  - In the context of K-12 education, the assignment plan at issue is narrowly tailored, as it uses race only to the extent necessary to achieve the goal of diverse schools. The substantially limited use of race employing a “wide range of racial makeups” does not amount to a quota, and the Board uses individualized consideration as much as is feasible in the primary and secondary school context. Student choice is given considerable weight, and the vast majority of students in Jefferson County never have their race taken into account at any point during the process.
- *Counsel of Record:* Sheryl G. Snyder, Frost Brown Todd LLC

## RELIGIOUS ORGANIZATION AND AFFILIATED INDIVIDUALS

- *Interest of Amici:* *Amici* are organizations and individuals affiliated with a diverse group of religious communities throughout the United States, all concerned with ensuring that our society is strengthened – rather than fractured – by our racial, religious, and ethnic differences. *Amici* believe that “public schools are our foremost asset in educating our children to become full participants in our increasingly diverse country.”
- *Summary:* *Amici* places these cases in both a historical and a global context, noting the strength of the United States in assimilating people of different religious backgrounds into a “cohesive American society,” in ominous contrast to the status of religious minorities in other nations, who are alienated from their fellow citizens, live in separate neighborhoods and attend separate schools. One of the missions of public education is to enable students to become informed, productive, and active citizens, and the government has a compelling interest in establishing integrated schools that aid in this mission.
  - The assimilation of minorities through integrated schools helps avoid the alienation of religious minorities that has resulted in unrest in other nations; integrated schools promote a spirit of shared community and increase civic participation.
  - Integrated schools provide students with exposure to diverse classmates, helping them move beyond stereotypes and fostering tolerance and open-mindedness. Students of all races and religions can develop the “tolerance, respect, and understanding necessary to thrive in a diverse society and recognize their common destiny.”
  - Further, integrated schools enhance the civil involvement of parents and students, fostering a united, rather than divided community and country. Indeed, in their experience, *amici* believe that integration is vital to ensuring that we are one nation, under God, indivisible, with liberty and justice for all.
  - While “separate but equal” has been condemned for more than half a century, courts have long recognized the “converse” – that is, improving education by integration of students – as a compelling state interest.
  - Public school districts may voluntarily undertake measures to integrate schools, and these measures do not raise the same narrow tailoring concerns as affirmative action programs.
- *Counsel of Record:* William T. Russell, Jr., Simpson Thacher & Bartlett LLP

## THE STATES OF NEW YORK, CONNECTICUT, ILLINOIS, IOWA, KENTUCKY, MAINE, MARYLAND, MISSOURI, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, UTAH, VERMONT, WASHINGTON, WISCONSIN, THE DISTRICT OF COLUMBIA, AND THE COMMONWEALTH OF PUERTO RICO

- *Interest of Amici:* *Amici* states and their subdivisions are responsible for the public education of America’s children, and are firmly committed to the tradition of local control of those schools. *Amici* note that, in order to effectively plan and operate their school systems, local school boards need stability and predictability in the legal landscape governing their schools. For 35 years, local school boards have taken voluntary efforts to reduce racial isolation in schools, with the understanding that federal courts recognize the importance of local control and the value of integrated education.
- *Summary:* An important goal of K-12 education is the assimilation of children from different backgrounds into one common community, and racially isolated schools thwart this goal. Courts should defer to local school districts in their judgment as to the best way to reduce segregation in schools.
  - Recognition of the compelling nature of the state interest in integrated schools is “consistent with the

principles of equality that animate the 14th amendment.” The effect of prohibiting school boards from considering race in formulating an integration plan would be “profound.”

