UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PARENTS INVOLVED IN COMMUNITY SCHOOLS, a Washington Nonprofit Corp.,

Plaintiff,

v.

SEATTLE SCHOOL DIST. NO. 1, a political subdivision of the State of Washington, et al.

Defendants.

No. 2:00-cv-01205-BJR

ORDER VACATING JUDGMENT IN FAVOR OF DEFENDANT AND GRANTING JUDGMENT IN FAVOR OF PLAINTIFF

This matter comes before the court pursuant to Plaintiff Parents Involved in Community Schools' ("PICS") Motion for Entry of Judgment, and Defendant Seattle School District No. 1's (the "District") Cross Motion for Dismissal.

I. BACKGROUND

A. The School District's Plan—The Racial Tiebreaker

In 1997, the District adopted an admissions plan that allowed incoming ninth graders to request assignment to any of the District's ten regular public high schools, ranking the schools in order of preference. If a particular high school was oversubscribed, the District employed a series of "tiebreakers" to determine which students would be granted admission. The first tiebreaker

gave preference to students with a sibling currently enrolled in the chosen school. The second tiebreaker gave preference to students whose race would help bring the school within 10 percentage points of the District's overall white/nonwhite racial balance. The final tiebreaker was the geographical proximity of the school to the student's residence. It is the second tiebreaker that became the subject of this lawsuit (hereinafter, "the racial tiebreaker").

B. Challenge to the Legality of the Racial Tiebreaker

PICS, an organization of Seattle parents opposed to the use of the racial tiebreaker, brought this action in 2000, alleging that the District's admissions scheme violated (1) Washington Civil Rights Act, Wash. Rev. Code § 49.60.400 (1998) ("Initiative 200"); (2) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and (3) Title VI of the federal Civil Rights Act of 1964. The District defended its use of the racial tiebreaker.

This court granted summary judgment in favor of the District in 2001, concluding that the admissions plan was permissible under federal law, because it was narrowly tailored to serve a compelling government interest, i.e., the twin goals of having a diverse student body and ameliorating the *de facto* effects of residential segregation in Seattle. This court also determined that Initiative 200 did not prohibit use of the racial tiebreaker. Parents Involved in Community Schools v. Seattle School District No. 1, et al., 137 F. Supp. 2d 1224 (2001). PICS appealed, and the 9th Circuit Court of Appeals reversed, enjoining use of the racial tiebreaker based on its interpretation of Initiative 200. Parents Involved in Community Schools v. Seattle School District No. 1, et al., 285 F.3d 1236, 1257 (9th Cir. 2002). The District suspended use of the racial tiebreaker at this point. The 9th Circuit subsequently vacated its injunction, withdrew its opinion, and certified the issue of the interpretation of state law to the Washington Supreme

Court. Parents Involved in Community Schools v. Seattle School District No. 1, et al., 294 F.3d 1084-85 (9th Cir. 2002). The District, however, voluntarily continued its suspension of the admissions plan employing the racial tiebreaker, and did not use it for the 2002-2003, or any subsequent, admissions cycle.

The Washington Supreme Court ruled in 2003 that Initiative 200 did not prohibit the District from using the racial tiebreaker to allocate spots in oversubscribed high schools. Parents Involved in Community Schools v. Seattle School District No. 1, et al., 149 Wash. 2d 660, 72 P.3d 151 (2003). The Washington Supreme Court returned the case to the 9th Circuit for a review of claims based on federal law. A three-judge panel of the 9th Circuit held that achieving racial diversity and avoiding racial isolation were compelling government interests, but concluded that the racial tiebreaker was not sufficiently narrowly tailored to achieve those goals. Parents Involved in Community Schools v. Seattle School District No. 1, et al., 377 F.3d 949 (2005). The 9th Circuit granted rehearing *en banc*, Parents Involved in Community Schools v. Seattle School District No. 1, et al., 395 F.3d 1168 (2005), and the *en banc* court overruled the panel's decision, affirming this court's grant of summary judgment. Parents Involved in Community Schools v. Seattle School District No. 1, et al., 426 F.3d 1162 (2005).

