CHAPTER 37 Education: Federal Statutes & Case Law

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I. Federal Statutes and Case Law

1899

***Cummings v. Board of Education of Richmond County* 175 U.S. 528**

Summary of Facts and Issues: African American taxpayers in Richmond County, Georgia, challenged the county's use of their taxes to fund high schools exclusively for white students, arguing it violated the Fourteenth Amendment.[1]

Impact of the Ruling: The Supreme Court rejected the challenge, claiming that there was no "evidence in the record" of "any desire or purpose . . . to discriminate against any of the colored school children[,]" and stated that the administration of state schools was a "matter belonging to the respective states," such that "any interference on the part of Federal authority . . . cannot be justified except in the case of a clear unmistakable disregard of [constitutional] rights."[2] This maintained the ability of states in the South and elsewhere to exclude African Americans from educational opportunities.

Subsequent History: This system of express racial exclusion and segregation in schools would eventually be ruled unconstitutional in *Brown v. Board of Education* (1954) 347 U.S. 483.

1927

***Gong Lum v. Rice* 275 U.S. 78**

Summary of Facts and Issues: In Rosedale, Mississippi, Gong Lum challenged a whites-only public high school's refusal to accept his daughter—who was of Chinese descent—due to her race.[3]

Impact of the Ruling: The Supreme Court rejected that challenge, affirming *Plessy v. Ferguson* (1896) 163 U.S. 537, and the idea that school segregation was legal so long as the state provided a school for all non-white people—whether Chinese American or African American.[4]

Subsequent History: This system of express racial exclusion and segregation in schools would eventually be ruled unconstitutional in *Brown v. Board of Education* (1954) 347 U.S. 483.

Nettie Hunt and her daughter Nickie sit on the steps of the U.S. Supreme Court. (1954)

1938

State of Missouri ex rel. Gaines v. Canada 305 U.S. 337

Summary of Facts and Issues: An African American man challenged Missouri's refusal to admit him to the state university's school of law, arguing that it violated the Fourteenth Amendment's equal protection clause.[5]

Impact of the Ruling: The Court ruled that where a state provides a law school for white students within its borders, then the Fourteenth Amendment's equal protection clause requires that it also provide a law school for African American students.[6] This ruling had the effect of requiring states to either admit African Americans into their law schools or to build a new law school of equal status for African Americans.

1948

Sipuel v. Board of Regents of University of Oklahoma 332 U.S. 631

Summary of Facts and Issues: An African American woman challenged the University of Oklahoma's refusal to admit her to its law school based on her race as a violation of the Fourteenth Amendment's equal protection clause, citing *State of Missouri ex rel. Gaines v. Canada* (1938) 305 U.S. 337.[7]

Impact of the Ruling: The Supreme Court agreed that the school's refusal to admit her due to race was unconstitutional.[8] The Supreme Court affirmed its decision in *State of Missouri ex rel. Gaines v. Canada* (1938) 305 U.S. 337, holding that under the Fourteenth Amendment's equal protection clause, the state must provide a law school education for African Americans, just as it does for any other group.[9]

Fisher v. Hurst 333 U.S. 147

Summary of Facts and Issues: Following the Supreme Court's decision in *Sipuel v. Board of Regents of University of Oklahoma* (1948) 332 U.S. 631, the case was remanded to the trial court with directions to issue an order consistent with the Court's ruling.[10] The trial court issued an order stating that, until Oklahoma establishes a separate but equal law school for African Americans, it must admit petitioner into the University of Oklahoma School of Law or refuse to enroll any applicants to the law school.[11] Ada Sipuel Fisher argued that the second part of the order was inconsistent with the Supreme Court's decision, and asked the Supreme Court for a writ of mandamus to force the trial court to act consistent with the Supreme Court's ruling.[12]

Impact of the Ruling: The Supreme Court denied Fisher's request for a writ, holding that the trial court's order was consistent with the Supreme Court's decision.[13] In doing so, the Court endorsed efforts to resist rulings requiring integration; it endorsed the possibility that states could refuse any students admission rather than accept the admission and integration of African Americans into the same schools. As the dissenting Justice Rutledge observed, "the equality required" in the Court's *Sipuel* decision "was equality in fact, not in legal fiction."[14] But the Court's decision did not enforce that equality in fact, as it permitted discriminating states to refuse integration by not providing any public services at all.

Subsequent History: The Court never reversed its decision in *Fisher*, and the course of action it endorsed—denying admissions to all, rather than admitting African Americans—would become the playbook for discriminatory states and communities to resist further laws or rulings requiring integration.[15]

1950

Sweatt v. Painter 339 U.S. 629

Summary of Facts and Issues: Sweatt, an African American man, was denied admission to the University of Texas Law School solely because of his race.[16] He challenged the denial as a violation of the Fourteenth Amendment's equal protection clause.[17] Though Texas eventually created a separate law school for African Americans during the litigation, Sweatt maintained that the separate law school for African Americans could not satisfy the equal protection clause because the separate school was not equal in quality to the University of Texas Law School.[18]

Impact of the Ruling: The Supreme Court ruled that the equal protection clause required Texas to admit Sweatt to the University of Texas Law School.[19] This case further undermined the doctrine of "separate but equal" from *Plessy v. Ferguson* (1896) 163 U.S. 537, acknowledging that the segregated schools for African Americans were, in fact, not equal to schools for white students. Nevertheless, the Supreme Court declined to reexamine the doctrine of "separate but equal" in its decision.[20]

McLaurin v. Oklahoma. State Regents for Higher Education 339 U.S. 637

Summary of Facts and Issues: After the Supreme Court's decisions in *Gaines v. Canada* (1938) 305 U.S. 337 and *Sipuel v. Board of Regents* (1948) 332 U.S. 631, McLaurin was admitted to University of Oklahoma—a white-only university—for a doctorate in education.[21] However, while enrolled, he was assigned to segregated classroom rows, library desks, and lunch tables, separated from the rest of other students.[22] He challenged this segregation as a violation of the equal protection clause.[23]

Impact of the Ruling: The Court ruled this treatment a violation of the equal protection clause.[24] Rejecting the state's arguments that these forms of separation and segregation were "nominal," the Court recognized that such segregation "sets McLaurin apart from the other students," and that "[s]uch restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession."[25]

Subsequent History: This case represented one of the several challenges to educational segregation that eventually led to the decision in *Brown v. Board of Education* (1954) 347 U.S. 483.

1952

Briggs v. Elliott 342 U.S. 350

Summary of Facts and Issues: African American school children in Clarendon County, South Carolina brought a suit challenging racial school segregation.[26] The district court held that the statute requiring segregation was valid but that the state had failed to provide equal school facilities for African American children; it thus ordered the state to provide equal facilities and to report within six months on actions taken.[27] The African American children challenged the district court's relief as inadequate, and the state filed its report while the appeal was pending.[28]

Impact of the Ruling: The Supreme Court declined to rule on their constitutional challenge, instead remanding the case to the district court to "be afforded the opportunity to take whatever action it may deem appropriate in light of that report."[29] As the dissenting justices observed, the state's report had no relevance to the constitutionality of segregation,[30] and the Court's ruling delayed its consideration of segregation's constitutionality.

1954

Brown v. Board of Education of Topeka, Shawnee County, Kansas 347 U.S. 483

Summary of Facts and Issues: African American children in Kansas, South Carolina, Virginia, and Delaware challenged racial school segregation as inherently unequal under the Fourteenth Amendment's equal protection clause.[31]

Impact of the Ruling: The United States Supreme Court overruled *Plessy v. Ferguson* (1896) 163 U.S. 537, and its doctrine of "separate but equal," and declared racial school segregation a violation of the equal protection clause.[32]

The Court held that racial segregation in public schools "has a detrimental effect upon the colored children," and "[t]he impact is greater when it has the sanction of the law[.]"[33] Segregation stamps a "sense of inferiority" which sabotages "the motivation of a child to learn[.]"[34] Thus, the Court ruled segregation "inherently unequal" under the equal protection clause, though the Court stated that the precise court-ordered remedy "presents problems of considerable complexity," and ordered a subsequent hearing the next year to decide the remedy.[35]

Subsequent History: In its subsequent rehearing to decide appropriate remedies, the Court, in *Brown v. Board of Education II,* instructed states to "make a prompt and reasonable start" toward compliance and to end segregation with "all deliberate speed."[36] Decades of protracted litigation would follow, as states resisted or delayed efforts to integrate, and African Americans continued to challenge these policies as unconstitutional in cases such as *Milliken v. Bradley* (1974) 418 U.S. 717. Other suits also raised the challenge of how schools would be integrated, including through bussing programs.[37] In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, the Supreme Court declared school assignment and bussing programs that expressly relied on race—for the purpose of ensuring racial integration in schools—a violation of the equal protection clause.

