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Charles J. Russo

University of Dayton, crusso1@udayton.edu

William E. Thro

Christopher Newport University

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Parents Involved in Community Schools v. Seattle School District No. 1:

An Overview with Reflections for Urban Schools

William E. Thro, M.A., J.D.

Charles J. Russo, J.D., Ed.D.

Abstract

In *Parents Involved in Community Schools v. Seattle School District No. 1* (*Parents Involved*, 2007), a highly contentious, and divided, Supreme Court invalidated race-conscious admissions plans in two urban school systems, Seattle, Washington, and Louisville, Kentucky on the basis that they were insufficiently narrowly tailored to accomplish a compelling governmental interest. As such, *Parents Involved* was the latest chapter in the Court's almost forty-year history of reaching mixed results in such far-reaching areas involving race-conscious remedies as admissions to higher education, employment in the general workforce and in education, minority set aside programs, and voting rights. In light of the impact that Supreme Court cases on race-conscious remedies have in education, particularly in urban settings, this article is divided into two parts. The first section reviews the opinions of the Supreme Court's Justices in *Parents Involved* because of its potentially far-reaching effect. The second part of the article reflects on the meaning of *Parents Involved* while also helping to set the tone for much of the rest to this special issue of *Education and Urban Society*. The article rounds out with a brief conclusion.

Key words:

race conscious admissions plans, affirmative action

Introduction

In *Parents Involved in Community Schools v. Seattle School District No. 1* (*Parents Involved*, 2007), a highly contentious, and divided, Supreme Court invalidated race-conscious admissions plans in two urban school systems, Seattle, Washington, and Louisville, Kentucky. The Court struck both programs down on the ground that they were insufficiently narrowly tailored to accomplish a compelling governmental interest. As such, *Parents Involved* was the latest chapter in the Court's almost forty-year history of reaching mixed results in such far-reaching areas involving race-conscious remedies as admissions to higher education (*DeFunis v. Odegaard*, 1974; *Regents of University of California v. Bakke*, 1978; *Grutter v. Bollinger*, 2003; *Gratz v. Bollinger*, 2003); employment in the general workforce (*United Steelworkers of America v. Weber*, 1979; *Local 28 of the Sheet Metal Workers' International Association v. Equal Employment Opportunities Commission*, 1986); *United States v. Paradise*, 1987; *Johnson v. Transportation Agency, Santa Clara County, California*, 1987) and in education (*Wygant v. Jackson Board of Education*, 1986a, b); minority set aside programs (*Fullilove v. Klutznick*, 1980; *Richmond v. J.A. Croson, Co.*, 1990a, b; *Adarand Constructors, Inc. v. Pena*, 1995); and voting rights (*United Jewish Organizations v. Carey*, 1977; *Shaw v. Reno*, 1993; *Miller v. Johnson*, 1995; *Bush v. Vera*, 1996).

Based on the impact that the Supreme Court's rulings on race-conscious remedies have played in education, particularly in K-12 schools in urban settings, this article is divided into two parts. The first section reviews the opinions of the Supreme Court's Justices in *Parents Involved* in some detail because of the case's potentially far-reaching effect. The second part of the article reflects on the meaning of *Parents Involved* while also helping to serve as a backdrop for much

of the rest to this special issue of *Education and Urban Society*. The article rounds out with a brief conclusion.

Parents Involved in Community Schools v. Seattle School Dist. No. 1

Parents Involved in Community Schools v. Seattle School District No. 1 involved two separate cases on race conscious admissions plans, also commonly referred to as affirmative action, in public school systems that were argued together at the Supreme Court. This section reviews the judicial histories of the two cases before examining the opinions of the Justices in *Parents Involved*.

McFarland ex rel. McFarland v. Jefferson County Public Schools

Litigation ensued in Louisville, Kentucky, the twenty-eighth largest school system in the United States, home to 97,000 students (*McFarland v. Jefferson County Public School*, (*McFarland*, 2004, p. 839), when dissatisfied parents challenged a district-wide, race-conscious school choice plan. Earlier, officials implemented the plan even though the district had been released from judicial supervision for school desegregation in 2000 (*Hampton v. Jefferson County Board of Education*, 2000).