C. The Supreme Court Opinion

The Supreme Court of the United States granted *certiorari* in this case, and in a 6th Circuit case that also involved a challenge to a race-based student assignment plan.[1] Parents Involved in Community Schools v. Seattle School District No. 1, et al., 547 U.S. 1177 (2006). The Supreme Court held, in a lengthy 5-4 decision, that the race-based assignment plan at issue in each of these cases was unconstitutional. Parents Involved in Community Schools v. Seattle

[1] McFarland v. Jefferson Cty. Public Schools, 416 F.3d 513 (2005).

School District No. 1, et al., 127 S. Ct. 2738 (2007) (hereinafter, "Parents"). Chief Justice Roberts authored the main opinion, writing in part for a plurality of the Chief Justice, and Justices Scalia, Thomas and Alito, and in part for a majority of five justices that included Justice Kennedy. Justice Kennedy filed a separate opinion concurring in part and concurring in the judgment. Justice Thomas filed a concurring opinion. Justice Breyer filed a dissenting opinion, which was joined by Justices Stevens, Souter and Ginsberg. Justice Stevens filed a separate dissenting opinion.

1. The Main Opinion

As a threshold matter, a majority of the Justices flatly rejected the District's contention that PICS lacked standing to maintain this action. First, the Court rejected the District's argument that the harm asserted by PICS was too speculative. The District had argued that even if it reinstated the racial tiebreaker, PICS' members would be affected only in the narrowest of circumstances—if a child of a member sought to enroll in an oversubscribed high school that none of his or her siblings attended and that happened to be out of racial balance. Parents, 127 S. Ct. at 2751. The Court found this argument to be unavailing, noting that any of PICS' members could claim a valid injury simply from being forced to compete for a child's admission in a race-based system that might prejudice them. Id. Second, the Court did not agree with the District's assertion that PICS lacked standing to contest the legality of the racial tiebreaker because the District voluntarily had abandoned the use of the policy. Id. The Court was unpersuaded by the District's continued suspension of the racial tiebreaker, in light of the District's practice of "vigorously defend[ing] the constitutionality of its race-based program, and [the lack of a suggestion] that if this litigation is resolved in its favor it will not resume using race to assign students." Id.

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Moving on to the merits, Chief Justice Roberts, writing for the majority, applied strict scrutiny to determine whether the use of individual racial classifications in this case was sufficiently narrowly tailored to achieve a compelling government interest. Id. at 2752. Justice Roberts outlined two interests that the Supreme Court had previously identified as compelling in the context of evaluating the use of racial classifications in the school admissions. The first, which was clearly inapplicable to this case, was that of remedying the effects of past intentional discrimination. Id. at 2752. The second compelling interest was creating diversity in the educational context, which the Supreme Court upheld in Grutter v. Bollinger, 539 U.S. 306, 328 (2003). Justice Roberts, still writing for a majority, noted that Grutter was limited to the context of higher education. In Grutter, Justice Roberts explained, the classification of students by race was used "as part of a broader effort to achieve 'exposure to widely diverse people, cultures, ideas and viewpoints.'" Id. at 2753, quoting Grutter, 539 U.S. at 330. Further, the Court held, in Grutter, there had been "consideration of a 'far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.'" Id. at 2753, discussing Grutter, 539 U.S. at 325, quoting Regents of the University of California v. Bakke, 438 U.S. 265, 315 (1978). The District, in contrast, used race as a "decisive" admissions factor for some students. Justice Roberts went on to declare, now only for a plurality of the justices, that racial balancing was not a compelling governmental interest such that it could justify the use of race in school admissions. Here, Justice Kennedy parted company with the plurality. See Section I(C)(2), below.

A majority of the Court, Justice Kennedy joining, agreed that the District failed to show that the racial tiebreaker was sufficiently narrowly tailored to achieve the proffered goal of student diversity. Id. at 2759. To the contrary, the Court reasoned, the minimal effect these

classifications actually had on student assignments suggested that non-race based means would have been just as effective. Id. Justice Roberts explained that the District's failure to consider any race-neutral alternatives proved that the racial tiebreaker was not narrowly tailored enough to achieve the District's goal. Id. at 2760. The final portion of the opinion authored by Chief Justice Roberts is a response by the plurality to Justice Breyer's lengthy dissent.