Bolling v. Sharpe 347 U.S. 497

Summary of Facts and Issues: African American children filed a class action challenging school segregation within the District of Columbia as a violation of the due process clause of the Fifth Amendment.[38] This case was a companion case, consolidated with *Brown v. Board of Education* (1954) 347 U.S. 483, and both cases were decided the same day.

Impact of the Ruling: The Court ruled that racial segregation in public schools violated the Fifth Amendment's due process clause.[39] The Court noted that even though the Fifth Amendment does not contain an equal protection provision, it does prohibit the arbitrary deprivation of liberty without due process.[40] The Court concluded that racial segregation amounted to such a denial "not reasonably related to any proper governmental objective[.]"[41] The Court also observed that if the Fourteenth Amendment prohibited states from racially segregating schools, "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government."[42]

Subsequent History: Though *Bolling* and its companion case, *Brown v. Board of Education* (1954) 347 U.S. 483, sought the end of racial segregation in schools, subsequent cases discussed throughout this chapter illustrate courts' struggle to enforce that mandate and the Supreme Court's eventual decisions retreating from the efforts to oversee desegregation in cases like *Board of Education of Oklahoma City Public Schools, Independent School Dist. No. 89 v. Dowell* (1991) 498 U.S. 237.

1958

Cooper v. Aaron 358 U.S. 1

Summary of Facts and Issues: After the Supreme Court's decision in *Brown v. Board of Education* (1954) 347 U.S. 4831961, the superintendent and school board of Little Rock, Arkansas, created a desegregation plan to admit African American students to previously all-white schools.[43] However, the state enacted a constitutional amendment commanding the legislature to oppose the Court's desegregation orders, and in the fall of 1957 the Governor of Arkansas dispatched the state's national guard to Little Rock, Arkansas, where the guard "stood shoulder to shoulder . . . and thereby forcibly prevented" African American students from attending the local high school.[44] The United States filed suit, and the district court issued an injunction enjoining the Arkansas governor and state National Guard from preventing African American students from attending the school.[45] The state National Guard withdrew, but when African American children tried to attend the school, Little Rock Police Department and Arkansas State Police officers had to remove the children due to difficulty controlling the hostile white mob that gathered at the school.[46] The President then dispatched federal troops to the high school to allow the African American students to attend throughout the year.[47]

The superintendent and school board of the school district filed a petition seeking to postpone their segregation plan for two and a half years due to the extreme hostility of both the public, the Arkansas Governor, and the state legislature.[48]

Impact of the Ruling: The Court rejected the petition, ruling that "constitutional rights" are "not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature."[49] In doing so, the Court reaffirmed that the school board—along with the governor and legislature—were bound by the federal constitution and the Supreme Court's rulings in *Brown* to make the "constitutional ideal of equal justice under law" a "living truth."[50]

Board of Education of City School District of City of New Rochelle v. Taylor 82 S.Ct. 10

Summary of Facts and Issues: The superintendent and school board of the New Rochelle School District in New York petitioned the Supreme Court to stay a court judgment requiring the school district to immediately desegregate its public elementary school.[51]

Impact of the Ruling: The Supreme Court rejected the petition to stay the desegregation order. The Court held that there was no basis for justifying a stay of the desegregation order, noting the district court's finding that the school board had "deliberately created and purposely maintained" a racially segregated elementary school.[52]

1963

Goss v. Board of Education of City of Knoxville, Tennessee 373 U.S. 683

Summary of Facts and Issues: African American students and their parents brought a class action suit against the public school systems of Knoxville and Davidson County, Tennessee, challenging several aspects of the schools' desegregation plans, including provisions that permitted students to transfer, upon request, from a desegregated school in which he or she was the racial minority, to a school in which he or she was in the racial majority.[53]

Impact of the Ruling: Limiting review solely to the school transfer provision in the school desegregation plans, the Court held that transfer provision violated the Fourteenth Amendment.[54] The Court noted: "It is readily apparent that the transfer system proposed lends itself to perpetuation of segregation," and "no official transfer plan or provision of which racial segregation is the inevitable consequence may stand under the Fourteenth Amendment."[55]

Subsequent History: The Court reaffirmed *Goss* in *Monroe v. Board of Commissioners of City of Jackson, Tennessee* (1968) 391 U.S. 450, 459-460, when ruling that free transfer policies, to the extent they furthered segregation, were inadequate to satisfy the desegregation requirements of the Fourteenth Amendment and *Brown v. Board of Education* (1954) 347 U.S. 483.

1968

Green v. County School Board of New Kent County 391 U.S. 430

Summary of Facts and Issues: African American students challenged a Virginia statute that divested local school boards of the authority to assign children to particular schools and placed that power in a state board.[56] After the suit was filed, the state adopted a "freedom-of-choice" plan that allowed each student to choose their school or be assigned to the one previously attended if they did not so choose.[57]

Impact of the Ruling: The Supreme Court ruled the "freedom-of-choice" plan inadequate to remedy segregation.[58] In three years of operation, "not a single white child" had chosen to attend the all-African American school, and 85 percent of African Americans in the county still attended the all-African American school.[59] In ruling the plan inadequate, the Court noted that the county's "first step" to desegregate "did not come until some 11

years after *Brown I* was decided," and "[s]uch delays are no longer tolerable."[60]

Subsequent History: Subsequent cases, like *Raney v. Board of Education of Gould School District* (1968) 391 U.S. 443, 447-449, would reaffirm that school "freedom of choice" plans were inadequate to combat school segregation.

Raney v. Board of Ed. of Gould School Dist. 391 U.S. 443

Summary of Facts and Issues: Following *Brown v. Board of Education*, an Arkansas county instituted a "freedom of choice" plan that resulted in racially segregated schools; not a single white student sought to enroll in the all-African American school, and over 85 percent of African American children in the school system attended the all-African American school.[61] Several African American students were denied applications to transfer to the formerly all-white school and brought suit, challenging the school system as unconstitutional.[62]

Impact of the Ruling: The Court held the freedom of choice system inadequate to remedy school segregation.[63] Quoting the Court's decision in the related case *Green v. County School Board of New Kent County* (1968) 391 U.S. 430, the Court observed that "[r]ather than further the dismantling" of segregation, the freedom of choice plan "has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board."[64] The Court ordered the board to formulate a new plan that promised to "realistically" end school segregation.[65]

Monroe v. Bd. of Commissioners of City of Jackson 391 U.S. 450

Summary of Facts and Issues: After a court order to desegregate schools in Jackson, Mississippi, the local school board created a desegregation plan, drawing new school zones and including a transfer provision that allowed any student to transfer to another school with capacity.[66] African American students challenged the provisions, arguing that the new school zones were racially gerrymandered and that the transfer provision maintained and perpetuated segregation.[67]

Impact of the Ruling: The Supreme Court ruled the desegregation plan unconstitutional under the Fourteenth Amendment.[68] Citing the district court's findings, the Court observed that "[b]ecause the homes of Negro children are concentrated in certain areas of the city, a plan of unitary zoning, even if prepared without consideration of race," will result in segregation.[69] The Court further held that the "free transfer" policy exacerbated (rather than remedied) school segregation, and that the school board's intent to resist desegregation was "evident from its long delay in making any effort whatsoever to desegregate, and the deliberately discriminatory manner in which the Board administered the plan," including that the board granted transfer requests for white students but not African American students.[70]

Subsequent History: Subsequent cases, like *North Carolina State Board of Education v. Swann* (1971) 402 U.S. 43, 45-47, would clarify that school districts would often need to take race-conscious measures to demonstrate adequate efforts to rectify racial segregation. Decades later, however, in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, 710-711, 747-748, the Supreme Court ruled that school districts could not use school assignment and transfer policies based on the individual race of students if that school district had not had a former racial segregation policy.