- Many states and local school boards have determined that the reduction of racial isolation produces essential educational benefits, and is integral to the educational mission of their schools. This determination is reflected in numerous state constitutional, statutory and regulatory provisions directly prohibiting *de facto* segregation and providing oversight and support for voluntary integration programs.
  - The government has a compelling interest in programs seeking to achieve the essential educational benefits of integrated education, and the court should defer to state and local governments seeking to achieve those benefits.
  - K-12 assignment plans do not require consideration of the same narrow tailoring factors relevant to university admission. These programs do not impose an undue burden on any group of children, and are subject to periodic review. Moreover, Petitioners suggest race-neutral methods for achieving integration that they prefer; adoption of these preferred methods are not required by law.
- *Counsel of Record*: Caitlin J. Halligan, Solicitor General, State of New York

## THE SWANN FELLOWSHIP, FORMER SCHOOL BOARD MEMBERS, PARENTS, AND CHILDREN FROM THE CHARLOTTE-MECKLENBERG SCHOOLS

- *Interest of Amici*: *Amici* have directly experienced the successive consequences of *de jure* segregation, court-ordered desegregation, and post-unitary re-segregation of the Charlotte School District. The Swann Fellowship is a non-profit organization dedicated to challenging the people of Charlotte-Mecklenberg to demand, sustain and participate in a quality, equitable, and integrated school system, and to ensuring that local school boards have the ability to develop programs that foster such a system. The former school board members have a longstanding commitment to the quality of schools in Charlotte-Mecklenberg, and an interest in ensuring that school officials have the capacity to implement policies responsive to the needs of their community. *Amici* parents and students currently attend Charlotte’s schools and have an immediate interest in an equal opportunity for a sound basic education in a racially integrated classroom. *Amici* contend “we will forestall, not promote the realization of ‘one nation’ tomorrow” by refusing to “recognize the salience of race in our nation” and in our lives today.
- *Summary*: A racially integrated K-12 education is essential, both because public schools are the only educational experience for those who do not attend college, and because attendance occurs during a child’s formative years. School districts that maintain racially isolated schools lose the support of the community, as parents believe that they must compete with one another for the best schools and limited resources.
  - The desegregation of Charlotte’s schools promoted genuine democratic participation and social cohesion for students and the community. It also increased parental support for the school system and exposed all students to important new ideas and experiences.
  - In contrast, the resegregation of the schools in Charlotte due to the adoption of a race-neutral plan has sharply eroded public support for the district. Schools in predominantly white neighborhoods were oversubscribed, and African-American students effectively lost access to these high performing majority white suburban schools. Private school use increased, and the community felt acutely the loss of intercommunity cooperation and support.
  - The “promise of *Swann*” – that local officials will have broad discretion to implement educational policies designed to prepare students to live in a pluralistic society – should not be abandoned. School districts who have pursued voluntary race-conscious integration programs have a reliance interest that the Court should account for.
  - In many school districts, race-neutral assignment policies cannot achieve the benefits of racial diversity. In Charlotte-Mecklenberg, race-neutral policies catalyzed an “astonishing” rate of resegregation.

Schools quickly became racial isolated, and student achievement does not improve in such schools. Seattle and Jefferson County were wise to conclude that race-neutral alternatives will not result in racially diverse schools.

- *Counsel of Record:* Anita S. Earls, Center for Civil Rights, Univ. of North Carolina School of Law