2. *Concurrences*

Justice Thomas joined in the Chief Justice's opinion in its entirety, but wrote separately to address Justice Breyer's dissent. Justice Kennedy concurred in part, and concurred in the judgment, helping to create a majority holding that strict scrutiny was the appropriate analysis, and that the racial tiebreaker was not sufficiently narrowly tailored to meet that standard. Id. at 2789 (Kennedy, J., concurring). Indeed, in his concurrence, Justice Kennedy characterized the racial tiebreaker as a "mechanical formula" based on "a crude system of individual racial classifications," and noted that the District had failed to show that such classifications were necessary to the District's stated purpose of promoting educational diversity. Id. at 2792-94.

However, Justice Kennedy strongly disagreed with the plurality to the extent that it refused to accept the achievement of racial diversity to be a compelling educational interest. Justice Kennedy found the plurality to be "too dismissive of the legitimate interest government has in ensuring all people have equal opportunity regardless of their race." Id. at 2791. According to Justice Kennedy, Justice Roberts was "profoundly mistaken" in thinking that the Constitution required state and local officials to "accept the status quo of racial isolation in schools." Id. To the contrary, Justice Kennedy explained that "[t]his 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." Id. at 2797. Therefore, Justice Kennedy concluded that

1 "a district may consider it a compelling interest to achieve a diverse student population" and
2 "avoid racial isolation." Id. To achieve these ends, Justice Kennedy wrote, a district could adopt
3 measures meant to increase diversity, of which race could be one component, but other
4 demographic factors, as well as special talents or needs of students, should also be considered.
5 Id. Therefore, where race-neutral measures do not achieve the stated goal of diversity in schools,
6 Justice Kennedy would allow school districts to consider the race of individual students. Id. at
7 2792.

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9 > School boards may pursue the goal of bringing together students
10 > of diverse races through other means, including strategic site
11 > selection of new schools; drawing attendance zones with general
> recognition of the demographics of neighborhoods; allocating
> resources for special programs; recruiting students and faculty
> in a targeted fashion; and tracking enrollments, performance, and
12 > other statistics by race.

13 Id. Individual racial classification, however, would be legitimate only as "a last resort to achieve
14 a compelling interest." Id. Such an approach, according to Justice Kennedy, would be "informed
15 by Grutter, though the particular criteria relevant to placement would differ based on the age of
16 the students, the needs of the parents, and the role of the schools." Id. at 2793. Justice Kennedy
17 concluded by stating that the Court's decision "should not prevent school districts from
18 continuing the important work of bringing together students of different racial, ethnic, and
19 economic backgrounds." Id. at 2797.
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21 Justice Kennedy's disagreement with the plurality on the question of whether achieving
22 racial diversity could ever constitute a compelling governmental interest leaves open the
23 possibility that an admissions plan utilizing racial classifications to further a compelling
24 governmental interest in achieving racial diversity in a student body could survive strict scrutiny.
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3. Dissents

Justice Breyer authored a dissenting opinion, which was joined by Justices Stevens, Souter and Ginsberg, supporting the "broad discretionary powers of school authorities" to use race-based policies to achieve positive race-related goals. Id. at 2812. Justice Breyer engaged in an extended review of the history of racial segregation of schoolchildren in this country, and the Supreme Court's historic decision in Brown v. Board of Education, 347 U.S. 483 (1954) (holding such racial segregation unconstitutional). Id. at 2801. Justice Breyer wrote that the majority reaches "the wrong conclusion" in this case, and that in so doing, "it misapplies the relevant constitutional principles, it announces legal rules that will obstruct efforts by state and local governments to deal effectively with the growing resegregation of public schools, it threatens to substitute for present calm a disruptive round of race-related litigation, and it undermines Brown's promise of integrated primary and secondary education that local communities have sought to make a reality." Id. at 2800. He concluded by stating that the Court's decision is one "that the Court and the Nation will come to regret." Id. at 2837. Justice Stevens joined in Justice Breyer's "eloquent and unanswerable dissent," id. at 2797, but wrote separately to add his thoughts about the history of Brown.

4. Remand

The Supreme Court remanded this case to the 9th Circuit Court of Appeals, which vacated its 2005 opinion, and remanded the case to the this court for further proceedings. Parents Involved in Community Schools v. Seattle School District No. 1, et al., 498 F.3d 1059 (2007). The District formally repealed the racial tiebreaker in September 2007.

