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

***Meredith v. Jefferson County Board of Education***

551 U.S. \_\_\_\_\_ (2007)

Vote: 5 (Alito, Kennedy, Roberts, Scalia, Thomas)

 4 (Breyer, Ginsburg, Souter, Stevens)

Opinion of the Court: Roberts

Concurring opinion: Kennedy, Thomas

Dissenting opinion: Breyer, Stevens

 [Note from the editors of *Constitutional Law in a Changing America*:] The Supreme Court consolidated these two cases in order to consider their central issue: the use of race as a criterion in the assignment of students to public schools.

 The Seattle School District voluntarily adopted a plan for assigning students to its ten public high schools that included a combination of student preference rankings and tie-breaker procedures. Incoming ninth graders submitted a rank ordering of their preferred school options. When those preferences resulted in a school being over subscribed, preference was given first to students who had a sibling in that school. The second tie-breaker was race. The city system was comprised of approximately 41 percent white students and 59 percent students from other racial backgrounds. If an oversubscribed school was not within 10 percentage points of this balance, it was classified as “integration positive,” and students whose race would bring the school closer to racial balance were given priority. The third tie-breaker was the proximity of the student’s residence to the school. The Seattle School District never operated unconstitutionally segregated schools and was never placed under court ordered desegregation. Parents Involved in Community Schools, a nonprofit organization of parents whose children had been or may be denied access to their preferred schools based on race, filed suit challenging the constitutionality of the assignment procedure. The Ninth Circuit Court of Appeals upheld the assignment policy.

 The Jefferson County Board of Education operates the public school system of metropolitan Louisville. In 1973, the federal courts found that the district maintained a racially segregated school system and placed it under court supervision. In 2000, the district was found to be in compliance with the law and court supervision ended. In 2001, the system adopted a pupil assignment policy for its non magnet schools. The racial breakdown for students in the system was 34 percent black and 66 per cent white. The plan required all non magnet schools to maintain a black enrollment of no lower than 15 percent and a maximum white enrollment of 50 percent. The system grouped its schools into geographical clusters and students were assigned to a cluster on the basis of residence. The parents of incoming students rank ordered their two top choices from among the schools in their cluster. Students of parents who did not submit rankings were assigned by the district. Assignment decisions were based on available space and the district’s racial guidelines. Once a school reached the extremes of the racial policy, no student was assigned to that school who would contribute to the school’s racial imbalance. Once assigned to a school, parents could request a transfer, but racial balance was taken into account in granting such requests.

 Crystal Meredith, whose son had been denied a requested transfer because it would have contributed to racial imbalance, filed suit claiming the assignment policy violated the Fourteenth Amendment. The Sixth Circuit Court of Appeals upheld the policy.

CHIEF JUSTICE ROBERTS announced the judgment of the Court, and delivered the opinion of the Court with respect to Parts I, II, III–A, and III–C, and an opinion with respect to Parts III–B and IV, in which JUSICES SCALIA, THOMAS, and ALITO join.

I

Both cases present the same underlying legal question—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….

II

[Jurisdictional issues. Omitted.]

III

A

It is well established that when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny. *Johnson* v. *California*  (2005); *Grutter* v. *Bollinger* (2003); *Adarand* [*Constructors v. Pena* (1995]. As the Court recently reaffirmed, “ ‘racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification.’ ” *Gratz* v. *Bollinger* (2003). In order to satisfy this searching standard of review, the school districts must demonstrate that the use of individual racial classifications in the assignment plans here under review is “narrowly tailored” to achieve a “compelling” government interest.

Without attempting in these cases to set forth all the interests a school district might assert, it suffices to note that our prior cases, in evaluating the use of racial classifications in the school context, have recognized two interests that qualify as compelling. The first is the compelling interest of remedying the effects of past intentional discrimination. See *Freeman* v. *Pitts* (1992). Yet the Seattle public schools have not shown that they were ever segregated by law, and were not subject to court-ordered desegregation decrees. The Jefferson County public schools were previously segregated by law and were subject to a desegregation decree entered in 1975. In 2000, the District Court that entered that decree dissolved it, finding that Jefferson County had “eliminated the vestiges associated with the former policy of segregation and its pernicious effects,” and thus had achieved “unitary” status.