1969

United States v. Montgomery County Board of Education 395 U.S. 225

Summary of Facts and Issue: A federal district court had ordered the Montgomery County Board of Education to desegregate school faculty and staff in the 1966-1967 school year.[71] Finding the board's failure to make adequate progress, in 1968, the court ordered the board to have a certain ratio of white to African American faculty members in each public school.[72] The board appealed the court's order.[73]

Impact of the Ruling: The Supreme Court affirmed the district court's order as a plan that "promises realistically to work" to secure prompt desegregation.[74] The Court also rejected the court of appeals' decision to strike the ratio requirements from the district court order, as a less specific order would lose its efficacy, and the record showed that the district court diligently attempted to tailor its orders to avoid inflicting unnecessary burdens on the county.[75]

Subsequent History: In *Regents of the University of California v. Bakke* (1978) 438 U.S. 265, the Court struck down the university's special admissions program under the Fourteenth Amendment, but held that the state "has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin."[76] In *Gratz v. Bollinger* (2003) 539 U.S. 244, the Court rejected the argument that diversity cannot constitute a compelling state interest, but held that the university's use of race in its current freshman admissions policy was not narrowly tailored to achieve its asserted interest in diversity.[77]

1970

Turner v. Fouche 396 U.S. 346

Summary of Facts and Issues: An African American schoolchild and her father challenged the county's system for selecting school board members, both on its face and as applied.[78] In Taliaferro County, Georgia, the county school board members were selected by a grand jury.[79] The grand jury's members, in turn, were drawn from a jury list selected by a six-member county jury commission.[80] Under state constitutional and statutory provisions, jury commissioners were given discretion to eliminate from grand jury service anyone they found not "upright" or "intelligent."[81] Additionally, the state required a citizen to own real property to be eligible to serve on the board.[82]

Impact of the Ruling: The Supreme Court rejected the facial challenge to the appointment scheme, stating that the system "is not inherently unfair" as the "challenged provisions do not refer to race[.]"[83] However, the Court agreed that the property qualification and the discretionary disqualification system, as applied, violated the equal protection clause.[84] As for the property qualification, the Court ruled it "invidious discrimination" because it presented an arbitrary limitation that bore no connection to educational qualifications.[85] As for the application of the discretionary disqualifications, the Court ruled it a violation of equal protection because there was "a substantial disparity" between the percentage of African American residents in the county and on the jury list, and "the disparity originated, at least in part . . . in the selection process where the jury commissioners invoked their subjective judgment . . . ."[86] For example, 96 percent of those rejected as unintelligent or not upright were African American.[87]

Subsequent History: The Court reaffirmed that a real property ownership requirement to serve on a government board is an unconstitutional limitation, borne of invidious discrimination, in *Quinn v. Millsap* (1989) 491 U.S. 95, 106-107. The Court also acknowledged the importance of statistical disparities as a basis for race-conscious remedies in cases such as *City of Richmond v. J.A. Croson Co.* (1989) 488 U.S. 469, 503.

1971

Davis v. Bd. of School Comrs. of Mobile County 402 U.S. 33

Summary of Facts and Issues: Petitioners challenged the school plan for Mobile County, Alabama, as inadequate to redress racial segregation.[88] The plan treated the eastern part of the metropolitan area, which was separated from the rest of the metropolitan area by a major highway, as isolated from the rest of the school system, and the petitioners challenged the plan as giving inadequate consideration to the possible use of bus transportation and split zoning.[89] Ninety-four percent of the area's African American students lived in the eastern section, and schools in the eastern section were 65 percent African American and 35 percent white, with nine elementary schools in the eastern section attended by 64 percent of all African American elementary school pupils in the metropolitan areas, and having over 90 percent African American enrollment, and over half of African American junior and senior high school students attending all-African American or nearly all-African American schools.[90]

Impact of the Ruling: The Court agreed that Mobile's plan was inadequate, stating that "neighborhood school zoning" alone is not "per se adequate to meet the remedial responsibilities of local boards," and that "the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation."[91] The Court observed that "inadequate consideration was given to the possible use of bus transportation and split zoning."[92]

Subsequent History: In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, 747-748, the Supreme Court declared school assignment and bussing programs that expressly relied on race—for the purpose of ensuring racial diversity in schools—a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

McDaniel v. Barresi 402 U.S. 39

Summary of Facts and Issues: White parents challenged the Clarke County, Georgia school desegregation plan and its provisions assigning students to elementary schools.[93] Specifically, the desegregation plan relied upon geographic attendance zones, but also enabled students in five heavily African American zones to attend schools in other attendance zones to ensure the integration of schools—including free transportation where a student had to travel more than 1.5 miles.[94] The parents claimed that the desegregation plan's treatment of students based on their race violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution and title IV of the Civil Rights Act of 1964.[95]

Impact of the Ruling: The Court upheld the desegregation plan as consistent with both the equal protection clause and title IV.[96] It stated that the school board "properly took into account the race of its elementary school children in drawing attendance lines" as "part of its affirmative duty to" end segregation, and that "[a]ny other approach would freeze the status quo that is the very target of all desegregation processes."[97] In so holding, the

Court recognized that race-conscious remedies would be necessary to undo racial discrimination.[98] The Court also noted that the petitioners cited portions of title IV that applied only to federal officials that had no relevance to this suit.[99]

Subsequent History: In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, 747-748, the Supreme Court declared school assignment and bussing programs that expressly relied on race—for the purpose of ensuring racial diversity in schools—a violation of the equal protection clause.

North Carolina State Bd. of Ed. v. Swann 402 U.S. 43

Summary of Facts and Issues: North Carolina enacted the Anti-Busing Law, which prohibited the consideration of a student's race in school assignments or bussing for the purpose of ensuring a racial balance or ratio in the state's public schools.[100] Plaintiffs challenged the law as unconstitutional under the Fourteenth Amendment's equal protection clause.[101]

Impact of the Ruling: The Court ruled the Anti-Busing Law unconstitutional.[102] It recognized that the statute "exploits an apparently neutral form" of "color blind" requirements that in effect "would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing [segregation]."[103] Just as "the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy."[104] Similarly, the Court observed that while "the Constitution does not compel any particular degree of racial balance or mixing," when "past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy," and that an "absolute prohibition against use of such a device" contravenes the Court's commands that "all reasonable methods be available" to remedy discrimination.[105]

Swann v. Charlotte-Mecklenberg Bd. of Ed. 402 U.S. 1

Summary of Facts and Issues: The Charlotte-Mecklenberg school board challenged a federal district court desegregation plan.[106] In addressing the challenge, the Supreme Court addressed four questions: (1) to what extent "racial balance or racial quotas may be used" to remedy a previously segregated system; (2) whether "every all-[African American] and all-white school must be eliminated" before desegregation is achieved; (3) "what the limits are, if any, on the rearrangement of school districts and attendance zones" as a remedial measure; and (4) what the limits are, if any, on the use of transportation to remedy segregation.[107]

Impact of the Ruling: The Court upheld the court-ordered desegregation plan. First, it observed that the district court's use of "mathematical ratios" as "a starting point in the process of shaping a remedy, rather than an inflexible requirement," was permissible.[108] Second, it upheld the court-ordered plan over the school board's alternative, declaring a presumption that school board plans that included schools "substantially disproportionate in their racial composition"—or are "all or predominantly of one race"—are inadequate to remedy segregation.[109] In doing so, the Court also observed that an "optional majority-to-minority transfer provision has long been recognized as a useful part of every desegregation plan."[110] Third, the Court noted that courts had the power to order the creation of non-contiguous or non-compact school attendance zones to remedy segregation, as "'[r]acially neutral' assignment plans . . . may be inadequate . . . to counteract the continuing effects of past school segregation."[111] Fourth, the Court held that "bus transportation" may be used "as one tool of school desegregation," though the Court noted that courts should consider practical considerations, such as time or travel distance.[112]