D. MOTIONS BEFORE THIS COURT

PICS filed a Motion for Entry of Judgment, seeking a declaratory judgment and an injunction. PICS also moved for a ruling that it is entitled to attorney's fees pursuant to the Civil Rights Attorney's Fees Awards Act, 42 U.S.C. §1988, and requested that the court retain jurisdiction to determine the amount of fees and costs, and to enforce the injunction, if necessary.

The District filed an opposition and Cross Motion for Dismissal in which it characterizes PICS's request for entry of judgment as a transparent attempt to buttress its request for a ruling that it is entitled to an award of attorney's fees. The District urges the court to decline to provide the relief requested on the grounds that: (1) the case is moot under the voluntary cessation doctrine; and (2) PICS fails to make the showing required to obtain prospective relief. The District seeks entry of judgment of dismissal pursuant to Rule 56.

PICS filed a Reply in Support of its Motion for Entry of Judgment and Opposition to Defendant's Motion to Dismiss, and the District filed a Reply in Support of Cross Motion to Dismiss. Pursuant to a request from this court, the parties provided supplemental briefing on PICS's entitlement to an award of attorney's fees.

III. OPINION OF THE COURT

A. Mootness

The District argues that this case is moot under the doctrine of voluntary cessation because the District abandoned use of the racial tiebreaker in 2002. In general, "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i. e.*, does not make the case moot." County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979) (quoting United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953)). However, in defined circumstances, jurisdiction can dissolve if the case becomes moot.

1 Voluntary cessation of a challenged practice will render a matter moot where: (1) there is no
2 reasonable expectation that the alleged violation will recur; and (2) interim events have
3 eradicated the effects of the alleged violation. Davis, 440 U.S. at 631. The Supreme Court in
4 Parents was unconvinced that the District's suspension of the racial tiebreaker rendered the case
5 moot:

6 > Voluntary cessation does not moot a case or controversy unless
7 > subsequent events ma[ke] it absolutely clear that the allegedly wrongful
8 > behavior could not reasonably be expected to recur ... a heavy burden that
> [the District] has clearly not met.

9 Parents, 127 S.Ct. at 2751 (citations and internal quotation marks omitted). The Court noted that
10 the District's sustained defense of its policy suggested that the matter was not moot. Id. The
11 District now asks this court to revisit the question, arguing that it is now absolutely clear that
12 there is no chance of a recurring violation.
13 The District relies heavily on Smith v. University of Washington, 233 F.3d 1188 (9th Cir.
14 2000), a case that presents under different circumstances. From at least 1994 to December 1998,
15 the University of Washington School of Law used race as a criterion in its admissions decisions,
16 with a stated goal of the enrollment of a diverse student body. Smith, 233 F.3d at 1191. In 1997,
17 a group of unsuccessful applicants to the law school sued the school, certain members of the
18 administration and some members of the law school faculty, alleging racial discrimination. Id.
19 After the lawsuit was filed, but before it could be resolved, the Washington State legislature
20 passed Initiative 200, a law prohibiting state entities from discriminating against, or granting
21 preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or
22 national origin in, *inter alia,* public education. Id. at 1192. The law school moved to dismiss on
23 the grounds that the new statute prohibited the use of race as a factor in its admissions decisions,
24 and therefore mooted the case. The plaintiffs opposed the motion, arguing that it had yet to be
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seen how the law school would interpret its obligations under the law. Id. The District Court determined that the case was moot, and the 9th Circuit affirmed. The 9th Circuit noted that the change in admissions policy was brought about "under the lash" of the statute, and that the law school's obligation to comply with the newly enacted law was sufficient to moot all claims for prospective relief. Id. at 1194-95. However, contrary to the District's contention, Smith does not compel a finding of mootness here. The District's repeal of the racial tiebreaker in the instant case was prompted not by an intervening, unrelated event such as the enactment of a statute by the legislature, but a ruling in this very case.