… 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.” *Milliken* v. *Bradley* (1977). 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.

The second government interest we have recognized as compelling for purposes of strict scrutiny is the interest in diversity in higher education upheld in *Grutter*. The specific interest found compelling in *Grutter* was student body diversity “in the context of higher education.” The diversity interest was not focused on race alone but encompassed “all factors that may contribute to student body diversity.”…

The entire gist of the analysis in *Grutter* was that the admissions program at issue there focused on each applicant as an individual, and not simply as a member of a particular racial group. The classification of applicants by race upheld in *Grutter* was only as part of a “highly individualized, holistic review.” As the Court explained, “[t]he importance of this individualized consideration in the context of a race-conscious admissions program is paramount.” The point of the narrow tailoring analysis in which the *Grutter* Court engaged was to ensure that the use of racial classifications was indeed part of a broader assessment of diversity, and not simply an effort to achieve racial balance, which the Court explained would be “patently unconstitutional.”

In the present cases, by contrast, race is not considered as part of a broader effort to achieve “exposure to widely diverse people, cultures, ideas, and viewpoints;” race, for some students, is determinative standing alone….

Even when it comes to race, the plans here employ only a limited notion of diversity, viewing race exclusively in white/nonwhite terms in Seattle and black/“other” terms in Jefferson County….

Prior to *Grutter*, the courts of appeals rejected as unconstitutional attempts to implement race-based assignment plans—such as the plans at issue here—in primary and secondary schools.... After *Grutter*, however, the two Courts of Appeals in these cases, and one other, found that race-based assignments were permissible at the elementary and secondary level, largely in reliance on that case.

In upholding the admissions plan in *Grutter*, though, this Court relied upon considerations unique to institutions of higher education, noting that in light of “the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition.”…

B

Perhaps recognizing that reliance on *Grutter* cannot sustain their plans, both school districts assert additional interests, distinct from the interest upheld in *Grutter*, to justify their race-based assignments. In briefing and argument before this Court, Seattle contends that its use of race helps to reduce racial concentration in schools and to ensure that racially concentrated housing patterns do not prevent nonwhite students from having access to the most desirable schools. Jefferson County has articulated a similar goal, phrasing its interest in terms of educating its students “in a racially integrated environment.” Each school district argues that educational and broader socialization benefits flow from a racially diverse learning environment, and each contends that because the diversity they seek is racial diversity—not the broader diversity at issue in *Grutter*—it makes sense to promote that interest directly by relying on race alone….

… [I]t is clear that the racial classifications employed by the districts are not narrowly tailored to the goal of achieving the educational and social benefits asserted to flow from racial diversity. In design and operation, the plans are directed only to racial balance, pure and simple, an objective this Court has repeatedly condemned as illegitimate….

…[T]he racial demographics in each district—whatever they happen to be—drive the required “diversity” numbers. The plans here are not tailored to achieving a degree of diversity necessary to realize the asserted educational benefits; instead the plans are tailored … to “the goal established by the school board of attaining a level of diversity within the schools that approximates the district’s overall demographics.”…

In fact, in each case the extreme measure of relying on race in assignments is unnecessary to achieve the stated goals, even as defined by the districts. For example, at Franklin High School in Seattle, the racial tiebreaker was applied because nonwhite enrollment exceeded 69 percent, and resulted in an incoming ninth-grade class in 2000–2001 that was 30.3 percent Asian-American, 21.9 percent African-American, 6.8 percent Latino, 0.5 percent Native-American, and 40.5 percent Caucasian. Without the racial tiebreaker, the class would have been 39.6 percent Asian-American, 30.2 percent African-American, 8.3 percent Latino, 1.1 percent Native-American, and 20.8 percent Caucasian. When the actual racial breakdown is considered, enrolling students without regard to their race yields a substantially diverse student body under any definition of diversity.

In *Grutter*, the number of minority students the school sought to admit was an undefined “meaningful number” necessary to achieve a genuinely diverse student body. Although the matter was the subject of disagreement on the Court, the majority concluded that the law school did not count back from its applicant pool to arrive at the “meaningful number” it regarded as necessary to diversify its student body. Here the racial balance the districts seek is a defined range set solely by reference to the demographics of the respective school districts.

