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 Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

BRIEF OF PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

I. Should *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Regents of University of California v. Bakke*, 438 U.S. 268 (1978) be overturned and/or misapplied to allow the Jefferson County Board of Education to use race as the sole factor to assign students to the regular (non-traditional) schools in the Jefferson County Public Schools?

II. Whether the race-conscious Student Assignment Plan with mechanical and inflexible quota systems of not less than 15% nor greater than 50% of African American students without individually or holistic review of any student, meets the Fourteenth Amendment requirement of the use of race which is a compelling interest narrowly tailored with strict scrutiny.

III. Did the District Court abuse and/or exceed its remedial judicial authority in maintaining desegregative attractiveness in the Public Schools of Jefferson County, Kentucky?

PARTIES TO PROCEEDING

Crystal Meredith as Custodial Parent and Next Friend of Joshua Ryan McDonald, a student in the regular (non-traditional) schools of the Jefferson County Public Schools.

Jefferson County Board of Education is the legal entity encompassing the Jefferson County Public Schools.

Stephen W. Daeschner is the Superintendent of the Jefferson County Board of Education.

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TABLE OF AUTHORITIES

OPINIONS BELOW

The Opinion of the Court of Appeals is reported as *McFarland v. Jefferson County Public Schools*, 416 F. 3d 513 (6th Cir., 2005). (Petition Appendix (P.A.) B1 through B3.) The order denying rehearing was filed of record October 21, 2005 and is found in (Petition Appendix (P.A.) A1 through A2.) The Opinion of the United States District Court for the Western District of Kentucky which was adopted by the Per Curiam Opinion of the Sixth Circuit Court of Appeals, was rendered on June 29, 2004, *McFarland v. Jefferson County Public Schools*, 330 F.Supp 2nd 834 (W.D.KY. 2004), and is found in the (Petition Appendix (P.A.) C1 through C79.)

BASIS OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on the 21 day of July, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions at issue: Fourteenth Amendment, Section 1, "All persons born or naturalized in the United States and subject to the jurisdiction thereof are

citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor to deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

On or about May 2, 2003, the trial court granted leave, allowing a Third Amended Complaint to be filed of record by Crystal Meredith, as Custodial Parent and Next Friend of Joshua Ryan McDonald. (Petition Appendix (P.A.) D1, D2.) Any additional Amended Complaints, were deemed unnecessary and inclusive by the Court's order of May 2, 2003.

This amended complaint of Crystal Meredith in behalf of her son, Joshua, became the Plaintiff to represent the rest of the students in the Jefferson County Public Schools hereinafter referred to as JCPS. The other plaintiffs were parents representing their children who had been denied admission into the Traditional Schools of JCPS. The trial Court ruled in favor of that class of plaintiffs in finding that the race-conscious student assignment plan of JCPS was not narrowly tailored, and therefore held that JCPS' use of race was unconstitutional. Crystal Meredith was denied her

request to transfer her son, Joshua, into Bloom Elementary because he was White, thus running afoul of said student assignment plan. (J.A., p.79.) All students, inclusive of Joshua Ryan McDonald, are assigned to schools based upon quotas of not less than 15% nor greater than 50% African American. (J.A., p.97.) Any other ethnic group, such as Hispanic, Asian American or even Native American are considered as Other and are categorized as White. Therefore, the race-designated, hard-core quotas are strictly compiled as Black and White. The trial Court ruled in favor of JCPS in regard to the class of students represented by Joshua McDonald in holding that the use of race in the regular program of JCPS was narrowed tailored.

The facts were not in dispute that with Joshua's admittance into Bloom, the school's racial make-up would still have been less that 49% African American; and the school was not at capacity. (J.A., p. 79.) From the trial Court's Memorandum Opinion and Order, only Crystal Meredith in behalf of her son, Joshua was left to appeal to the 6th Circuit Court of Appeals. The initial plaintiffs had prevailed on their 14th Amendment cause of action. The 6th Circuit Court of Appeals affirmed the Trial Court's Opinion *Per Curium* and Motion for Rehearing and Rehearing En Banc was denied. Crystal Meredith filed her Petition for Writ of Certiorari to the Supreme Court of the United States. Petition for Writ of Certiorari was granted on June 5, 2006.

SUMMARY OF ARGUMENT

Petitioner submits the following is a concise statement of her summary of argument:

1. Race was the sole factor to assign students in the non-traditional schools in the Jefferson County Public School system, (J.A., p. 79; J.A., p.97; J.A., p.122), and;
2. There was no plus factor in determining which students, Black or White, should be assigned to certain schools; said plan was not narrowly tailored, and;
3. There was no individual holistic review of any student's application for acceptance within the non-traditional school program, (J.A., p.79), and;
4. There was no distinguishing factor in the public school setting from the university setting of the Michigan undergraduate program (*Gratz*, *supra*) that would allow quotas, or allow expansion of compelling interest to apply to a K-12 educational setting, and;
5. There was no finding of critical mass, and;
6. There were no facts to support any type of finding that said unknown critical mass would improve educational outcome as found in *Grutter v. Bollinger*, *supra*, and;
7. If compelling interest is defined as "educational benefit", then there is no compelling interest: See:

Scalia's Dissent, *Grutter v Bollinger*, *supra*, (J.A., pp. 109-111), and;

8. The defining feature of a student's application to the non-traditional schools was race; every student has to check the box, (J.A., p.74), and the 15% to 50% quota as used by the Jefferson County Public Schools is a race-designated, hard-core mechanized quota. Race is the make or break test of admission into the regular and/or non-traditional program of JCPS, *see McFarland v. Jefferson County Public School*, *supra*, and;

9. Any factual reference by the Respondent to de facto neighborhood schools with an African American majority would not apply. The Jefferson County Schools having won in the lower court, that the trial court had to find that all public schools in the non-traditional program were basically fungible (equal) , As admitted, JCPS already includes high concentrations of poverty; therefore what difference would a high concentration of poverty school with greater than 50% African Americans make, if all non-traditional schools are equal, *see McFarland v. Jefferson County Public School*, *supra*, and;

10. This hard-core mechanized race-designated quota system with no improvement of educational outcome is simply an action for the sake of reflecting racial distribution. There is nothing written in the

> Fourteenth Amendment to define this use of race as a compelling constitutional interest. It is nothing more than affirmative discrimination. Present and future societal discrimination alone is insufficient to justify a racial classification. *Wygant v. Jackson Board of Education,* 476 U.S. 267 (1986).

ARGUMENT

The law is well settled that race must solely be a plus factor not the dominant factor in any type of race-conscious plan utilized by the JCPS. The trial court has simply misapplied *Regents of University of California v. Bakke, supra*; *Grutter, supra* and *Gratz, supra* to allow the race-conscious plan used by the JCPS to be a compelling constitutional interest on the basis of diversity and that the plan used is not narrowly tailored and fails to withstand strict scrutiny for all the reasons cited above.

In order to satisfy the legal requirements pronounced by this Honorable Court in *Gratz v. Bollinger, supra, Grutter v. Bollinger, supra* and *Regents of University of California v. Bakke, supra*, there must be three (3) legal standards achieved. Those three (3) legal parameters simply are:

(1) Compelling interest;
(2) Narrowly tailored plan; and
(3) Strictness of scrutiny.

All race-conscious policies failing to conform to these three (3) legal standards must fail. Plurality opinions adopted by this Honorable Court in *Grutter v. Bollinger*, *supra* mandates the operational definition in those three (3) standards. The trial court's opinion fails to meet those three (3) standards and thus, is a failed attempt to comply with *Bakke*, *supra*, *Grutter*, *supra* and *Gratz*, *supra*.

More specifically, as to the third legal parameter established by the above cited cases, the standard for review is the strictness of judicial scrutiny. The race-conscious plan of the JCPS is not narrowly tailored. The Student Assignment Plan of the JCPS is nothing more than a hard-core, mechanized quota. If a race-conscious plan is a hard-core, mechanized quota, then it violates the Supreme Court's finding in *Gratz v. Bollinger*, *supra* and violates the Equal Protection Clause of the Constitution of the United States of America. "Racial classifications are too pernicious to permit any but the most exact connection between justification and classification." *Gratz*, *supra*, p. 259.

The race-conscious, hard-core, mechanical quota Student Assignment Plan of the JCPS seeks to fix a number of desirable minority students to insulate one group of applicants from another. For the Student Assignment Plan of the JCPS to be defined as anything other than a hard-core, mechanized quota, there must have been a finding by the trial court that Joshua Ryan McDonald was denied entrance into his neighborhood school for a reason other than he was

White. That simply is not the case. Race was the make or break test!

The JCPS is the only state actor who denigrates a 5-year-old's self-worth and self-esteem by comporting him to be color coded throughout his educational career. JCPS is the only state actor allowed to use race to dissipate the family unit by time and distance from home. JCPS should no longer be allowed to use race as the determining factor of educational outcome. If educational benefit is the true test of compelling interest, than JCPS fails their own test. Race, as the make or break test, culminates in the justification of perceived stereotypes as to all of our African American students in the public school systems of the United States. To embrace and accept the pivotal argument of the School Systems in support of their race-conscious student assignment plan, this Honorable Court must concede and/or agree that African American students in their own environment are worse off, worse off socially, worse off educationally and will be unable to integrate into a menial job in an increasingly diverse workforce. JCPS and the other public schools in our great nation promote the status quo and repudiate change. They should embrace it, for only then will each family/parent/student be able to control their own destiny.

". . . The judiciary is fully competent to make independent determinations concerning the existence of state action without the unnecessary and misleading assistance of

social scientists. . . ." *Missouri, et al v. Kalima Jenkins, et al*, 515 U.S. 70 (1995), p. 23.

CONCLUSION

Crystal Meredith in behalf of her son, Joshua, and all students similarly situated who attend the regular program within the Jefferson County Public Schools, seeks to have the Student Assignment Plan of the Jefferson County Public Schools declared unconstitutional and in violation of their equal protection rights pursuant to the Fourteenth Amendment of the Constitution of the United States of America.

Respectfully submitted,

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