As PICS argues, the Supreme Court's decision in Quern v. Mandley, 436 U.S. 725 (1978) is directly on point. In Quern, plaintiffs alleged that the State of Illinois violated federal law by imposing tighter eligibility requirements for an emergency assistance program than were required by federal statute. The state won in the district court, but the court of appeals reversed and remanded. Thereafter, the state withdrew from the emergency assistance program and successfully moved the trial court for dismissal of the claims on the ground that they were moot. Plaintiffs appealed again, the court of appeals reversed again, and the Supreme Court granted *certiorari,* which, before reaching the merits of the case, ruled on the mootness issue as follows:

> We agree with the Court of Appeals that the cases were not rendered moot by Illinois' decision to withdraw from the program …By granting the defendants' motions to dismiss, as it was bound to do if the case was indeed moot, the District Court rendered the entire proceeding a nullity. There was no longer any judgment binding on the defendants to prevent them from returning to the old program. And, while the defendants' good-faith representation that they had no intention of doing so might properly have led the District Court to deny injunctive relief, it could not operate to deprive the successful plaintiffs, and indeed the public, of a final and binding determination of the legality of the old practice.

1 Id. at 733 n. 7 (internal quotations omitted). Thus, the Supreme Court held, in a situation similar
2 from the present case, that defendant's cessation of a challenged practice did not render the
3 plaintiff's claims moot. See also Scott v. Pasadena Unified School Dist., 306 F.3d 646, 656 (9th
4 Cir. 2002) (discontinuing use of lottery assignment in response to a court order did not render
5 case moot). For the above reasons, this court finds that this case is not moot.

6 **B. Prospective Relief**

7 PICS asserts that it is entitled to prospective relief in the form of an injunction and
8 a declaratory judgment. inapposite.

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10 *1. Injunctive Relief*

11 PICS argues that the following injunction is necessary to implement the Supreme Court
12 opinion in Parents, and to prevent future use of racial classifications in school assignments by the
13 District:

14 That the District and its present and future directors, officers,
15 and employees are each permanently enjoined from authorizing,
16 permitting, or implementing the Racial Tiebreakers or any
substantially similar modification thereof or any other plan,
17 policy or device by which individual students are classified
systematically or "typed" according to race and assigned to high
18 schools solely on the basis of race, unless it shall have been
19 demonstrated to the Court that such race-based assignments are
necessary as a last resort to achieve a compelling interest of
20 the District.

21 A plaintiff seeking injunctive relief must show: "(1) that it has suffered an irreparable
22 injury; (2) that remedies available at law, such as monetary damages, are inadequate to
23 compensate for that injury; (3) that, considering the balance of hardships between plaintiff and
24 defendant, a remedy in equity is warranted; and (4) that the public interest would not be
25 disserved by a permanent injunction." eBay, Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391

1 (2006). "The decision to grant or deny permanent injunctive relief is an act of equitable
2 discretion by the district court[.]" Id.
3 PICS contends that the deprivation of its constitutional rights constitutes an irreparable
4 injury. But it is well-established that the requirement of an irreparable injury can not be met
5 without a showing of a "real or immediate threat that the plaintiff will be wronged again—a
6 likelihood of substantial and immediate irreparable injury." City of Los Angeles v. Lyons, 461
7 U.S. 95, 111 (1983) (quotation marks and citation omitted). See also Bloodgood v. Garraghty,
8 783 F.2d 470, 475 (4th Cir. 1986) ("injunction is a drastic remedy and will not issue unless there
9 is an imminent threat of illegal action."); Allis-Chalmers Corp. v. Arnold, 619 F. 2d 44, 46 (9th
10 Cir. 1980) (injunctive relief requires a "determination that there exists some cognizable danger of
11 recurrent violation"). The determination that such danger exists must "be based on appropriate
12 findings supported by the record." Federal Election Comm'n v. Furgatch, 869 F.2d 1256, 1263
13 (9th Cir. 1989). Factors that the district court may consider in making this finding include:
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15 > The degree of scienter involved; the isolated or recurrent nature of the infraction; the defendant's recognition of the wrongful nature of his conduct; the extent to which the defendant's professional and personal characteristics might enable or tempt him to commit future violations; and the sincerity of any assurances against future violations.
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20 Id. at 1263, n. 5. PICS insists that without an injunction, there is a "substantial risk that the
21 District will be tempted to adopt new racial classifications that run afoul of the Supreme Court's
22 decision." The court does not agree.
23 PICS has not provided, nor is the court aware, of any evidence that the District intends to
24 ignore the Supreme Court's order. First, the District lacked discriminatory intent in formulating
25 its plan. The challenged policy was conceived in good faith, for the benefit of the students in its
school district; it had no reason to suspect that the policy would later be held unconstitutional.