This working backward to achieve a particular type of racial balance, rather than working forward from some demonstration of the level of diversity that provides the purported benefits, is a fatal flaw under our existing precedent. We have many times over reaffirmed that “[r]acial balance is not to be achieved for its own sake.” *Freeman*. See also *Richmond* v. *J. A. Croson Co. Grutter* itself reiterated that “outright racial balancing” is “patently unconstitutional.”

Accepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society, contrary to our repeated recognition that “[a]t the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class.” *Miller* v. *Johnson* (1995)….

The principle that racial balancing is not permitted is one of substance, not semantics. Racial balancing is not transformed from “patently unconstitutional” to a compelling state interest simply by relabeling it “racial diversity.” While the school districts use various verbal formulations to describe the interest they seek to promote—racial diversity, avoidance of racial isolation, racial integration—they offer no definition of the interest that suggests it differs from racial balance….

C

The districts assert, as they must, that the way in which they have employed individual racial classifications is necessary to achieve their stated ends. The minimal effect these classifications have on student assignments, however, suggests that other means would be effective. Seattle’s racial tiebreaker results, in the end, only in shifting a small number of students between schools….

Similarly, Jefferson County’s use of racial classifications has only a minimal effect on the assignment of students. Elementary school students are assigned to their first- or second-choice school 95 percent of the time…..

While we do not suggest that *greater* use of race would be preferable, the minimal impact of the districts’ racial classifications on school enrollment casts doubt on the necessity of using racial classifications….

The districts have also failed to show that they considered methods other than explicit racial classifications to achieve their stated goals. Narrow tailoring requires “serious, good faith consideration of workable race-neutral alternatives,” *Grutter,* and yet in Seattle several alternative assignment plans—many of which would not have used express racial classifications—were rejected with little or no consideration. Jefferson County has failed to present any evidence that it considered alternatives, even though the district already claims that its goals are achieved primarily through means other than the racial classifications.…

IV

Justice Breyer’s dissent takes a different approach to these cases, one that fails to ground the result it would reach in law. Instead, it selectively relies on inapplicable precedent and even dicta while dismissing contrary holdings, alters and misapplies our well-established legal framework for assessing equal protection challenges to express racial classifications, and greatly exaggerates the consequences of today’s decision….

\* \* \*

If the need for the racial classifications embraced by the school districts is unclear, even on the districts’ own terms, the costs are undeniable. “[D]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Adarand*. Government action dividing us by race is inherently suspect because such classifications promote “notions of racial inferiority and lead to a politics of racial hostility,” *Croson,* “reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin,” *Shaw* v. *Reno* (1993), and “endorse race-based reasoning and the conception of a Nation divided into racial blocs, thus contributing to an escalation of racial hostility and conflict.” As the Court explained in *Rice* v. *Cayetano* (2000), “[o]ne of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities.”

All this is true enough in the contexts in which these statements were made—government contracting, voting districts, allocation of broadcast licenses, and electing state officers—but when it comes to using race to assign children to schools, history will be heard. In *Brown* v. *Board of Education* (1954) (*Brown I*), we held that segregation deprived black children of equal educational opportunities regardless of whether school facilities and other tangible factors were equal, because government classification and separation on grounds of race themselves denoted inferiority. It was not the inequality of the facilities but the fact of legally separating children on the basis of race on which the Court relied to find a constitutional violation in 1954. The next Term, we accordingly stated that “full compliance” with *Brown I* required school districts “to achieve a system of determining admission to the public schools *on a nonracial basis*.” *Brown II* (emphasis added).

The parties and their *amici* debate which side is more faithful to the heritage of *Brown*, but the position of the plaintiffs in *Brown* was spelled out in their brief and could not have been clearer: “[T]he Fourteenth Amendment prevents states from according differential treatment to American children on the basis of their color or race.”

Before *Brown*, schoolchildren were told where they could and could not go to school based on the color of their skin. The school districts in these cases have not carried the heavy burden of demonstrating that we should allow this once again—even for very different reasons. For schools that never segregated on the basis of race, such as Seattle, or that have removed the vestiges of past segregation, such as Jefferson County, the way “to achieve a system of determining admission to the public schools on a nonracial basis” is to stop assigning students on a racial basis. The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.

The judgments of the Courts of Appeals for the Sixth and Ninth Circuits are reversed, and the cases are remanded for further proceedings.

