

No. 05-915

In the
Supreme Court of the United States

CRYSTAL D. MEREDITH, Custodial Parent
and Next Friend of Joshua Ryan McDonald,

Petitioner,

v.

JEFFERSON COUNTY
BOARD OF EDUCATION, et al.,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY BRIEF

TEDDY B. GORDON
Counsel of Record
Attorney at Law
807 West Market Street
Louisville, Kentucky 40202
Telephone: (502) 585-3534
Facsimile: (502) 585-3539

Counsel for Petitioner

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
ARGUMENT	1
I. PLAINTIFF HAS STANDING TO BRING THIS ACTION	1
II. RESPONDENTS' PLAN AMOUNTS TO "OUTRIGHT RACIAL BALANCING" AND IS THEREFORE PRESUMPTIVELY UNCONSTITUTIONAL	3
III. DEFERENCE TO LOCAL BOARDS ON THE USE OF RACE IN PUBLIC SCHOOLS IS INCOMPATIBLE WITH THE EQUAL PROTECTION CLAUSE	4
IV. RACIAL BALANCING IS NOT A COMPELLING INTEREST SUFFICIENT TO JUSTIFY DISCRIMINATING AGAINST STUDENTS IN K-12 PUBLIC SCHOOLS	8
A. Social Science Research Does Not Support the Conclusion That Racial Diversity Provides Educational Benefits to Students	8
B. Marginal Increase in Education Outcomes Does Not Rise to the Level of a Compelling State Interest	12
C. Racial Balancing Harms and Stigmatizes Children	12
V. RESPONDENTS' PLAN IS NOT NARROWLY TAILORED	14

TABLE OF CONTENTS—Continued

	Page
A. The Plan Is Not “Specifically and Narrowly Framed” to Accomplish Its Purpose; It Is an Impermissible Continuation of a Prior Remedial Plan	14
B. Respondents Use Race as the Defining Feature in Admissions in Order to Maintain Racial Balances	15
C. By Arguing “Holistic” Evaluation Is Not Required in K-12 Admissions, Respondents Argue For an Unconstitutional Expansion of <i>Grutter</i>	16
D. Respondents’ Plan Operates as a Quota	17
E. Respondents Failed To Pursue Race-Neutral Alternatives	18
CONCLUSION	20

TABLE OF AUTHORITIES

	Page
Cases	
<i>Adarand Constructors, Inc. v. Pena</i> , 515 U.S. 200 (1995)	5, 8, 17
<i>Bd. of Educ. of Oklahoma City Pub. Sch.</i> <i>v. Dowell</i> , 498 U.S. 237 (1991)	15
<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954)	4
<i>Brown v. Bd. of Educ.</i> , 349 U.S. 294 (1955)	4
<i>Cavalier v. Caddo Parish Sch. Bd.</i> , 403 F.3d 246 (5th Cir. 2005)	15
<i>City of Richmond v. J.A. Croson Co.</i> , 488 U.S. 469 (1989)	3, 7-8, 19
<i>Epperson v. Arkansas</i> , 393 U.S. 97 (1968)	6
<i>Freeman v. Pitts</i> , 503 U.S. 467 (1992)	3-4
<i>Goss v. Lopez</i> , 419 U.S. 565 (1974)	6
<i>Gratz v. Bollinger</i> , 539 U.S. 244 (2003)	2
<i>Gutter v. Bollinger</i> , 539 U.S. 306 (2003)	3, 5, 8-9, 14-18
<i>Hampton v. Jefferson County Bd. of Educ.</i> , 102 F. Supp. 2d 358 (W.D. Ky. 2000)	3, 19
<i>Hazelwood Sch. Dist. v. Kuhlmeier</i> , 484 U.S. 260 (1988)	5
<i>Hirabayashi v. United States</i> , 320 U.S. 81 (1943)	5
<i>Ho v. San Francisco Unified Sch. Dist.</i> , 147 F.3d 854 (9th Cir. 1998)	17, 19
<i>Johnson v. California</i> , 543 U.S. 499 (2005)	5-6, 8

TABLE OF AUTHORITIES—Continued

	Page
<i>Local 28 of the Sheet Metal Workers' Int'l Ass'n</i> <i>v. EEOC</i> , 478 U.S. 421 (1986)	17
<i>McFarland v. Jefferson County Pub. Sch.</i> , 330 F. Supp. 2d 834 (W.D. Ky. 2004) ..	2, 14, 16-17, 19
<i>Milliken v. Bradley</i> , 433 U.S. 267 (1977)	4
<i>Newburg Area Council, Inc. v. Gordon</i> , 521 F.2d 578 (6th Cir. 1975)	14
<i>North Carolina State Bd. of Educ.</i> <i>v. Swann</i> , 402 U.S. 43 (1971)	7
<i>Northeastern Fla. Chapter of the</i> <i>Associated Gen. Contractors of America v.</i> <i>City of Jacksonville, Florida</i> , 508 U.S. 656 (1993)	2
<i>Regents of the Univ. of Cal. v.</i> <i>Bakke</i> , 438 U.S. 265 (1978)	3, 5, 15, 18
<i>Rice v. Cayetano</i> , 528 U.S. 495 (2000)	12
<i>San Antonio Indep. Sch. Dist. v.</i> <i>Rodriguez</i> , 411 U.S. 1 (1973)	6
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993)	5, 12
<i>Swann v. Charlotte-Mecklenburg Bd. of Educ.</i> , 402 U.S. 1 (1971)	7-8
<i>Wygant v. Jackson Bd. of Educ.</i> , 476 U.S. 267 (1986)	6-7
United States Constitution	
U.S. Const. amend. I	5