Subsequent History: In *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) 551 U.S. 701, 747-748, the Supreme Court declared school assignment and bussing programs that expressly relied on race—for the purpose of ensuring racial integration in schools—a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

1972

Wright v. Council of City of Emporia 407 U.S. 451

Summary of Facts and Issues: The City of Emporia had long contracted to have its schools operated as part of Greenville County's school system.[113] But two weeks after a federal court ordered a desegregation plan to apply to Greensville's schools, the City of Emporia announced its intent to operate a separate school system.[114] Plaintiffs sought an injunction to prevent Emporia from withdrawing its children from county schools on the grounds that the separate school system would interfere with the court's Greensville desegregation order.[115]

Impact of the Ruling: The Court reversed the court of appeals' decision and affirmed the district court's decision to enjoin the City of Emporia from forming a separate school system, as doing so would harm the desegregation of the county's schools.[116] The Court observed that Emporia's separate school system would create a "substantial increase in the proportion of whites in the schools attended by city residents," that the two formerly

all-white schools (with better facilities and equipment than the formerly all-African American schools in the surrounding county) had been located within Emporia, and that Emporia announced its decision two weeks after the court's desegregation order—admitting that the decision to create a separate school system came in response to the desegregation order.[117]

1973

Keyes v. School Dist. No. 1, Denver 413 U.S. 189

Summary of Facts and Issues: Plaintiffs challenged Denver's school system—which "ha[d] never been operated under a constitutional or statutory provision that mandated or permitted racial segregation"— as having implemented a system of de facto segregation sufficient to require a court-ordered desegregation plan.[118]

Impact of the Ruling: The Court held that the plaintiffs had presented a prima facie case of racial segregation in Denver's school system sufficient to justify a court-ordered desegregation plan.[119] It noted the district court's findings that Denver's school board policies "'show an undeviating purpose to isolate [African American] students' in segregated schools 'while preserving the Anglo character of (other) schools.'"[120] Though the discriminatory policies were targeted at Park Hill schools—only a portion of the overall Denver system, the Court rejected the idea that "a substantial portion of the school system can be viewed in isolation from the rest of the district."[121] The Court stated that a finding of intentionally segregative school board actions in a meaningful portion of a school system "creates a presumption" of unlawful segregation requiring a court remedy.[122]

Subsequent History: In *Milliken v. Bradley* (1974) 418 U.S. 717, 752-753 and *Missouri v. Jenkins* (1995) 515 U.S. 70, 102 (*Jenkins II*), the Court would sharply limit its view of segregation to the boundaries of single districts, rejecting remedies that recognized a need to address segregation between school districts as well.

1974

Bob Jones University v. Simon 416 U.S. 725

Summary of Facts and Issues: Bob Jones University was a private university that taught fundamentalist religious beliefs, including the belief that "God intended segregation of the races."[123] In 1970, the IRS announced it would no longer give 501(c)(3) tax-exempt status to private schools with racially discriminatory admissions policies.[124] When the IRS proceeded to commence administrative proceedings to revoke the university's tax-exempt status, the university filed suit seeking an injunction to prevent the IRS from revoking its status, arguing that the IRS's action was beyond its authority and a violation of the university's free exercise, free association, due process, and equal protection rights.[125]

Impact of the Ruling: The Supreme Court held that the Anti-Injunction Act—which barred any lawsuit "for the purpose of restraining the assessment or collection of any tax"—barred the university's lawsuit.[126]

Milliken v. Bradley 418 U.S. 717

Summary of Facts and Issues: Plaintiffs brought a class action suit alleging that the Detroit public school system was racially segregated as a result of the official policies and actions of the state and city officials, and seeking a court-ordered plan to eliminate segregation.[127] Here, the district court determined that a remedy limited to Detroit would fail to end segregation, as the segregation fell between districts, rather than within a single district.[128] The issue in this case was whether—when confronted with segregation between school districts—a federal court could order a desegregation plan cutting across multiple different school districts.[129]

Impact of the Ruling: The Supreme Court ruled that the district court lacked the authority to fashion a desegregation plan beyond the Detroit school district to extend to the suburbs surrounding it.[130] Doing so ignored the way in which segregation cuts across district lines, and marked the Supreme Court's retreat from the commitment to desegregating schools that it articulated in *Brown v. Board of Education* (1954) 347 U.S. 483, 495.

Subsequent History: In *Missouri v. Jenkins* (1995) 515 U.S. 70, 102 (*Jenkins II*), the Court would again constrain its view of segregation to the boundaries of a single district, rejecting remedies that recognized a need to address segregation between school districts as well.

1976

Runyon v. McCrary 427 U.S. 160

Summary of Facts and Issues: Parents of African American children brought suit after their children were denied admission to private schools based solely on race, arguing that such denial violated 42 United States Code section 1981's requirement that all persons "have the same right in every State . . . to make and enforce contracts . . . as is enjoyed by white citizens."[131]

Impact of the Ruling: The Court held that section 1981 prohibits a private school from denying admission to a student because of his or her race.[132] The Court also held that section 1981, as applied here, did not violate the rights of free association or privacy, or a parent's right to direct the education of their children.[133]

Pasadena City Bd. of Education v. Spangler 427 U.S. 424

Summary of Facts and Issues: Following a lawsuit by parents and students seeking to end unconstitutional school segregation in Pasadena, California, a federal court issued an injunction ordering Pasadena, in 1970, to implement a desegregation plan to ensure that there would be no school "with a majority of any minority students."[134] Four years later, school officials filed suit to eliminate the "no majority" requirement and end the court injunction.[135]

Impact of the Ruling: The Court granted the petition and dissolved the court desegregation plan.[136] Because the school district had accomplished the "no majority" requirement in its first year of implementing the plan, the Court ruled that the district court had no further power to police the district's desegregation efforts or require "annual readjustment," even though the district failed to meet that court's requirement in each of the three years after, and even though it "may well be that petitioners have not yet totally achieved" desegregation.[137] This decision further limited the ability of courts to ensure that school districts fully remedied discrimination.

1978

Regents of University of California v. Bakke 438 U.S. 265

Summary of Facts and Issues: A white person who was denied admission to the University of California at Davis Medical School challenged its admissions program, which offered a "special admissions program" for disadvantaged minority students, as a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.[138]

Impact of the Ruling: The Court held that UC Davis's special program violated the equal protection clause.[139] Justice Powell's plurality opinion held that any program using racial classifications, including affirmative action, should be subject to the same strict scrutiny used to strike down invidious statutes.[140] While Justice Powell recognized that race-conscious remedies may be appropriate to remedy discrimination, the opinion determined that no court or legislative body had made findings of discrimination to justify this particular program.[141] And while Justice Powell recognized that educational diversity may represent a compelling interest that could justify a race-conscious program, in this case the program lacked the narrow tailoring necessary to achieve the educational benefits of diversity.[142] Justice Powell suggested, however, that the consideration of race as a "plus factor" might be a constitutionally permissible means of achieving educational diversity.[143]

Subsequent History: The Supreme Court adopted Justice Powell's opinion in *Bakke*—recognizing racial diversity as a compelling interest in education, to be achieved by treating race as one "plus factor" among many—in *Grutter v. Bollinger* (2003) 539 U.S. 306.