*It is so ordered.*

JUSTICE THOMAS, concurring.

Today, the Court holds that state entities may not experiment with race-based means to achieve ends they deem socially desirable. I wholly concur in The Chief Justice’s opinion…. Contrary to the dissent’s arguments, resegregation is not occurring in Seattle or Louisville; these school boards have no present interest in remedying past segregation; and these race-based student-assignment programs do not serve any compelling state interest. Accordingly, the plans are unconstitutional. Disfavoring a color-blind interpretation of the Constitution, the dissent would give school boards a free hand to make decisions on the basis of race—an approach reminiscent of that advocated by the segregationists in *Brown* v. *Board of Education* (1954). This approach is just as wrong today as it was a half-century ago. The Constitution and our cases require us to be much more demanding before permitting local school boards to make decisions based on race.

… Contrary to the dissent’s rhetoric, neither of these school districts is threatened with resegregation, and neither is constitutionally compelled or permitted to undertake race-based remediation. Racial imbalance is not segregation, and the mere incantation of terms like resegregation and remediation cannot make up the difference.

Because this Court has authorized and required race-based remedial measures to address *de jure* segregation, it is important to define segregation clearly and to distinguish it from racial imbalance. In the context of public schooling, segregation is the deliberate operation of a school system to “carry out a governmental policy to separate pupils in schools solely on the basis of race.” *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.* (1971). In *Brown,* this Court declared that segregation was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

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.

Although there is arguably a danger of racial imbalance in schools in Seattle and Louisville, there is no danger of resegregation. No one contends that Seattle has established or that Louisville has reestablished a dual school system that separates students on the basis of race…. [R]acial imbalance without intentional state action to separate the races does not amount to segregation. To raise the specter of resegregation to defend these programs is to ignore the meaning of the word and the nature of the cases before us….

What was wrong in 1954 cannot be right today. Whatever else the Court’s rejection of the segregationists’ arguments in *Brown* might have established, it certainly made clear that state and local governments cannot take from the Constitution a right to make decisions on the basis of race by adverse possession. The fact that state and local governments had been discriminating on the basis of race for a long time was irrelevant to the *Brown* Court. The fact that racial discrimination was preferable to the relevant communities was irrelevant to the *Brown* Court. And the fact that the state and local governments had relied on statements in this Court’s opinions was irrelevant to the *Brown* Court. The same principles guide today’s decision. None of the considerations trumpeted by the dissent is relevant to the constitutionality of the school boards’ race-based plans because no contextual detail--or collection of contextual details--can “provide refuge from the principle that under our Constitution, the government may not make distinctions on the basis of race.”

In place of the color-blind Constitution, the dissent would permit measures to keep the races together and proscribe measures to keep the races apart. Although no such distinction is apparent in the Fourteenth Amendment, the dissent would constitutionalize today’s faddish social theories that embrace that distinction. The Constitution is not that malleable. Even if current social theories favor classroom racial engineering as necessary to “solve the problems at hand,” the Constitution enshrines principles independent of social theories. Indeed, if our history has taught us anything, it has taught us to beware of elites bearing racial theories. See, *e.g.*, *Dred Scott* v. *Sandford* (1857). Can we really be sure that the racial theories that motivated *Dred Scott* and *Plessy* are a relic of the past or that future theories will be nothing but beneficent and progressive? That is a gamble I am unwilling to take, and it is one the Constitution does not allow.

The plans before us base school assignment decisions on students’ race. Because “[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens,” such race-based decisionmaking is unconstitutional. I concur in the Chief Justice’s opinion so holding.

JUSTICE KENNEDY, concurring in part and concurring in the judgment.

I … join Parts I, [II, III-A, and III-C] of the Court’s opinion….

Our Nation from the inception has sought to preserve and expand the promise of liberty and equality on which it was founded. Today we enjoy a society that is remarkable in its openness and opportunity. Yet our tradition is to go beyond present achievements, however significant, and to recognize and confront the flaws and injustices that remain. This is especially true when we seek assurance that opportunity is not denied on account of race. The enduring hope is that race should not matter; the reality is that too often it does.