On appeal of an order upholding the plan (*McFarland*, 2004), the Sixth Circuit, in *McFarland ex rel. McFarland v. Jefferson County Public Schools* (2005), affirmed its constitutionality. In a brief, one paragraph opinion, the court agreed that the plan was acceptable because the school board had a compelling interest in using racial guidelines and applied them in a manner that was narrowly tailored to realize its goals. The court explained that since the plan was narrowly tailored to achieve the compelling governmental interest of preserving the presence

of minority students in each school as a means of successfully implementing racial integration, it passed constitutional muster.

Parents Involved in Community Schools v. Seattle School District No. 1

Parents Involved was a procedurally complex case from Seattle, Washington, a school system which never been segregated by law even though it was involved in a 1982 Supreme Court case on busing. In *Washington v. Seattle School District No. 1* (1982) the Court invalidated a law from Washington that was adopted by a statewide referendum that was designed to prevent student assignments to remedy de facto segregation. The Court explained that the law was unconstitutional because in allowing local school boards to make all assignments except those for race-connected purposes, it violated the Equal Protection Clause, a topic that is discussed below. Based on their stated goal of eliminating what they described as thirty years of racial isolation in the city's public schools (*Parents Involved*, 2001, p. 1225), in 2000 educational leaders in the 46,000 student school system developed an "open choice" plan to attempt to redress inequities in student assignments (Walsh, 2007).

Parents in Seattle, Washington, sued their school board over the "open choice" assignment plan, claiming that it violated the Equal Protection Clause and state laws by unconstitutionally relying on race as the tiebreaker in assigning students to oversubscribed high schools. In the initial round of litigation, a federal trial court granted the school board's motion for summary judgment, finding that the use of race in the open choice policy tiebreaker did not violate the equal protection clause because it was narrowly tailored to serve a compelling governmental interest (*Parents Involved*, 2001).

On appeal, the Ninth Circuit reversed in favor of the parents (*Parents Involved*, 2002a) but withdrew its opinion when it agreed to a rehearing (*Parents Involved*, 2002b) while asking the Supreme Court of Washington to review the case. The panel requested that the Supreme Court of Washington consider whether the use of a racial tiebreaker in making high school assignments violated a state law against discrimination, or granting preferential treatment to, individuals or groups due to race, color, ethnicity, or national origin in the operation of public schools.

The Supreme Court of Washington ruled that while racial diversity in education is a compelling interest, since the board's use of race as a tiebreaker was not narrowly tailored to further such an interest, it violated the state constitution (*Parents Involved*, 2003). The Ninth Circuit then reversed and remanded in favor of the parents with instructions to enjoin the plan (*Parents Involved*, 2004). The panel thought that the racial integration tiebreaker violated a state law which prohibited the preferential use of race in public education. Subsequently, an en banc panel of the Ninth Circuit, relying on the Supreme Court's rulings in *Grutter* and *Gratz*, cases from the University of Michigan which, respectively, rejected race conscious admissions policies in undergraduate programming while allowing its use in the Law School, contended that the plan did not violate equal protection since its use of race was sufficiently narrowly tailored to achieve the compelling state interest of avoiding racial isolation while increasing diversity (*Parents Involved*, 2005). The court decided that the plan was constitutionally acceptable because it met the requirements of *Grutter and Gratz* insofar as the school board engaged in a good-faith consideration of race-neutral alternatives.

After agreeing to hear an appeal (*Parents Involved*, 2006) in *Parents Involved In Community Schools v. Seattle School District Number 1* (2007), a highly divided Supreme Court

struck down plans from Seattle and Louisville that classified students by race in making school assignments. Chief Justice Roberts announced the judgment of the Court and delivered its opinion with respect to Parts I, II, III-A, and III-C, in which Justice Scalia, Kennedy, Thomas, and Alito joined and which Justices Scalia, Thomas, and Alito joined as to Parts III-B and IV. Justice Thomas concurred. Justice Kennedy concurred in part and concurred in the judgment. Justice Stevens dissented. Justice Breyer's dissent was joined by Justices Stevens, Souter, and Ginsburg.