1979

Columbus Board of Education v. Penick 443 U.S. 449

Summary of Facts and Issues: In 1973, African American students in the Columbus, Ohio school system alleged that the Columbus Board of Education and its officials created and maintained racial segregation in the district's public schools, in violation of the Fourteenth Amendment to the U.S. Constitution.[144] The district court agreed, and ordered a desegregation plan that included system wide changes, including bussing.[145]

Impact of the Ruling: The Court affirmed the district court's findings that Columbus had taken actions to officially create and maintain segregated schools in its district, even if "segregated schooling was not commanded by state law."[146] The Court also upheld a lower court's order mandating "systemwide" remedies throughout the school district, including a "massive [bus] transportation program," as necessary to respond to "purposefully segregative practices with current, systemwide impact."[147]

Dayton Board of Education v. Brinkman 443 U.S. 526

Summary of Facts and Issues: Students in the Dayton, Ohio, school system, through their parents, filed suit in 1972, alleging that the Dayton Board of Education, the State Board of Education, and various local and state officials were operating a racially segregated school system in violation of the equal protection clause of the Fourteenth Amendment.[148]

Impact of the Ruling: The Court held that the defendants created and maintained a segregated school system, both in 1954 and in 1972—through policies like optional attendance zones and the district's pattern of school construction and site selection, with clearly discriminatory purposes—which required the school district to affirmatively undo the desegregation.[149] The Court also affirmed the court of appeals' citation of the school board's total failure to fulfill its affirmative duty—and its policies that resulted in increased segregation—as further evidence of the system wide discrimination in the district.[150] The Court held that the district had conducted purposeful discrimination in a sufficiently substantial part of a school system to provide sufficient basis for finding system wide discrimination, requiring a remedy of similar scope.[151]

1982

Patsy v. Bd. of Regents of State of Fla. 457 U.S. 496

Summary of Facts and Issues: An applicant for employment with a state university brought suit under 42 U.S.C. section 1983, alleging that the employer had denied her employment opportunities solely on the basis of her race and sex.[152] The district court dismissed her complaint for failure to exhaust available state administrative remedies.[153]

Impact of the Ruling: The Court ruled that exhaustion of state administrative remedies was not a prerequisite to an action under 42 U.S.C. section 1983, based on prior Supreme Court precedent rejecting an exhaustion requirement, as well as the act's purpose, legislative history, historical context, and text.[154] As a result, the Court lessened the burden of a plaintiff seeking to bring a section 1983 case on the basis of race or sex.

Subsequent History: In **Felder v. Casey (1988) 487 U.S. 131, 153,** the Court extended *Patsy* to invalidate a state court procedural rule that had the effect of limiting plaintiffs from vindicating their federal constitutional rights in state court.

Crawford v. L.A. Bd. of Ed. 458 U.S. 527

Summary of Facts and Issues: In 1979, California voters ratified Proposition 1, an amendment to the due process and equal protection clauses of the California Constitution that restricted the power of state courts to impose pupil school reassignment and transportation to integrate schools.[155] Before the proposition passed, California state courts had been able to mandate desegregation via busing under the state Constitution.[156] Proposition 1 brought the power of state courts into alignment with the power of federal courts.[157] Petitioners argued that Proposition 1 used an explicit racial classification that limited the remedies available to African American students seeking to desegregate schools.[158]

Impact of the Ruling: The Supreme Court upheld the amendment to the California Constitution barring the state judiciary from imposing busing to integrate schools.[159] The Court concluded that Proposition 1 did not use a racial classification and the previous standard required by California went beyond what was required by the Fourteenth Amendment.[160]

1984

Grove City Coll. v. Bell 465 U.S. 555

Summary of Facts and Issues: A private college and four of its students filed suit challenging the Department of Education's termination of students' financial assistance based on the college's failure to execute an assurance of compliance with title IX, which prohibited sex discrimination in any educational program receiving federal financial assistance.[161]

Impact of the Ruling: The Court ruled: (1) the college was subject to the statute prohibiting sex discrimination in programs receiving federal financial assistance where some of its students received basic educational opportunity grants, even though the college did not receive any direct federal financial assistance, and (2) the assurance of compliance did not require every part of the college to comply with title IX, only the specific educational program which received federal financial assistance (i.e., the financial aid program).[162]

Subsequent History: In March 1988, Congress enacted the Civil Rights Act of 1987—a part of the act amended title IX to override the Supreme Court's ruling in *Grove* and broaden the application of title IX (and title VI) to the entirety of the educational institution that receives federal funding and not just the specific program that receives it.[163]

1986

Bazemore v. Friday 478 U.S. 385

Summary of Facts and Issues: African American plaintiffs alleged racial discrimination in employment and the provision of services by the North Carolina Agricultural Extension Service, a division of the School of Agriculture and Life Sciences at North Carolina State University.[164] The Plaintiffs alleged discrimination through both the Extension Service's discriminatory pay to African American, as opposed to white, participants, as well as the Extension Service's failure to desegregate the clubs it had established to educate members in home economics and other practical skills.[165]

Impact of the Ruling: The Court held that the lower courts had erred by rejecting plaintiffs' proof of discrimination through statistical disparities in pay.[166] However, the Court rejected the claim that the Extension Service discriminated through the racial segregation in its clubs, because the service had ended its segregated club policy and opened any club to any person, even if the clubs remained racially segregated in fact.[167]

1990

Missouri v. Jenkins 495 U.S. 33

Jenkins I

Summary of Facts and Issues: The Kansas City School District and a group of students sued Missouri for maintaining a segregated school system in the Kansas City metropolitan area.[168] The district court found that the school district and state had maintained a segregated

school system, including substandard educational services to its African American students.[169] The district court issued several desegregation orders, including the financing necessary to implement those remedies.[170] When the district court observed that state law prevented the district from raising property taxes to pay for the desegregation efforts, it first enjoined that law to allow the district to raise additional money to fund the desegregation efforts.[171] When the school district failed to convince voters to approve a tax increase (or secure funding elsewhere), the court eventually issued an injunction raising the school district property's taxes to fund the desegregation efforts.[172]

Impact of the Ruling: The Supreme Court held that the district court lacked the authority to directly order increased taxes; nevertheless, the Court declared that the district court had the power to issue an order authorizing or requiring the school district itself to raise property taxes.[173] The Court reasoned that this approach "protects the function of" local government institutions while also "plac[ing] the responsibility for solutions to the problems of segregation upon those who have themselves created the problems."[174]

Subsequent History: The case would return to the Supreme Court in *Missouri v. Jenkins* (1995) 515 U.S. 70, 100-101 (*Jenkins II*), where the Supreme Court would hold that the additional remedies ordered by the district court went beyond the court's remedial authority.

1991

Bd. of Education of Okla. City Public Schools, Independent School Dist. No. 89 v. Dowell 498 U.S. 237

Summary of Facts and Issues: In 1963, a federal court issued a desegregation order to end racial segregation in Oklahoma City's public schools.[175] In 1977, the court declared that the desegregation plan had achieved "substantial compliance" and closed the case.[176] In 1985, parents of African American children sought to reactivate the court's desegregation order, arguing that the school district had not eliminated desegregation, and that the school board's student reassignment plan based on neighborhoods would cause schools to return to being primarily one-race schools, reproducing segregation.[177]

Impact of the Ruling: The Court held that the district court could properly end its desegregation order if it had found the school district to have previously complied with the order.[178] It held that federal supervision was "intended as a temporary measure to remedy past desegregation" and was "not intended to operate in perpetuity."[179] The Court ruled it proper to dissolve the desegregation order if the school district had complied with it, and remanded for the district court to decide whether the school board made a sufficient showing of compliance.[180] This decision opened the door for courts to withdraw or dissolve the desegregation orders used throughout the country to end segregation in schools.

1992

Freeman v. Pitts 503 U.S. 467

Summary of Facts and Issues: DeKalb County, Georgia, had been subject to a court-ordered desegregation plan since 1969.[181] In 1986, the county school system filed a motion to end the court-supervised plan, seeking a declaration that the school district had ended segregation.[182] Though the district court observed that the school district had largely ended segregation with regard to student assignments, transportation, physical facilities, and extracurricular activities, ending its desegregation orders with respect to those elements, the court declined to end its supervision of desegregation in faculty assignments and resource allocation, including the quality of education offered to white residents versus African Americans.[183]

Impact of the Ruling: The Court affirmed that a federal court in a school desegregation case has discretion to order an incremental or partial withdrawal of its supervision and control before full compliance has been achieved in every area of school operations.[184] This ruling gave courts further discretion to withdraw their supervision of desegregation efforts.