… The plurality opinion is too dismissive of the legitimate interest government has in ensuring all people have equal opportunity regardless of their race. The plurality’s postulate that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race” is not sufficient to decide these cases. Fifty years of experience since *Brown* v. *Board of Education* (1954) should teach us that the problem before us defies so easy a solution. School districts can seek to reach *Brown*’s objective of equal educational opportunity. The plurality opinion is at least open to the interpretation that the Constitution requires school districts to ignore the problem of *de facto* resegregation in schooling. I cannot endorse that conclusion. To the extent the plurality opinion suggests the Constitution mandates that state and local school authorities must accept the status quo of racial isolation in schools, it is, in my view, profoundly mistake….

This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children. A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a district may consider it a compelling interest to achieve a diverse student population. Race may be one component of that diversity, but other demographic factors, plus special talents and needs, should also be considered. What the government is not permitted to do, absent a showing of necessity not made here, is to classify every student on the basis of race and to assign each of them to schools based on that classification. Crude measures of this sort threaten to reduce children to racial chits valued and traded according to one school’s supply and another’s demand.

That statement, to be sure, invites this response: A sense of stigma may already become the fate of those separated out by circumstances beyond their immediate control. But to this the replication must be: Even so, measures other than differential treatment based on racial typing of individuals first must be exhausted.

The decision today should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds. Due to a variety of factors—some influenced by government, some not—neighborhoods in our communities do not reflect the diversity of our Nation as a whole. Those entrusted with directing our public schools can bring to bear the creativity of experts, parents, administrators, and other concerned citizens to find a way to achieve the compelling interests they face without resorting to widespread governmental allocation of benefits and burdens on the basis of racial classifications.

With this explanation I concur in the judgment of the Court.

JUSTICE STEVENS, dissenting.

There is a cruel irony in The Chief Justice’s reliance on our decision in *Brown* v. *Board of Education* (1955). The first sentence in the concluding paragraph of his opinion states: “Before *Brown,* schoolchildren were told where they could and could not go to school based on the color of their skin.” This sentence reminds me of Anatole France’s observation: “[T]he majestic equality of the la[w], forbid[s] rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread.” The Chief Justice fails to note that it was only black schoolchildren who were so ordered; indeed, the history books do not tell stories of white children struggling to attend black schools. In this and other ways, The Chief Justice rewrites the history of one of this Court’s most important decisions.

The Chief Justice rejects the conclusion that the racial classifications at issue here should be viewed differently than others, because they do not impose burdens on one race alone and do not stigmatize or exclude. The only justification for refusing to acknowledge the obvious importance of that difference is the citation of a few recent opinions—none of which even approached unanimity—grandly proclaiming that all racial classifications must be analyzed under “strict scrutiny.”…

…It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today’s decision.

JUSTICE BREYER, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG join, dissenting.

These cases consider the longstanding efforts of two local school boards to integrate their public schools. The school board plans before us resemble many others adopted in the last 50 years by primary and secondary schools throughout the Nation. All of those plans represent local efforts to bring about the kind of racially integrated education that *Brown* v. *Board of Education* (1954) long ago promised—efforts that this Court has repeatedly required, permitted, and encouraged local authorities to undertake. This Court has recognized that the public interests at stake in such cases are “compelling.” We have approved of “narrowly tailored” plans that are no less race-conscious than the plans before us. And we have understood that the Constitution *permits* local communities to adopt desegregation plans even where it does not *require* them to do so….

… Because of its importance, I shall repeat what this Court said about the matter in *Swann*. Chief Justice Burger, on behalf of a unanimous Court in a case of exceptional importance, wrote:

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

… The constitutional principle enunciated in *Swann,* reiterated in subsequent cases, and relied upon over many years, provides, and has widely been thought to provide, authoritative legal guidance ….

…Today’s opinion reveals that the plurality would rewrite this Court’s prior jurisprudence, at least in practical application, transforming the “strict scrutiny” test into a rule that is fatal in fact across the board. In doing so, the plurality parts company from this Court’s prior cases, and it takes from local government the longstanding legal right to use race-conscious criteria for inclusive purposes in limited ways….

This context is *not* a context that involves the use of race to decide who will receive goods or services that are normally distributed on the basis of merit and which are in short supply. It is not one in which race-conscious limits stigmatize or exclude; the limits at issue do not pit the races against each other or otherwise significantly exacerbate racial tensions. They do not impose burdens unfairly upon members of one race alone but instead seek benefits for members of all races alike. The context here is one of racial limits that seek, not to keep the races apart, but to bring them together….