Prior to the Supreme Court opinion in Parents, the Court had specifically recognized an interest in diversity in the educational context to be a compelling interest that could survive strict scrutiny. Grutter v. Bollinger, 539 U.S. 306, 328 (2003). Second, the District made a sustained effort to contain any potential harm caused by the scheme, once challenged. After the 9th Circuit vacated its injunction in 2002, the District did not attempt to resuscitate the racial tiebreaker. The District instead left the policy in suspension, and waited for a final judicial ruling on the matter.[1] Third, it is clear that the District grasps that use of the racial tiebreaker is now prohibited. After issuance of the Supreme Court decision, the Seattle School Board formally repealed the challenged measure, and began to formulate a new admissions plan in accord with the guidance provided in that ruling. As the Supreme Court recognized in Quern, a defendants' good-faith representation that it has no intention of reverting to a challenged practice can properly lead a court to deny injunctive relief. Quern, 436 U.S. at 733, n. 7 (internal quotations omitted). There is simply no basis upon which the court could find that the District is hatching a new admissions scheme that would run contrary to the Supreme Court opinion. See also Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305 (4th Cir. 2001) (*en banc*) (vacating injunction where the record was devoid of evidence that the school district intended to ignore a court order and resume race-based assignment policies).

PICS argues that past illegal conduct can give rise to an inference that future violations may occur. PICS relies on United States v. Laerdal Mfg., 73 F.3d 852 (9th Cir. 1995) for this proposition, but Laerdal is distinguishable from the present case. In Laerdal, the defendant repeatedly and knowingly failed to comply with *existing* federal regulations which led the district

[1] Although the fact that the District took this voluntary measure provides insufficient support for the District's claim of mootness, it lends solidity to the District's argument that an injunction is unnecessary.

1 court to doubt the veracity of the defendant's assurances that it would comply with the
2 regulations in the future. Laerdal, 73 F.3d at 857. In the instant case, the District was acting in
3 good faith and in a manner consistent with the law at the time when it put the admissions plan
4 containing the racial tiebreaker into practice. This court therefore finds Laerdal to be inapposite.

5 *2. Declaratory Relief*

6 PICS argues that it is entitled, by virtue of the Supreme Court opinion in Parents, to the
7 following declaratory relief:

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9 (1) The District's policy of considering race in its admissions
10 decisions, adopted as part of the District's comprehensive high
11 school assignment plan in 1997 and modified in 2000,whereby
12 numerous students were assigned to high schools solely on the basis of race (the "Racial Tiebreakers"), violated the Fourteenth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*.

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14 (2) The District has not demonstrated that assigning individual
15 students to different high schools solely on the basis of race is necessary as a last resort to achieve any compelling interest of the District.

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17 (3) The District can have no compelling interest in achieving in its
18 high schools either (a) diversity based solely on race or ethnicity, or (b) a predetermined demographic balance between white and non-white students.

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20 The Declaratory Judgment Act provides: "In a case of actual controversy within its
21 jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations
22 of any interested party seeking such declaration, whether or not further relief is or could be
23 sought." 28 U.S.C. § 2201(a). See also Fed. R. Civ. P. 57. A declaratory judgment is an equitable
24 remedy; it is therefore left to the court's discretion whether to grant such relief. Government
25 Employees Ins. Co. v. Dizol, 133 F.3d 1220, 1223 (9th Cir. 1998), citing Public Affairs Assoc., Inc. v. Rickover, 369 U.S. 111, 112 (1962) (Declaratory Judgment Act "gave the federal courts

1 competence to make a declaration of rights; it did not impose a duty to do so.”). Although
2 declaratory judgments and injunctions are both prospective, equitable relief, the two standards
3 are not identical. Indeed, at times, a declaratory judgment may be proper where an injunction
4 would not. Green v. Mansour, 474 U.S. 64, 72 (1985); Steffel v. Thompson, 415 U.S. 452, 471
5 (1974).

6 The propriety of issuing a declaratory judgment depends upon various equitable
7 considerations, and is also “informed by the teachings and experience concerning the functions
8 and extent of federal judicial power.” Green, 474 U.S. at 72 (citations and internal quotation
9 marks omitted). Declaratory relief is appropriate when a declaratory judgment “will serve a
10 useful purpose in clarifying and settling the legal relations between the parties, and [when] it will
11 terminate the controversy.” Los Angeles County Bar Ass'n v. Eu, 979 F.2d 697, 703 (9th Cir.
12 1992) (citation omitted). In the instant case, the court finds that granting a declaratory judgment
13 would neither serve a useful purpose in clarifying the legal rights of the parties, nor would it
14 resolve any controversy that is properly before the court.