U.S. v. Fordice 505 U.S. 717

Summary of Facts and Issues: In 1975, African American citizens filed suit alleging that Mississippi had maintained a racially segregated university system.[185] After the lawsuit was filed, the parties attempted for 12 years to voluntarily end segregation.[186] By the mid-1980s, more than 99 percent of the state's white students were enrolled at five state universities, and the student bodies at these universities averaged between 80 and 91 percent white.[187] The case proceeded to trial in 1987 to determine whether Mississippi had met its affirmative duty to dismantle its segregated university system.[188]

Impact of the Ruling: The Court ruled that Mississippi implementing "race-neutral" and "free choice" policies (that gave any student the "real freedom" to choose the university they attended) were "not enough" to meet its affirmative duty to dismantle segregation.[189] Even where students have "free choice," that choice may be influenced by "state action that is traceable to the State's prior *de jure* segregation," such as policies "influencing student enrollment decisions or . . . fostering segregation in other facets of the university system."[190] In other words, a segregated school system must do more than end the formal policy of segregation to remedy

that discrimination; it must examine other lingering aspects of the school system that contribute to or perpetuate racial segregation among schools.

1995

Missouri v. Jenkins 515 U.S. 70
Jenkins II

Summary of Facts and Issues: This case arose from the same set of facts as *Jenkins I*, described earlier in this chapter.[191] After that case, Missouri challenged the district court's subsequent orders requiring the state to increase school staff salaries within the Kansas City School District and to continue funding remedial quality education programs.[192]

Impact of the Ruling: The Supreme Court held that the ordered remedies went beyond the court's remedial authority.[193] The Court viewed both the salary increases and funding for remedial quality education programs as seeking to redress racial disparities in school populations through an inter-district tool, by seeking to attract students from surrounding districts to correct racial imbalances rather than a tool using means focused solely within the district where the court identified segregation.[194] This decision further limited the ability of courts to redress racial segregation in schools.

2003

Gratz v. Bollinger 539 U.S. 244

Summary of Facts and Issues: White applicants rejected by the University of Michigan filed suit, arguing that the university's use of racial affirmative action in undergraduate admissions violated the equal protection clause.[195] The University of Michigan used a point system to grade and admit applicants, and automatically assigned bonus points to applicants of a minority race.[196]

Impact of the Ruling: The Court struck down the University of Michigan's mechanical points system as a violation of the equal protection clause.[197] The Court harkened back to *Regents of University of California v. Bakke*, declaring that a rigid and "decisive" racial preference denied applicants individual consideration, making it unconstitutional.[198]

Grutter v. Bollinger 539 U.S. 306

Summary of Facts and Issues: A white applicant denied admission to the University of Michigan Law School challenged the law school's admissions process, which considered racial diversity as a one of many factors in favor of admission, as a violation of title VI and the equal protection clause.[199]

Impact of the Ruling: The Supreme Court rejected the challenge, holding that a school could consider racial diversity as one soft factor among many in deciding whether to admit applicants.[200] The Court endorsed Justice Powell's reasoning in *Bakke*, observing that achieving educational diversity in universities represented a compelling state interest[201] and that consideration of race as one soft factor among many was a flexible, non-mechanical way to achieve that interest while still providing "individualized consideration" to each applicant.[202]

2007

Parents Involved in Community Schools v. Seattle School Dist. No. 1 551 U.S. 701

Summary of Facts and Issues: A Seattle school district adopted a school assignment plan allowing students to apply to whichever district high school they wished to attend, ranking their schools in order of preference.[203] If too many students listed the same school as their first choice, the district used "tiebreakers," including the racial composition of the particular school and the race of the individual student, breaking the tie in favor of admitting the student if doing so would bring the racial balance of the school closer to the district's overall racial balance.[204] A nonprofit organization comprised of parents challenged the school assignment system as a violation of the equal protection clause.[205]

Impact of the Ruling: In a plurality opinion, the Court held that the school assignment system violated the equal protection clause.[206] The Court first observed that the school district did not defend its program as remedying discrimination, as Seattle public schools had not been segregated by law or subject to court-ordered desegregation decrees.[207] The Court then rejected the school district's argument that the program was narrowly tailored to achieve a compelling interest in educational diversity.[208] The Court declared that the program was not narrowly tailored because the school district's plan made race a "decisive" factor when considered as a tiebreaker, rather than "one factor weighed with others."[209] Additionally, the Court suggested that the compelling interest in educational diversity that it recognized in *Grutter* might be limited to the "unique context of higher education."[210]

2014

Schuette v. Coalition to Defend Affirmative Action 572 U.S. 291

Summary of Facts and Issues: In 2006, Michigan voters approved a ballot measure prohibiting race-based preferences in state university enrollment.[211] A coalition of groups challenged the measure, and the lower court

agreed, ruling that the issue of racial preferences in admissions could not be regulated by voter initiative since it divested authority from universities in a way that burdened minority interests.[212]

Impact of Ruling: The United States Supreme Court upheld the affirmative action prohibition. Central to its holding was the notion that voters were authorized to make decisions regarding affirmative action policies, and that the federal judiciary could not (and should not) intrude on that decision-making process.[213] Ultimately, the ruling opened the door for other states to pass similar measures barring affirmative action.

2016

Fisher v. Univ. of Texas 579 U.S. 365

Summary of Facts and Issues: A white applicant denied admission to the University of Texas at Austin challenged the University of Texas's admissions process as a violation of the equal protection clause.[214] The University of Texas had a rule automatically admitting certain students in the top ten percent of a Texas high school.[215] In addition, the University of Texas considers, for other applicants, race as a non-numerical but "meaningful factor" as a component of a student's "Personal Achievement Index," a holistic index measuring a student's leadership, work experience, awards, activities, and other circumstances.[216]

Impact of the Ruling: The Court held that the university's admissions process was constitutional.[217] *Fisher* relied upon the Supreme Court's ruling in *Grutter v. Bollinger* (2003) 539 U.S. 306, which permitted race to be considered as one factor among many in school admissions. Applying *Grutter*, the *Fisher* Court stated that the process was narrowly tailored to achieve a compelling interest in achieving diversity in higher education.[218]

II. State Statutory and Case Law

1874

Ward v. Flood 48 Cal. 36

Summary of Facts and Issues: A writ of mandamus action was brought, seeking admission of an African American child into a public school where white children were taught, even though a separate school for African Americans had been established.

Impact of Ruling: In conceding that African Americans were entitled to equal rights, the Court held that separate schools for African American and Native American children did not violate those rights as long as those separate schools were actually maintained in an appropriate condition. If not, then children would have the right to attend any school in the district.

1971

Serrano v. Priest 5 Cal.3d 584

Summary of Facts and Issues: Los Angeles County public school children and their parents sued over the state's public school financing system which based school funding on local property taxes.

Impact of Ruling: The Court found the program tied school funding, and thus the quality of a child's education, to the wealth of their parents and neighbors, leading to wide disparities in school revenue, which violated equal protection since the state could not identify a compelling interest that could withstand a constitutional challenge.

1975

Santa Barbara School Dist. v. Super. Ct. 13 Cal.3d 315

Summary of Facts and Issues: This case involved an appeal from an injunction which prevented the implementation of a desegregation plan in elementary schools based in part on state initiatives that prohibited all busing based on race in order to attain racial integration, and which repealed several statutory and administrative provisions requiring school districts to achieve specific racial balances.

Impact of Ruling: The Court reversed an injunction, allowing the implementation plan to move forward, and the Court found unconstitutional the state antibusing proposition that barred the assignment of public school children by race as applied to segregated school districts.