Opinion of the Court

Stipulating that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race (p. 2768), Chief Justice Roberts, as a reflection of his adopting a more active leadership role on the Supreme Court, wrote an opinion that is both the Opinion of the Court, namely those portions joined by Justices Scalia, Kennedy, Thomas, and Alito and a four Justice plurality that was joined by Justices Scalia, Thomas, and Alito, but not Justice Kennedy. At the outset, the Court defined the issue as “whether a public school that had not operated legally segregated schools or has been found to be unitary may choose to classify students by race and rely upon that classification in making school assignments (p. 2746).” The Court then reviewed the facts of the cases and declared that it had jurisdiction to resolve the dispute.

At the heart of its analysis, the Supreme Court employed equal protection analysis in applying strict scrutiny but did so in such a way that it represents a significant development in many respects. Briefly stated, equal protection analysis recognizes that since all governmental actions impact Americans, their constitutionality depends on the degree to which they interact

with protected rights. On the one hand, the general constitutional test for classifications is whether they are rationally related to legitimate governmental purposes. To this end, there is a strong, but rebuttable, presumption that laws enacted through the legislative process are constitutional. In explaining this test, the Supreme Court determined that “. . . if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end (*Romer v. Evans*, 1996, p. 632).”

On the other hand, when laws or the actions of governmental officials allegedly limit fundamental constitutional rights, such as equal protection under the law or treat individuals differently on the basis of constitutionally “suspect” factors such as race, the courts apply the “strict scrutiny” test and are unlikely to uphold such classifications unless they are based on compelling justification. Insofar as strict scrutiny analysis shifts the burden shifts to the government to prove the existence of a compelling need for such classifications, they must be as narrowly drawn as possible. Still, when courts apply the so-called strict scrutiny test, governmental actions are almost always struck down.

Some classifications, such as illegitimacy and gender, although not at issue in *Parents Involved*, belong to a third category that is subject to heightened scrutiny. In limited circumstances, the Supreme Court has adopted an intermediate standard of review that is not as difficult for the government to meet as the compelling interest test but which involves less deference to legislation than the rational relations test. In these cases, courts reject classifications unless they have “substantial relationships” to “important” governmental interests.

In its application of strict scrutiny, the Supreme Court initially held that correcting a racial imbalance in elementary and secondary schools was not, without more, a compelling

governmental interest. The Court noted that “we have emphasized that the harm being remedied by mandatory desegregation plans is the harm that is traceable to segregation,” and that “the Constitution is not violated by racial imbalance in the schools, without more. Once Jefferson County achieved unitary status, it had remedied the constitutional wrong that allowed race-based assignments. Any continued use of race must be justified on some other basis” (*Parents Involved*, at 2752). In doing so, the Court emphasized that a racial imbalance was of no constitutional consequence.

As to its resolution of educational equality, it is worth noting that the courts have typically utilized two competing “paradigms” of educational equality. The first such test, the “Numerical Parity Paradigm” focuses on ensuring that racial and gender groups are adequately represented. This paradigm concerns disparate impact and ensuring that traditionally excluded groups such as racial minorities, women, and the poorer economic classes are adequately, if not proportionally, represented. Implicit in this paradigm is the assumption that one group must be advantaged, at least on a temporary basis, to atone for the previous sins against it. This paradigm focuses on objective criteria such as number of participants and assumes, at least implicitly, that all groups have an equal desire to pursue certain opportunities.

When taken to its logical conclusion, the Numerical Parity Paradigm results in numerical or financial quotas. In the Numerical Parity Paradigm at its extreme, change is brought about by forcing educational institutions to adopt rigid numerical quotas for each gender or race and then finding persons of the appropriate gender or race to fill the quotas. Under this approach, persons are valued not so much for their individuality as for their membership in a particular gender group. Moreover, in the numerical parity paradigm, the emphasis is on the impact of a policy or

decision. The fact that no one made a conscious choice to discriminate is irrelevant. What matters is that one group was disadvantaged more than another.