The principal interest advanced in these cases to justify the use of race-based criteria goes by various names. Sometimes a court refers to it as an interest in achieving racial “diversity.” Other times a court, like the plurality here, refers to it as an interest in racial “balancing.” I have used more general terms to signify that interest, describing it, for example, as an interest in promoting or preserving greater racial “integration” of public schools. By this term, I mean the school districts’ interest in eliminating school-by-school racial isolation and increasing the degree to which racial mixture characterizes each of the district’s schools and each individual student’s public school experience.

Regardless of its name, however, the interest at stake possesses three essential elements. First, there is a historical and remedial element: an interest in setting right the consequences of prior conditions of segregation….

Second, there is an educational element: an interest in overcoming the adverse educational effects produced by and associated with highly segregated schools….

Third, there is a democratic element: an interest in producing an educational environment that reflects the “pluralistic society” in which our children will live...

In light of this Court’s conclusions in *Grutter,* the “compelling” nature of these interests in the context of primary and secondary public education follows here *a fortiori*. Primary and secondary schools are where the education of this Nation’s children begins, where each of us begins to absorb those values we carry with us to the end of our days. As Justice Marshall said, “unless our children begin to learn together, there is little hope that our people will ever learn to live together.”…

I next ask whether the plans before us are “narrowly tailored” to achieve these “compelling” objectives….

First, the race-conscious criteria at issue only help set the outer bounds of *broad* ranges… They constitute but one part of plans that depend primarily on other, nonracial elements. To use race this way is not a forbidden “quota.”...

Second, broad-range limits on voluntary school choice plans are less burdensome, and hence more narrowly tailored than other race-conscious restrictions this Court has previously approved….

Third, the manner in which the school boards developed these plans itself reflects “narrow tailoring.” Each plan was devised to overcome a history of segregated public schools. Each plan embodies the results of local experience and community consultation. Each plan is the product of a process that has sought to enhance student choice, while diminishing the need for mandatory busing. And each plan’s use of race-conscious elements is *diminished* compared to the use of race in preceding integration plans….

Having looked at dozens of *amicus* briefs, public reports, news stories, and the records in many of this Court’s prior cases, which together span 50 years of desegregation history in school districts across the Nation, I have discovered many examples of districts that sought integration through explicitly race-conscious methods, including mandatory busing. Yet, I have found *no* example or model that would permit this Court to say to Seattle and to Louisville: “Here is an instance of a desegregation plan that is likely to achieve your objectives and also makes less use of race-conscious criteria than your plans.” And, if the plurality cannot suggest such a model—and it cannot—then it seeks to impose a “narrow tailoring” requirement that in practice would never be met….

Finally, I recognize that the Court seeks to distinguish *Grutter* from these cases by claiming that *Grutter* arose in “ ‘the context of higher education.’ ” But that is not a meaningful legal distinction…. I do not believe the Constitution could possibly find “compelling” the provision of a racially diverse education for a 23-year-old law student but not for a 13-year-old high school pupil. And I have explained how the plans before us are more narrowly tailored than those in *Grutter*…. The context here does not involve admission by merit; a child’s academic, artistic, and athletic “merits” are not at all relevant to the child’s placement. These are not affirmative action plans, and hence “individualized scrutiny” is simply beside the point….

… The plans before us satisfy the requirements of the Equal Protection Clause….”

Not everyone welcomed this Court’s decision in *Brown*.…Today, almost 50 years later, attitudes toward race in this Nation have changed dramatically. Many parents, white and black alike, want their children to attend schools with children of different races. Indeed, the very school districts that once spurned integration now strive for it. The long history of their efforts reveals the complexities and difficulties they have faced. And in light of those challenges, they have asked us not to take from their hands the instruments they have used to rid their schools of racial segregation, instruments that they believe are needed to overcome the problems of cities divided by race and poverty. The plurality would decline their modest request.

The plurality is wrong to do so. The last half-century has witnessed great strides toward racial equality, but we have not yet realized the promise of *Brown*. To invalidate the plans under review is to threaten the promise of *Brown*. The plurality’s position, I fear, would break that promise. This is a decision that the Court and the Nation will come to regret.

I must dissent.