Subsequent History: In *Crawford v. Bd. of Education* (1976) 17 Cal.3d 280, following a challenge by the Los Angeles Unified School District of a lower court's order to prepare and implement a desegregation plan, the Court held that school boards have a constitutional obligation to undertake reasonably feasible steps to alleviate racial segregation in public schools, although racial or ethnic percentages may not be established to determine whether a school is segregated. In extending both cases, the Court in *Nat. Assn. for Advancement of Colored People v. San Bernardino City Unified School Dist.* (1976) 17 Cal.3d 311, after finding segregation existed, found the district had a constitutional

obligation to alleviate that segregation, but that no obligation to achieve racially balanced schools exists. The Court furthered this holding in *McKinny v. Oxnard Union High School Dist. Bd. of Trustees* (1982) 31 Cal.3d 79, where it stated that implementation plans are quasi-legislative actions and districts are allowed to determine whether a particular school is segregated, as long as the district's actions are not arbitrary, capricious, or lacking evidentiary support. The Court also stated school boards must consider several criteria to determine whether segregation exists, such as racial imbalances in the student body and attitudes of the community, administration, and staff. In *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, the Court reiterated that the standard of review of a school district's plan is whether the school board acted arbitrarily, capriciously, or without evidentiary support in finding that its plan would not promote racial or ethnic discrimination or segregation.

1976

Bakke v. Regents of Univ. of Cal. 18 Cal.3d 34

Summary of Facts and Issues: White males whose applications to a state medical school were rejected brought an action challenging the legality of the school's special admissions program, under which 16 of the 100 positions in the class were reserved for "disadvantaged" minority students.

Impact of Ruling: The Court found that a deprivation based on race is not subject to a less demanding standard of review because it involves the majority race, and thus a compelling interest must be demonstrated, and here the program failed to carry that burden.

Subsequent History: In *Regents of Univ. of Cal. v. Bakke* (1978) 438 U.S. 265, the United States Supreme Court found race could be one of the factors considered in admissions, but a state must show the challenged classification is necessary to promote a substantial state interest. Additionally, in *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, the Court held that Proposition 209 superseded *DeRonde v. Regents of Univ. of Cal.* (1981) 28 Cal.3d 875, which had approved of a state law school system that considered ethnic minority status as a factor in admission, since Proposition 209 prohibited the type of affirmative action plan approved of in the case.

1996

California Proposition 209 (Cal. Const., art. I, § 31) (1996)

Result of the Proposition Vote: Voters approved the proposition, which created a constitutional amendment to end affirmative action programs in California. Proposition 209 added article I, section 31 to the Constitution: "The State shall not . . . grant preferential treatment to[] any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."[219]

Impact of the Law: The constitutional amendment approved by California voters in 1996 ended affirmative action programs in California. By voting in favor of Proposition 209, California voters essentially removed decision-making authority on affirmative action from government agencies and public schools.

1998

California Education Code Section 200

Summary of Provision: "It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, equal rights, and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor."

California Education Code Section 201

Summary of Provisions: All pupils have the right to participate fully in the educational process, free from discrimination and harassment. California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity. The statute also declares that harassment based on personal characteristics or status creates a hostile environment, and that there is an urgent need to prevent and respond to acts of hate violence and bias-related incidents, and to inform pupils of their rights. It is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds.

California Education Code Section 212.1

Summary of Provisions: "Race or ethnicity" includes ancestry, color, ethnic group identification, and ethnic background. "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. "Protective hairstyles" includes, but is not limited to, such hairstyles as braids, locs, and twists.

California Education Code Section 220

Summary of Provisions: "No person shall be subjected to discrimination on the basis of disability, gender, gender

identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid."

Endnotes

[1] *Cumming v. Bd. of Ed. of Richmond Cnty.* (1899) 175 U.S. 528, 529.

[2] *Id.* at pp. 544-545.

[3] *Gong Lum v. Rice* (1927) 275 U.S. 78, 80-81.

[4] *Id.* at pp. 85-87.

[5] *State of Missouri ex rel. Gaines v. Canada* (1938) 305 U.S. 337, 342.

[6] *Id.* at pp. 349-352.

[7] *Sipuel v. Bd. of Regents of Univ. of Okl.* (1948) 332 U.S. 631, 631-633.

[8] *Ibid.*

[9] *Id.* at p. 633.

[10] *Fisher v. Hurst* (1948) 333 U.S. 147, 148.

[11] *Id.* at p. 149.

[12] *Id.* at pp. 147, 150.

[13] *Id.* at pp. 150-151.

[14] *Id.* at pp. 151-152 (dis. opn. of Rutledge, J.).

[15] See, e.g., Smith-Richardson and Burke, *In the 1950s, Rather than Integrate the Public Schools, Virginia Closed Them*, The Guardian (Nov. 27, 2021) (as of Apr. 21, 2023); June-Friesen, *Massive Resistance in a Small Town* (2013) 34 Humanities 5 (as of Apr. 21, 2023); Gershon, *When Cities Closed Pools to Avoid Integration*, JSTOR Daily (June 21, 2019) (as of Apr. 21, 2023).

[16] *Sweatt v. Painter* (1950) 339 U.S. 629, 631.

[17] *Id. at pp. 631-632.*

[18] *Id.* at pp. 632-635.

[19] *Id.* at pp. 635-636.

[20] *Id.* at p. 636.

[21] *McLaurin v. Oklahoma State Regents for Higher Ed.* (1950) 339 U.S. 637, 639-640.

[22] *Id.* at p. 640.

[23] *Ibid.*

[24] *Id.* at pp. 641-642.

[25] *Id.* at p. 641.

[26] *Briggs v. Elliott* (1952) 342 U.S. 350.

[27] *Id.* at p. 351.

[28] *Ibid.*

[29] *Id.* at pp. 351-352.

[30] *Id.* at pp. 352 (dis. opn. of Black, J. and Douglas, J.).

[31] *Brown v. Board of Education* (1954) 347 U.S. 483, 486-488.

[32] *Id.* at pp. 494-495.

[33] *Id.* at p. 494.

[34] *Ibid.*

[35] *Id.* at p. 495.

[36] *Brown v. Bd. of Ed. of Topeka, Kan.* (1955) 349 U.S. 294, 300-301.

[37] See, e,g,, *Swann v. Charlotte-Mecklenburg Bd. of Ed.* (1971) 402 U.S. 1.

[38] *Bolling v. Sharpe* (1954) 347 U.S. 497, 498.

[39] *Id.* at pp. 499-500.

[40] *Id.* at p. 500.

[41] *Ibid.*

[42] *Ibid.*

[43] *Cooper v. Aaron* (1958) 358 U.S. 1, 5-8.

[44] *Id.* at pp. 8-11.

[45] *Id.* at pp. 11-12.

[46] *Id.* at p. 12.

[47] *Ibid.*

[48] *Ibid.*

[49] *Id.* at p. 16.

[50] *Id.* at pp. 19-20.

[51] *Bd. of Ed. of City School District of City of New Rochelle v. Taylor, supra*, 82 S.Ct. at p. 10.

[52] *Id.* at p. 11.

[53] *Goss v. Bd. of Ed. of City of Knoxville* (1963) 373 U.S. 683, 684-686.

[54] *Id.* at pp. 686-689.

[55] *Id.* at pp. 686, 689.

[56] *Green v. Cnty. Sch. Bd. of New Kent Cnty.* (1968) 391 U.S. 430, 432-433.

[57] *Id.* at pp. 433-434.

[58] *Id.* at pp. 440-442.

[59] *Ibid.*

[60] *Id.* at p. 438.

[61] *Raney v. Board of Ed. of Gould Sch. Dist.* (1968) 391 U.S. 443, 445-446.

[62] *Id.* at p. 446.

[63] *Id.* at pp. 447-449.

[64] *Id.* at p. 447-448.

[65] *Id.* at p. 448.

[66] *Monroe v. Bd. of Comm'rs of City of Jackson* (1968) 391 U.S. 450, 453-454.

[67] *Id.* at p. 454.

[68] *Id.* at pp. 459-460.

[69] *Id.* at p. 458.

[70] *Id.* at pp. 458-459.

[71] *United States v. Montgomery County Bd. of Ed.* (1969) 395 U.S. 225, 225-226.

[72] *Id.* at pp. 231-233.