Second, other courts have utilized a second test, the “Non-Discrimination Paradigm,” which focuses on ensuring that race or gender of individuals are never considerations in educational decision-making and that students have the opportunity to attend a quality school. Implicit in this paradigm is the assumption that individuals, regardless of race, should be treated the same. This paradigm ensures that there is no overt or covert gender discrimination in either participation opportunities or treatment. Rather than focusing on equality of numbers, the non-discrimination paradigm considers equality of treatment. As such, the paradigm acknowledges that individuals may place different values on given programs. Thus, this paradigm would require that no students be treated differently or excluded simply because of race, gender, or economic status.

Under the non-discrimination paradigm, change occurs by requiring educational institutions to adopt affirmative steps to promote full acceptance of persons as individuals, not as members of a group, and by encouraging all persons to maximize the use of their particular talents and to pursue their specific interests in sports and other activities. Pursuant to this approach, persons are treated as *individuals*, are accorded dignity and respect, and are permitted to meet their personal objectives. In light of the Non-Discrimination Paradigm’s emphasis on the “marketplace” of desires and respect for individual differences, change is much slower than in the quota driven numerical parity paradigm. Moreover, in the non-discrimination paradigm, the emphasis is on conscious decisions to exclude or to treat differently. The fact that a neutral policy may have the unintended consequence of affecting one group more than another is considered irrelevant under this paradigm.

The Supreme Court next found that obtaining the educational benefits of a diverse student body is simply not a compelling interest in K-12 context. This part of the opinion stands in strong contradistinction to the University of Michigan racial preference cases, *Grutter* and *Gratz*, wherein, a mere four years earlier, the Justices decreed that obtaining the educational benefits of a diverse student was a compelling governmental interest in the higher education context. In refusing to apply a diversity rationale in the context of K-12 schooling, the Court emphasized the unique nature of optional higher education. The Justices thus determined that the disputed school board policies inappropriately treated race as the decisive factor rather than merely as one factor among many. In fact, the Court chided local school officials for viewing “race exclusively in white/nonwhite terms in Seattle and black/’other’ terms” (*Parents Involved*, p. 2754).”

The Supreme Court reemphasize that if racial classifications are going to survive strict scrutiny, then they must be effective in achieving a compelling governmental interest. The Court noted that “the minimal impact of the districts’ racial classifications on school enrollment casts doubt on the necessity of using racial classifications (*Parents Involved*, p. 2760).” The Court expanded this rationale in maintaining that “[c]lassifying and assigning schoolchildren according to a binary conception of race is an extreme approach” that “requires more than such an amorphous end to justify it (p. 2760).” By demanding that racial classifications *actually achieve* the compelling objective, the Court made it more difficult for the government to pursue the use of race in school admissions.

Finishing up its majority rationale, the Supreme Court strengthened the requirement that the government consider race-neutral alternatives before utilizing racial classifications. At this point, the Justices conceded that they deferred to the University of Michigan’s assertions in

Grutter that race neutral alternatives would be ineffective. However, the Court refused to expand this deference in K-12 public education, responding that local school officials “failed to show that they considered methods other than explicit racial classifications to achieve their stated goals (*Parents United*, p. p. 2761).”

In sum, the Supreme Court’s rationale *Parents Involved* signals the majority’s reaffirmation of the principle that the Equal Protection Clause prevents the government from treating people differently due to race. Of course, differing treatment is allowed if it is a narrowly tailored means of remedying the present day effects of past intentional discrimination by the government. Moreover, in the higher education context, differing treatment is allowed if it is a narrowly tailored means of achieving the educational benefits of a diverse student body. In refusing to allow racial preferences in order to achieve racial balances, the Court rejected racial balancing in K-12 education as a compelling interest, limited the pursuit of diversity to higher education, demanded that racial classifications actually work, and directed educational officials to consider non-racial alternatives in student assignments. In this way, the Court made it more difficult for governmental agencies to pursue racial balancing.

