US Supreme Court rules school districts cannot consider race in integration plans

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On Thursday, the last court session before its traditional summer recess, the Supreme Court struck down school integration plans in Seattle, Washington and Louisville, Kentucky, ruling for the first time that local school officials cannot constitutionally consider the race of their students when implementing plans to maintain racial balance among public schools within their districts. The court reversed lower court rulings that had upheld the integration plans.

The decision in the consolidated cases of *Parents Involved in Community Schools v. Seattle School District* and *Meredith v. Jefferson County Board of Education* is the most significant high court pronouncement on racial integration since 1954, when the Supreme Court held racially segregating public schools to be illegal in *Brown v. School Board*.

Yesterday's decision immediately calls into question hundreds of integration plans currently in place throughout the United States. Because a school district cannot promote racial integration without taking its students' racial characteristics into consideration, all school districts that do not immediately abandon their integration plans face the threat of protracted litigation.

The more long-term effect of the ruling will be to roll back school integration, which has already proven difficult to implement and maintain, reversing much of the democratic advance embodied in *Brown* and the concomitant civil rights struggles of the post-war era.

This thoroughly reactionary legal precedent marks a fitting conclusion to the first full Supreme Court term of Bush appointees Chief Justice John G. Roberts, Jr. and Associate Justice Samuel A. Alito, Jr.

With associate justices Antonin Scalia, Clarence Thomas and, more often than not, Anthony M. Kennedy, they comprise a majority five-justice voting bloc responsible not only for dismantling school desegregation, but also, among other things, limiting the right of workers to sue for discrimination in pay scales, restricting the right of condemned prisoners to seek habeas corpus, curtailing the right of high school students to express themselves off campus, limiting the right of taxpayers to challenge government expenditures on religion, and attacking the right of women to late-term abortions prescribed by their doctors for health reasons. At the same time, the court has issued pro-corporate rulings protecting the right of big business to influence elections and to manipulate prices and the stock market without incurring any civil liability.

This spate of anti-democratic rulings was made possible by the complicity of Senate Democrats, who refused to use the filibuster to block the confirmation of Roberts and Alito, despite the well-established ultra-conservative records of both as judges in the United States Court of Appeals, and the obvious consequences of allowing such a right-wing Supreme Court majority to be formed.

Brown, considered among the most significant decisions in Supreme Court history, was decided unanimously, as were many of the subsequent school desegregation decisions. In contrast, none of the five opinions issued yesterday garnered the majority requirement of five votes. Running an extraordinary 185 pages in total, the opinions are replete with pointed challenges, and even outright insults, among the justices, highlighting deep divisions on the high court.

The measures being challenged in the two cases were relatively mild compared to the controversies over "forced busing" that dominated school desegregation efforts during the 1970s and 1980s. Both were the continuation of plans adopted in response to prior court rulings mandating the desegregation of public schools.

To avoid litigation, Seattle agreed to desegregate its schools in a 1978 settlement with the National Association for the Advancement of Colored People (NAACP). After relying heavily on unpopular compulsory busing of students, the Seattle school district worked out a compromise plan which allowed high school students to choose among various schools, but if a school had too many applicants, the district could use race to determine admission so that each school would wind up with a ratio of minority students not too divergent from that in the district as a whole.

Unlike Seattle, a federal district court had determined Louisville schools to be unlawfully segregated and, in 1975, ordered them integrated. After going through several plans, in 1996 Louisville, which has 30 percent black students, settled on one which provided parents with local schools and choice, so long as no individual school became over 50 percent or below 15 percent black.

To maintain that balance, the district restricted student transfers. In 2000, the supervising federal court released the district, which by then had expanded to all of Jefferson County, from further supervision, noting that the school district officials "treated the ideal of an integrated system as much more than a legal obligation—they consider it a positive, desirable policy and an essential element of any well-rounded public school education."

Both plans were struck down as violations of equal protection. Roberts's plurality decision, joined by Scalia, Thomas and Alito,

holds that race can never be considered when assigning students to schools unless done as part of an integration plan to remedy a court finding of deliberate segregation. The fact that Louisville's plan was enacted precisely for that purpose meant nothing, Roberts reasoned, as the 2000 release from court supervision established that the district was "unitary" and no longer in need of integration measures.