## **MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES (JIM MCDERMOTT ET AL.)**

- *Interest of Amici:* *Amici* are individual members of the U.S. House of Representatives. For 35 years, Congress has enacted policies to encourage local school boards to establish and maintain racially integrated public schools. *Amici* urge the Court to uphold voluntary school choice programs aimed at providing equal opportunity in education and to all students the benefits of a racially diverse classroom.
- *Summary:* In both Louisville and Seattle, relatively few students are affected by a race-based assignment; parental choice and proximity to residence play a much larger role. To the extent that school officials do consider race, it is “reasonable” and “hardly surprising” given residential segregation and the government’s compelling interest in providing an integrated education.
  - Both the Court and Congress have recognized the compelling interest in racial integration of K-12 public schools. The Court has consistently stated that local school boards have a duty to prevent racial segregation in public schools, and Congress has repeatedly enacted into law a national policy of maintaining and establishing racially integrated schools.
  - The Seattle and Louisville plans are narrowly tailored, as race is only a single – but necessary – component of student assignments aimed at maintaining integrated schools in communities with *de facto* segregated housing patterns. The record is “plain” that the school districts are not seeking to achieve some racial balance “for its own sake.”
  - The Court should consider whether strict scrutiny is an “unduly restrictive standard of review” when local school authorities voluntarily seek to achieve or maintain public school integration in communities with *de facto* residential segregation. However, if strict scrutiny is applied, *amici* urge the court to follow the analysis of the lower courts, in noting that race is merely a “plus factor in a multi-step process.”
- *Counsel of Record:* William R. Weissman, DLA Piper US LLP

## **UNITED STATES SENATORS EDWARD M. KENNEDY, PATTY MURRAY, MARIA CANTWELL, THOMAS HARKIN, RICHARD J. DURBIN, BARACK OBAMA, AND KEN SALAZAR**

- *Interest of Amici:* *Amici* note that, as members of the U.S. Senate, they are given the responsibility for enforcing “through appropriate legislation” the anti-discrimination guarantees of the 13th and 14th Amendments. In addition, several are members of committees with principal jurisdiction over the Nation’s civil rights and education laws and policies. Therefore, they have significant experience and interest in the issues before the Court.
- *Summary:* *Amici* point out that Congress has “historically played an essential role in supporting local authorities in their efforts to establish integrated schools.” Congress has long recognized the compelling national interest in racially diverse educational opportunities for children of all races, and the need to take race-conscious measures to achieve that interest. The Seattle and Louisville plans pass constitutional muster under any standard of review.
  - All three branches of the federal government have consistently, and unambiguously, recognized the

compelling national interest in integrated schools, and in these cases, local school authorities have also presented clear evidence of this interest.

- *Grutter* and *Gratz* did not overturn *Brown*. Rather, *Grutter* recognized that racial integration, not some proxy for it, is valuable in and of itself.
- Under “traditional” factors, the plans are narrowly tailored. First, among other things, the individualized, holistic approach embraced in *Grutter* is inapplicable in the K-12 student assignment context. Second, neither plan establishes a racial quota. Instead each plan targets a flexible and broad range of black or non-white students for each school; indeed, the racial composition of the schools can vary significantly from year to year.
- However, *amici* conclude by urging the Court not to use strict scrutiny in evaluating these assignment plans, since the voluntary integration context is very different from the circumstances in which strict scrutiny has been applied. In the voluntary integration context, race is being considered for the purpose of remedying segregation and promoting racial integration.