Chief Justice Roberts’ Four Justice Plurality

Chief Justice Roberts’ plurality, that portion of the Court’s opinion that was not the judgment of the Court, had had the support of Justices Scalia, Thomas, and Alito, effectively adopted the first Justice Harlan’s dissenting opinion in *Plessy v. Ferguson* (1896). In *Plessy*, using language that presaged *Brown v. Board of Education* (1954), Justice Harlan reasoned that “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law (p. 559).”

In his analysis, Chief Justice Roberts maintained that “accepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society (*Parents Involved*, p. 2757).” Further, Roberts remarked that “[a]llowing racial balancing as a compelling end in itself” would ensure “that race will always be relevant in American life” and “would support indefinite use of racial classifications, employed first to obtain the appropriate mixture of racial views and then to ensure that the [program] continues to reflect that mixture (*Parents Involved*, p. 2758).” Roberts went on to declare that “[r]acial balancing is not transformed from ‘patently unconstitutional’ to a compelling state interest simply by relabeling it ‘racial diversity’ [or avoidance racial isolation or promotion of racial integration] (*Parents Involved*, p. 2759).”

Next, the Roberts plurality insisted that *Brown* stands for the proposition that “segregation deprived black children of equal educational opportunities... because government classification and separation on grounds of race themselves denoted inferiority (*Parents Involved*, p. 2767).” Roberts made it clear that if school boards are “to achieve a system of determining admission to the public schools on a nonracial basis,” then boards must “stop assigning students on a racial basis (*Parents Involved*, at 2768).” The Chief Justice thus viewed non-discrimination as the constitutional command.

In conclusion, the Roberts plurality asserted that race has no role in governmental decision-making except when it is used remedially as in *United States v. Paradise* (1987), wherein the Court upheld the use of percent promotion requirement for state troopers in Alabama under the equal protection clause since it was justified by the compelling governmental interest in eradicating the past discriminatory exclusion of African Americans from such positions and was narrowly tailored to serve its stated purposes. While the majority opinion effectively

prohibited the *direct* consideration of race, the Roberts plurality effectively forbade the *indirect* consideration of race.

Justice Kennedy's Concurrence

Justice Kennedy's concurrence focused on the difference between the indirect and direct consideration of race (*Parents Involved*, 2007. p. 2788), analysis that was consistent with the Supreme Court's rationales in *Gratz* and *Grutter*. Still, Justice Kennedy viewed the Roberts plurality's endorsement of a color-blind constitution as "inconsistent in both its approach and its implications with the history, meaning, and reach of the Equal Protection Clause (*Parents Involved*, p. at 2788)." In particular, Kennedy would have permitted local school board officials "to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition" as long as officials avoided "treating each student in different fashion solely on the basis of a systematic, individual typing by race (*Parents Involved*, p. 2788)."

Justice Kennedy's opinion stands for the notion that school board officials can consider race in building new schools, drawing attendance boundaries, allocating resources, and recruiting students for special programs. He further ascertained that "[t]hese mechanisms are race conscious but do not lead to different treatment based on a classification that tells each student he or she is to be defined by race, so it is unlikely any of them would demand strict scrutiny to be found permissible (*Parents Involved*, p. 2788)."

While Justice Kennedy refused to accept a color-blind constitution, he found the dissent's embrace of racial balancing to be "a misuse and mistaken interpretation of our precedents. This leads it to advance propositions that, in my view, are both erroneous and in fundamental conflict

with basic equal protection principles (*Parents Involved*, p. 2788).” In addition, he joined four other Justices in forming the Opinion of the Court that adopted the Non-Discrimination Paradigm while rejecting the Numerical Parity Paradigm.

