

Week 5

# **EQUAL CITIZENSHIP**

**Section B**  
**(Feb 11, 2008)**

# **PARENTS INVOLVED V. SEATTLE SCHOOL DIST, NO. 05-908 (2007)**

## **• FACTS**

- Seattle operates 10 public high schools.
- Uses a series of tie-breakers, including use of race, to determine admission of incoming 9<sup>th</sup> graders for their first choice.
- Seattle has no past de jure segregation.
- Andy Meeks was accepted into Ballard but because of the racial tie-breaker was denied assignment to Ballard.

- Parents Concerned challenged, arguing that the use of racial tie-breaker violates the Equal Protection Clause
- The District Court granted summary judgment for the school district.
- The Ninth Circuit affirmed.

## **QUESTION BEFORE THE COURT**

- Whether Seattle's assignment plan is narrowly tailored to further its compelling governmental interest; more specifically,
- Whether racial diversity ("racial balancing") serves a compelling interest;
- Whether the narrowly-tailoring method used in Seattle satisfies the requirement of individualized consideration (Grutter v. Bollinger)

## • **OPINION OF THE COURT**

- Chief Justice Roberts delivered the plurality opinion (4-4) of the Court, with Justice Kennedy agreeing in part and disagreeing in part).
- Plurality concluded that Seattle's goal of racial diversity is "racial balancing," pure and simple, and cannot survive the strict scrutiny test (compelling interest).
- Seattle's assignment plan (%) is not narrowly tailored.

# **DISAGREEMENT OVER THE APPLICATION OF “STRICT SCRUTINY”**

- **PLURALITY (Roberts, Thomas, Scalia, Alito)**
- Compelling interest can be justified only by past discrimination
- Seattle has no prior (de jure) history of discrimination.
- Therefore, Seattle fails to pass constitutional muster.

- **DISSENT (Breyer, Stevens, Souter, Ginsburg)**
- Racial diversity (integration) gives a compelling state interest.
- De jure and de facto segregation are a meaningless distinction.
- Strict scrutiny should not be used in a manner that is “strict in theory, but fatal in fact.”
- The strict scrutiny doctrine should **not** be applied rigidly to the context of public schools. (Swann v. N.C. School Board) *[corrected]*
- The goal (Brown and Swann) is “racial integration” that helps remedy prior condition, overcome the adverse effects, and create an educational environment that reflects the “pluralist society.”
- The Seattle plan is narrowly tailored because race is used only as one of the three tie-breakers.

- **JUSTICE KENNEDY (Swing)**

- Diversity serves a compelling interest in the educational context (First Amendment)
- Racial diversity is an element in student body diversity.
- Two types of racial isolation (segregation) should be discerned: de jure and de facto
- Racial classification is permitted to *de jure* segregation;
- Alternative means (including race) is permitted to *de facto* segregation: site selection, attendance zones, etc.

- The Seattle plan, which has an internal contradiction, is not narrowly tailored
  - 50% (White) + 50% (Asian) is considered diverse; yet
  - 20% (white) + 30% (Asian) + 25% (Black) + 25% (Latino) is not considered diverse.
- “The decision today should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds.” P. 257

# Readings for Next Class

- Palko v. State of Connecticut (1937)
- Gideon v. Wainwright (1963)