- *Counsel of Record*: Andy Liu, Crowell & Moring LLP

## FORMER CHANCELLORS OF THE UNIVERSITY OF CALIFORNIA

- *Interest of Amici*: *Amici* are 19 former chancellors of all ten campuses of the University of California (“UC”), and bring three perspectives to these issues. *Amici* are educators with expertise on the learning environments conducive to fostering high achievement and productive citizenship in a diverse society. Second, as former University presidents, *amici* are committed to ensuring excellence and diversity in the pipeline of students entering higher education. Third, *amici* are also statewide leaders responsible for large public institutions that serve as major employers, landowners, and “engines of economic growth.” *Amici* believe that the strength of UC, the state, and the Nation depends on the “stability and prosperity of our multiracial society.”
- *Summary*: California is a perfect example of our nation’s struggle to absorb a multitude of cultures and traditions, while striving to unite its people in a common commitment to liberty, tolerance, and mutual respect. Racially integrated schools aid in this endeavor, by exposing children of all races to cultures and perspectives different from their own. Yet California’s schools – like those of many communities throughout the nation – are significantly segregated by race. *Amici* urge the Court to allow local communities, who are applying their educational judgment through democratic means, to use race as a limited factor in school assignments in order to combat the racial isolation that thwarts the promotion of a unified society.
  - Racially integrated schools strengthen our democracy by promoting tolerance, cooperation, and mutual respect. Indeed, interracial harmony and mutual respect are essential to the proper functioning of democracy, and the habits of racial tolerance that children develop in integrated schools enhances their likelihood of living integrated lives as adults. Yet, Students in California’s highly segregated public schools are deprived of the opportunity to develop these vital qualities.
  - The limited use of race in student assignment is necessary to create and maintain racially diverse schools. School assignment policies based on socioeconomic diversity, as one example, are unlikely to achieve substantial racial diversity.
  - Other nation’s experiences – e.g., Northern Ireland and Israel - “confirm the importance of integrated education to strengthening the stability and cohesion of a diverse democracy.”
  - K-12 education of underrepresented minorities must be improved. Presently in California, black and Latino students are disproportionately concentrated in racially segregated, inferior schools, and consequently have diminished access to UC. If K-12 education for underrepresented minorities does not improve, it will be impossible for UC to continue its commitment to excellence and diversity in education.

- Finally, “[I]ntegrated public schools enhance minority access to higher education and cultivate diverse leaders for our diverse democracy.”

*Counsel of Record:* Goodwin Liu, Boalt Hall School of Law, University of California, Berkeley

## URBAN LEAGUE OF METROPOLITAN SEATTLE

- *Interest of Amici:* The Urban League of Metropolitan Seattle was established in 1929 to advocate for housing, jobs, and educational opportunities for African-Americans and other people of color. The Seattle branch has partnered with the school district to promote understanding and racial diversity in the public schools, and to provide enriched academic programs to disadvantaged students. The Urban League appeared as amicus in favor of the district’s assignment plan before the Washington State Supreme Court. The League also proposed its own alternative assignment plan during that litigation. Although the District did not adopt it, the plans both considered diversity a critical goal, and use race as a tiebreaker to achieve it.
- *Summary:* The effects of racial segregation demonstrate the need for diversity in public schools, as racial segregation is as harmful today as it was in the time of *Brown*.
  - Neither the United States Constitution nor the Washington Constitution creates a constitutional right to neighborhood schools. “This is especially true if neighborhood schools, by definition, mean segregated schools.”
  - The Urban League supports the Seattle Plan. Indeed, the Plan put forth by the Urban League is similar to the Seattle Plan: they both have integrated schools as a goal, and use diversity as a tiebreaker.
- *Counsel of Record:* Rebecca J. Roe, Schroeter, Goldmark & Bender

## WALT SHERLIN, FORMER SUPERINTENDENT OF WAKE COUNTY, NC PUBLIC SCHOOLS

- *Interest of Amici:* Amicus worked for thirty years in the Wake County public school system, and was chiefly responsible for the implementation of the race-neutral assignment plan that the district put into place in 2000. Petitioner’s *amici* point to this plan as an alternative to those currently employed in Louisville and Seattle. Mr. Sherlin writes to emphasize the unique goals and circumstances of Wake County.
- *Summary:* Wake County’s plan uses socio-economic status as a factor in student assignment, and was designed to promote academic achievement, not racial diversity. Indeed, racial diversity has decreased since the implementation of the plan.
  - Although the plan has maintained a significant amount of racial diversity, this is a result of Wake County’s unique characteristics, and is not necessarily replicable. Racially diverse schools are not a sought-for objective of the Wake County plan, and would not inevitably result from such an assignment program.
  - Other school districts in North Carolina would not be racially diverse under Wake County’s plan, and if the demographics in Wake County shift, nothing in the plan will operate to maintain racially integrated schools.
  - Amicus concludes with a stern warning that “Wake County’s success cannot be generalized categorically.”
- *Counsel of Record:* Melinda Lawrence, Patterson Harkavy LLP