Justice Thomas’ Concurrence

Unlike Justice Kennedy, Justice Thomas joined all aspects of the Roberts opinion (*Parents Involved*, p. 2768). Nevertheless, he was compelled to write separately to address Justice Breyer’s dissent. In addition to allaying fears that Seattle or Louisville would become resegregated, Justice Thomas emphasized the constitutional equivalence between race-based assignments designed to help racial minorities and race-based assignments designed to hinder minorities, rejecting the dissent’s argument that student assignment plans should be subjected to strict scrutiny. He also set out a comprehensive explanation as to why he believes that the color-blind interpretation of the Constitution is correct.

Dissenting Opinions

Justice Stevens’ Dissent

In a brief, but bitter, dissent Justice Stevens stated that he joined Justice Breyer’s dissent in full (*Parents Involved*, p. 2797). Even so, he wrote a separate opinion expressing his contention that the current majority had turned its back on *Brown*, bitterly charging that The Court has changed significantly over the past forty years. To this end, he decried that the Court “was then more faithful to *Brown* and more respectful of our precedent than it is today. It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today's decision (p. 2800).”

Justice Breyer's Dissent

Justice Breyer's lengthy dissent (*Parents Involved*, 2007, p. 2800), which was joined by Justices Stevens, Souter, and Ginsburg, maintained that since the plans at issue were sufficiently narrowly tailored, especially since they were developed by democratically elected school boards, they should have been upheld. Not unlike Justice Stevens, Breyer feared that the outcome in *Parents Involved* would lead to additional segregation in schools based on race.

Reflections

On the one hand, the Supreme Court declared that "[e]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected (*San Antonio Independent School District v. Rodriguez*, 1973, p. 35)." Yet, at the same time, in *Brown v. Board of Education* (1954), the Court acknowledged that "education is perhaps the most important function of state and local governments (p. 493)." The Court added that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education (p. 493)."

To the extent that "Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government," (*Abington School District v. Schempp*, 1963, p. 230), every State Constitution has a provision mandating, at a minimum, that the State provide a system of free public schools (Thro, 1998). Yet, despite the importance placed on education in the Nation's fundamental charters, American public schools remain inherently unequal and the worst schools inevitably fail. Indeed, "there are very few people who have the temerity to stand up and say that the public school system is doing a good job of educating its students. Virtually everyone who comments on education, be they defenders or

enemies of the establishment, agrees that the system is in dire need of reformation (Peyser, 1994, p. 626).”

Insofar as the failure of the public schools is particularly clear in urban centers (Pixley, 1998), which continue to be more segregated than they were a generation ago (Frankenberg & Orfield, 2007), African-American and Hispanic students are disproportionately affected whether in regular or special education (Russo & Talbert-Johnson, 1997). “[T]he gap in educational achievement between black and white students was so great that it threatened to defeat any other attempts to narrow the economic differences separating blacks and whites (Murray, 1984, p. 105).” Data suggest that minority students’ mastery of basic skills is less than half of that of their white counterparts. The profound educational policy problem of our time is how to equalize educational opportunities.

In *Parents Involved*, the Opinion of the Court, the four-Justice Roberts Plurality, and concurring opinions do not directly address the problem of equalizing educational opportunities, but the opinions have profound implications for how policy makers may respond to the problem. The net effect of the opinions is to remove the opposition of achieving equal opportunities through racial integration. As reflected in *Brown v. Board of Education* (1954), the Constitution requires an end to de jure segregation. Further, while later cases mandate the elimination of the lingering effects of segregation (*Freeman v. Pitts*, 1992), *Parents Involved* (pp. 2757-59) noted that the Court has yet to mandate racial integration (Russo & Talbert-Johnson, 2004). Indeed, as Justice Thomas acknowledged in his concurring opinion in *Parents Involved*, pursuing racial integration for the sake of racial integration is forbidden:

Racial imbalance is the failure of a school district’s individual schools to match or approximate the demographic makeup of the student population at large. Racial

imbalance is not segregation. Although presently observed racial imbalance might result from past de jure segregation, racial imbalance can also result from any number of innocent private decisions, including voluntary housing choices.