15 The Parents decision sparked an impassioned debate among legal academics as to what
16 impact the ruling will have on school assignment plans nationwide. The Supreme Court opinion
17 in Parents was produced by a fractured and deeply divided Court that found itself unable to reach
18 consensus on whether achieving racial diversity could constitute a compelling governmental
19 interest. One scholar described the five opinions that comprise the decision in Parents as follows:

20 > On a first read, one is struck by the dramatic rhetoric, heightened emotion, sharp disagreement, and accusations of bad faith coursing through this 185-page collection of opinions. Chief Justice Roberts …accuses Justice Breyer of lawlessness…Justice Thomas equates Justice Breyer’s dissent with arguments made by white racists who supported school segregation…Justice Kennedy call[s] the plurality opinion ‘profoundly mistaken.’

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> In his short dissent, Justice Stevens calls the Chief Justice's reliance on Brown 'a cruel irony,' …Justice Breyer returns the Chief Justice's favor by calling his opinion lawless…claiming that 'the plurality's approach risks serious harm to the law and for the Nation.'

James E. Ryan, *The Supreme Court and Voluntary Integration*, 121 Harv. L. Rev. 131, 134 (2007). As explained above, in Section I(C), Justice Kennedy's concurrence left the door open to the possibility that in the future, a school assignment plan featuring race as a factor could survive strict scrutiny under circumstances similar to those of the instant case. However, exactly to what extent and in what manner the Equal Protection Clause would permit a school system to incorporate race into an assignment plan remains unclear.

PICS' proposed declaratory judgment, which seeks to resolve this uncertainty, is simply too broad in light of the complexity of the Supreme Court opinion, and the evident disagreement regarding its meaning. PICS asserts that this disagreement supports its claim that prospective relief is necessary, but the court disagrees. Given that reasonable minds could differ in understanding the impact of the Supreme Court opinion in Parents, the court finds that PICS has failed to provide the court with a persuasive reason to provide a pre-emptive interpretation of that opinion. The declaratory judgment sought by PICS strikes this court as verging on an invitation to the court to abuse its discretion.

Accordingly, the court finds that PICS is entitled to have this court vacate its prior grant of summary judgment in favor of the District, and to have judgment enter in its favor; however, the court's judgment will be so limited. The court declines to grant PICS' request for declaratory relief.

1 **C. Attorney's Fees**

2 PICS moves for a ruling that it is entitled to attorney's fees pursuant to the Civil Rights
3 Attorney's Fees Awards Act, 42 U.S.C. § 1988, which authorizes district courts to award
4 reasonable attorney's fees to prevailing parties in civil rights litigation. A party is "prevailing"
5 within the meaning of § 1988 when "(1) it wins on the merits of its claim, (2) the relief received
6 materially alters the legal relationship between the parties by modifying the defendant's behavior,
7 and (3) that relief directly benefits the plaintiff." Martinez v. Wilson, 32 F.3d 1415, 1422 (9th
8 Cir. 1994). While an award of attorney's fees is discretionary, courts are constrained to award
9 fees to prevailing parties unless special circumstances exist justifying denial. Topanga Press, Inc.
10 v. City of Los Angeles, 989 F. 2d 1524, 1534 (9th Cir. 1993), as amended, cert. den., 511 U.S.
11 1030 (1994). Therefore, the inquiry requires the court to determine: (1) whether PICS is a
12 prevailing party; and (2) if so, whether special circumstances exist that would render a fee award
13 unjust in these circumstances.