[73] *Ibid.*

[74] *Id.* at pp. 235-237.

[75] *Id.* at pp. 234-235.

[76] *Id.* at p. 320.

[77] *Id.* at pp. 268-272.

[78] *Turner v. Fouche* (1970) 396 U.S. 346, 349.

[79] *Id.* at p. 348.

[80] *Ibid.*

[81] *Id.* at pp. 353-354.

[82] *Id.* at pp. 361-365.

[83] *Id.* at p. 355.

[84] *Id.* at pp. 356-361.

[85] *Id.* at pp. 361-364.

[86] *Id.* at p. 360.

[87] *Id.* at p. 358.

[88] *Davis v. Bd. of School Comrs. of Mobile County* (1971) 402 U.S. 33, 34.

[89] *Id.* at pp. 35-36.

[90] *Id.* at pp. 36-37.

[91] *Id.* at p. 37.

[92] *Id.* at p. 38.

[93] *McDaniel v. Barresi* (1971) 402 U.S. 39, 40.

[94] *Ibid.*

[95] *Id.* at p. 41.

[96] *Ibid.*

[97] *Ibid.*

[98] *Ibid.*

[99] *Id.* at pp. 41-42.

[100] *North Carolina State Bd. of Ed. v. Swann* (1971) 402 U.S. 43, 44-45 & fn. 1.

[101] *Id.* at pp. 43-45.

[102] *Id.* at pp. 45-46.

[103] *Ibid.*

[104] *Id.* at p. 46.

[105] *Ibid.*

[106] *Swann v. Charlotte-Mecklenberg Bd. of Ed.* (1971) 402 US 1 , 11.

[107] *Id.* at p. 22.

[108] *Id.* at pp. 22-25.

[109] *Id.* at pp. 25-27.

[110] *Id.* at p. 26.

[111] *Id.* at pp. 27-29.

[112] *Id.* at pp. 29-31.

[113] *Wright v. Council of City of Emporia* (1972) 407 U.S. 451, 454-455.

[114] *Id.* at p. 456.

[115] *Id.* at p. 458.

[116] *Id.* at p. 453.

[117] *Id.* at pp. 463-466.

[118] *Keyes v. School Dist. No. 1, Denver, Colo.* (1973) 413 U.S. 189, 191.

[119] *Id.* at p. 208.

[120] *Id.* at pp. 198-200.

[121] *Id.* at pp. 200-203.

[122] *Id.* at pp. 208, 213.

[123] *Bob Jones University v. Simon* (1974) 416 U.S. 725, 734-735.

[124] *Id.* at p. 735.

[125] *Id.* at pp. 735-736.

[126] *Id.* at pp. 736-746.

[127] *Milliken v. Bradley* (1974) 418 U.S. 717, 723-724.

[128] *Id.* at pp. 725-735.

[129] *Id.* at pp. 739-740.

[130] *Id.* at pp. 752-753.

[131] *Runyon v. McCrary* (1976) 427 U.S. 160, 163-164.

[132] *Id.* at pp. 172-175.

[133] *Id.* at pp. 175-179.

[134] *Pasadena City Bd. of Education v. Spangler* (1976) 427 U.S. 424, 427-428.

[135] *Id.* at pp. 428-432.

[136] *Id.* at pp. 431-436.

[137] *Id.* at pp. 434-436.

[138] *Regents of University of California v. Bakke* (1978) 438 U.S. 265, 274.

[139] *Id.* at p. 319.

[140] *Id.* at pp. 287-299.

[141] *Id.* at pp. 300-302, 307-310.

[142] *Id.* at pp. 311-320.

[143] *Id.* at pp. 315-320.

[144] *Columbus Bd. of Ed. v. Penick* (1979) 443 U.S. 449, 452.

[145] *Id.* at p. 454; *see also id.* at p. 469 (conc. opn. of Burger, C. J.).

[146] *Id.* at pp. 455-457.

[147] *Id.* at pp. 454, 465-468; see also *id.* at p. 469 (conc. opn. of Burger, C. J.).

[148] *Dayton Board of Education v. Brinkman* (1979) 443 U.S. 526, 530.

[149] *Id.* at pp. 534-540.

[150] *Id.* at p. 541.

[151] *Id.* at pp. 540-542.

[152] *Patsy v. Bd. of Regents of State of Fla.* (1982) 457 U.S. 496, 498.

[153] *Id.* at pp. 498-499.

[154] *Id.* at pp. 502-516.

[155] *Crawford v. L.A. Bd. of Ed.* (1982) 458 U.S. 527, 531-533.

[156] *Id.* at pp. 530-531.

[157] *Id.* at p. 532.

[158] *Id.* at p. 536.

[159] *Id.* at p. 545.

[160] *Id.* at pp. 537-545.

[161] *Grove City College v. Bell* (1984) 465 U.S. 555, 561.

[162] *Id.* at pp. 564-574.

[163] See *Nat'l Collegiate Athletic Ass'n v. Smith* (1999) 525 U.S. 459, 466, fn. 4.

[164] *Bazemore v. Friday* (1986) 478 US 385, 388-391 (conc. opn. of Brennan, J.).

[165] *Ibid.*

[166] *Id.* at pp. 394-404 (conc. opn. of Brennan, J.)

[167] *Id.* at pp. 387-388; see also *id.* at pp. 407-409 (conc. opn. of White, J.).

[168] *Missouri v. Jenkins* (1990) 495 U.S. 33, 37.

[169] *Ibid.*

[170] *Id.* at pp. 38-40.

[171] *Id.* at p. 39.

[172] *Id.* at pp. 39-40.

[173] *Id.* at pp. 50-58.

[174] *Id.* at p. 51.

[175] *Bd. of Education of Okla. City Public Schools, Independent School Dist. No. 89 v. Dowell* (1991) 498 US 237, 240.

[176] *Id.* at pp. 241-242.

[177] *Id.* at p. 242.

[178] *Id.* at pp. 250-251.

[179] *Id.* at pp. 247-248.

[180] *Id.* at pp. 250-251.

[181] *Freeman v. Pitts* (1992) 503 U.S. 467, 471.

[182] *Ibid.*

[183] *Id.* at pp. 480-484.

[184] *Id.* at pp. 485-492.

[185] *United States v. Fordice* (1992) 505 US 717, 723.

[186] *Id.* at p. 724.

[187] *Id.* at pp. 724-725.

[188] *Id.* at p. 725.

[189] *Id.* at pp. 728-732.

[190] *Id.* at pp. 729-732.

[191] *Missouri v. Jenkins* (1995) 515 U.S. 70, 74 (*Jenkins II*).

[192] *Id.* at p. 73.

[193] *Id.* at pp. 89-102.

[194] *Ibid.*

[195] *Gratz v. Bollinger* (2003) 539 U.S. 244, 251-252.

[196] *Id.* at pp. 255-257.

[197] *Id.* at pp 271-276.

[198] *Ibid.*

[199] *Grutter v. Bollinger* (2003) 539 U.S. 306, 316-317.

[200] *Id.* at pp. 335-344.

[201] *Id.* at pp. 325, 327-333.

[202] *Id.* at pp. 334-335.

[203] *Parents Involved in Community Schools v. Seattle School Dist. No. 1* (2007) 551 U.S. 701, 709-719.

[204] *Ibid.*

[205] *Id.* at pp. 710-711.

[206] *Id.* at pp. 748-749.

[207] *Id.* at pp. 720-721.

[208] *Id.* at pp. 723-725.

[209] *Id.* at p. 723.

[210] *Id.* at pp. 724-726.

[211] *Schuette v. Coalition to Defend Affirmative Action* (2014) 572 U.S. 291, 298-299.

[212] *Id.* at p. 307.

[213] *Id.* at pp. 309-10.

[214] *Fisher v. Univ. of Texas* (2016) 579 U.S. 365, 375.

[215] *Id.* at p. 373.

[216] *Id.* at pp. 371-374.

[217] *Id.* at pp. 377-380.

[218] *Ibid.*

[219] (Cal. Const., art. I, § 231, subd. (a).)