Because racial imbalance is not inevitably linked to unconstitutional segregation, it is not unconstitutional in and of itself (p. 2769).

If the problem of educational inequality is solved, it will be solved without utilizing race.

Given the prohibition on the use of race, policy-makers have two possible approaches. First, educational inequality is caused by a wide variety of factors including administrative mismanagement and the problems endemic to poverty, but the prohibition on race based student assignments seems likely to result in renewed focus on school finance. As one scholar observed:

Urban schools generally face incredible, if not intractable, problems, as “dropout rates hover well above 50 percent, truancy is the norm rather than the exception, violence is common, students struggle for basic literacy . . . and the physical condition of the schools is a disgrace.” Black males appear to be faring most poorly under current conditions (Barnes, 1997, p. 2376, quoting Cookson, Jr., 1994, p. 2).

Despite receiving funds from both federal and state sources, all local school districts, except those in Hawaii, raise much of the money necessary for operations through a percentage tax, with the rate set by the local residents, on the value of the real property in the district. Due to differences in rates and in the value of real property, this system results in vast disparities. As a result, some school systems have trouble providing even the basics while others are able to offer educational luxuries.

Sadly, the disparities in local funding have long been so great that “[i]f a state without a

previous history of public financing were now proposing the initiation of a plan, it is highly unlikely that the system of dual responsibility [both local and state] would be adopted (Johnson, 1979, p. 327).” While State legislatures and governors have adopted various mechanisms to correct this financial inequality, the disparities remain.

Given the obvious conflict between the constitutional value of free public education for all and the funding disparities created by the States’ school finance systems, it is not surprising that the courts have been asked to intervene and vindicate the constitutional value of free public education for all by declaring that the current system of financing the schools is unconstitutional. Indeed, over the last four decades, the high court of virtually every State has wrestled with the question of whether the State’s school financing system is constitutional. However, since a judicial solution to the problem has proved as elusive as a legislative or executive solution, America’s other constitutional values actually undermine the judiciary’s efforts to solve the problem (Thro, 2005, p. 2005).

Second, a prohibition on the use of race may well force school board officials to focus on the socio-economic status of students and their families. Although a socio-economic preference may advantage certain racial and ethnic groups disproportionately, such disproportionate impact is not constitutionally problematic. By shifting the emphasis from race to socio-economic status, the school district is recognizing that race is frequently used as a “proxy for other characteristics that institutions value but that do not raise similar constitutional concerns (*Hopwood v. Texas*, 1996, p. 946).” At least on its face, such an approach eliminates race as a relevant factor. Thus, it should be possible for school board officials to arrange students assignments so that the poor, the middle class, and the rich are represented in each school. Such intermixing of socio-economic classes likely will result in the most of the same benefits generally attributed to racial integration without encountering

constitutional difficulties. More significantly, socio-economic integration may begin to eliminate the achievement gaps that plague urban schools.

Conclusion

Parents Involved represents a significant turning point for urban schools. While the problems of educational inequality remain, the Supreme Court has sent the clear message that, except in those few school systems that have failed to achieve unitary status, student assignments may not be based on race. In other words, then other tools, such as assignments based on socio-economic status or increased funding for certain programs, will have to replace the current practice of seeking equality through racial balance. In moving toward, if not actually adopting, Justice Harlan's vision of a colorblind Constitution, the Court is not signaling an abandonment of the core values of *Brown*. Rather, the Court is defining *Brown's* core value as a principle of non-discrimination and is suggesting that there needs to a fundamental change in our approach to the elimination of educational inequality.

William E. Thro, M.A., J.D., a former State Solicitor General of Virginia, currently is University Counsel & Assistant Professor of Government, Christopher Newport University, Newport News, Virginia. "The views expressed in this article are entirely those of the Authors and do not necessarily reflect the views of the Attorney General of Virginia.

Charles J. Russo, J.D., Ed.D., is Panzer Chair in Education and Adjunct Professor of Law at the University of Dayton in Dayton, Ohio. He is also editor of *Education & Urban Society*.

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