14 A party is "prevailing" for attorney's fees purposes if it succeeds on "any significant
15 issue in litigation which achieves some of the benefit the parties sought in bringing suit." Id. at
16 433, quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-279 (1st Cir. 1978). Following this
17 reasoning, courts have bestowed prevailing party status on a wide array of plaintiffs. See e.g.,
18 Texas State Teachers Ass'n v. Garland Independent School Dist., 489 U.S. 782 (1989) (plaintiff
19 need not prevail on all issues, or even the main issue to qualify as prevailing party); Watson v.
20 County of Riverside, 300 F. 3d 1092 (9th Cir. 2002) (plaintiff who succeeds in obtaining
21 preliminary injunction is prevailing party even when he fails to obtain any other relief); Clark v.
22 City of Los Angeles, 803 F. 2d 987, 989 (9th Cir. 1986) (plaintiff need not obtain formal relief to
23 be prevailing party).
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The court does not find it difficult to conclude that PICS is a prevailing party. There is no question that PICS prevailed on a significant issue in litigation when the Supreme Court agreed that the racial tiebreaker was unconstitutional. The District, however, argues that despite this, PICS is not a prevailing party. First, the District argues that PICS is not a prevailing party because the case is moot. This argument fails for the reasons given above. The District also contends that the Supreme Court's decision did not change the legal relationship between the parties because its ultimate elimination of the tiebreaker was not prompted by the decision, and was undertaken voluntarily. But elimination of the racial tiebreaker from the District's admissions policy is exactly what PICS sought to accomplish when it filed suit—and it succeeded. The Supreme Court held the admissions plan unconstitutional. Following that, the District formally repealed the policy. The repeal, however it was accomplished, was a direct result of PICS's lawsuit. There is little doubt that PICS is the prevailing party in this matter.

PICS' status as a prevailing party, however, does not automatically entitle it to an award of attorney's fees pursuant to §1988. The 9th Circuit has articulated a two-pronged test for determining the existence of special circumstances that could render an award of attorney's fees unjust: (1) whether allowing attorney's fees would further the purposes of § 1988; and (2) whether the balance of the equities favors or disfavors the denial of fees. Bauer v. Sampson, 261 F. 3d 775, 785-86 (9th Cir. 2001), citing Gilbrook v. City of Westminster, 177 F. 3d 839, 878 (9th Cir. 1999). Therefore, prior to deciding to grant or deny an award of attorney's fees to PICS, the court will allow the parties to brief the issue of whether special circumstances exist that would render an award of fees unjust in this case. Further, the court declines to make its decision on attorney's fees in the abstract. When a party makes a request for attorney's fees, it is customary to set forth the amount it is seeking and the court directs PICS to do precisely that.

D. Conclusion

For all the foregoing reasons, the court hereby orders as follows:

In accordance with the decision of the United States Supreme Court in this case, Parents Involved in Community Schools v. Seattle School District No. 1 et al., 127 S. Ct. 2738 (2007); the judgment of the Supreme Court entered on July 28, 2007 (remanding this case to the Court of Appeals for the Ninth Circuit for further proceedings); and the Judgment of the Court of Appeals entered on August 22, 2007 (remanding the case to this court for further proceedings); and based upon the reasoning of the Supreme Court in its aforesaid decision, the court hereby:

(1) vacates its April 6, 2001 grant of summary judgment in favor of Defendant, Seattle School District No. 1;

(2) grants, in part, Plaintiff's Motion for Entry of Judgment;

(3) denies Plaintiff's Motion for Entry of Judgment insofar as it seeks injunctive or declaratory relief;

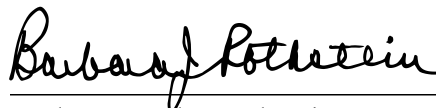
(4) denies Defendant's Cross Motion for Dismissal; and

(5) finds that Plaintiff is a prevailing party as that term is used in Civil Rights Attorney's Fees Awards Act, 42 U.S.C. § 1988, but declines, at this juncture, to declare that Plaintiff is entitled to an award of attorney's fees.

Before ruling on Plaintiff's request for attorney's fees, the court will require a breakdown of the fees and expenses it will be seeking. It will not be necessary to attach supporting documentation at this time. In addition, the court orders briefing from the parties on the issue of whether special circumstances exist in this case that would render an award of attorney's fees unjust. In particular, the court would like the parties to address the criteria discussed in Thorsted v. Gregoire, 841 F. Supp. 1069 (W.D. Wash. 1994).

The court sets the following briefing schedule: Plaintiff shall file its brief no later than Monday, January 26, 2009. Defendant's response will be due Friday, February 6, 2009. Plaintiff's reply brief will be due on Friday, February 13, 2009.

DATED at Seattle, Washington this 12th day of January, 2009.



Barbara Jacobs Rothstein
U.S. District Court Judge