Ignoring the continuing impact of racial discrimination, as well as the distinction between using racial categories to insure integration rather than to maintain segregation, Roberts absurdly compared the Seattle and Louisville plans to the pre-*Brown* period where "schoolchildren were told where they could and could not go to school based on the color of their skin." Roberts concluded his opinion with circular logic: "The way to stop discrimination on the basis of race is to stop discrimination on the basis of race."

Although he too voted to invalidate the Seattle and Louisville plans, Justice Kennedy—consistent with his role as a slightly more moderate right-winger than the other four justices—filed a separate concurring opinion distancing himself from Roberts's extreme views. "Parts of the opinion by the chief justice imply an all-too-unyielding insistence that race cannot be a factor in instances when, in my view, it may be taken into account," Kennedy wrote. "The plurality opinion is too dismissive of the legitimate interest government has in ensuring all people have equal opportunity regardless of their race."

Because of the 4-1-4 lineup of votes, Justice Kennedy's concurrence is considered controlling. Kennedy's opinion gives little indication of the circumstances which might justify a school district's consideration of race, however.

Associate Justice Stephen G. Breyer wrote a 77-page dissenting opinion, joined by the three other liberal associate justices, John Paul Stevens, David H. Souter and Ruth Bader Ginsburg.

Breyer began by emphasizing that the case arose from "the longstanding efforts of two local school boards to integrate their public schools," with the intent "to bring about the kind of racially integrated education that *Brown v. Board of Education* long ago promised."

After reviewing the history of desegregation struggles since *Brown*, Breyer identified three important social interests in eliminating school segregation: "setting right the consequences of prior conditions of segregation," "overcoming the adverse educational effects produced by and associated with highly segregated schools," and "a democratic element: an interest in producing an educational environment that reflects the 'pluralistic society' in which our children will live."

Breyer analyzed each social interest and how five decades of Supreme Court precedent upheld "both voluntary and compulsory race-conscious measures to combat segregated schools. The Equal Protection Clause, ratified following the Civil War, has always distinguished in practice between state action that excludes and thereby subordinates racial minorities and state action that seeks to bring together people of all races," Breyer explained.

Answering Roberts's crude invocation of *Brown*, Breyer wrote that "segregation policies did not simply tell schoolchildren 'where they could and could not go to school based on the color of their skin,' they perpetuated a caste system rooted in the institutions of slavery and 80 years of legalized subordination. The lesson of history is not that efforts to continue racial segregation are constitutionally indistinguishable from efforts to achieve racial integration. Indeed, it is a cruel distortion of history to compare Topeka, Kansas in the 1950s to Louisville and Seattle in the modern day."

Thomas filed a particularly noxious concurring opinion, in which he compared Breyer's equal protection analysis to that of the Supreme Court majority in *Plessy v. Ferguson* (1896), which sanctioned state-sponsored racial segregation under the now discredited doctrine of "separate but equal." "The segregationists in *Brown* embraced the arguments the Court endorsed in *Plessy*," Thomas wrote. "Though *Brown* decisively rejected those arguments, today's dissent replicates them to a distressing extent."

On the other flank, Justice Stevens, after joining with Breyer, added an individual dissent, decrying as "cruel irony" Roberts's use of *Brown v. School Board* to invalidate integration plans. "The Chief Justice fails to note that it was only black schoolchildren" who were told which schools they could not attend. "Indeed, the history books do not tell stories of white children struggling to attend black schools," Stevens added.

Noting the extreme right-wing trajectory of the court, Stevens—the senior justice on the Supreme Court, having been appointed by Gerald Ford—concluded, "It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today's decision."

There were always severe limitations inherent in the perspective of achieving racial integration and equality within the framework of a system based on class exploitation, and the Supreme Court, as an arm of the capitalist state, could never seriously address the fundamental social and economic divisions underlying racial discrimination and oppression.

The June 28 anti-integration decision highlights the inability of the current capitalist political set-up, under conditions of increasing social polarization and economic inequality, to defend even the limited gains of the post-war struggle for civil rights. The court majority speaks for and sanctions an accelerating assault on any form of equality.