

## Court rulings

from page A1

Whites are not singled out for different treatment, they are all subject to being denied a transfer request solely on the basis of their race. Any racial classification, including that present here, must survive strict scrutiny review; failing such review manifests a violation of Jacob's constitutional rights. ... Strict scrutiny review requires the racial classification to serve a compelling governmental interest and be narrowly tailored to achieve that interest. ...

The 4th Circuit Court of Appeals did not rule on whether racial/ethnic diversity is a compelling state interest, because the U.S. Supreme Court has not decided that issue.

On the second issue, The 4th Circuit Court of Appeals ruled that the Montgomery County Board of Education's race-based classification was not narrowly tailored and was unconstitutional.

The 4th Circuit Court of Appeals referred to a decision by the 9th Circuit Court of Appeals in *Spangler vs. Pasadena Board of Education*: "The (Ninth Circuit Court) recognized the Supreme Court's emphasis on the idea 'that when a large percentage of minority students in a neighborhood school results from housing patterns for which school authorities are not responsible, the school board may not be charged with unconstitutional discrimination if a racially neutral assignment method is adopted.'"

The 4th Circuit Court of Appeals continued, "Thus, in the situation before us, if racial isolation, meaning low or high percentages of either racial minorities or non-minorities, may be feared because transfer requests are granted to students when the assigned and requested schools are both stable at appropriate utilization levels, any found racial imbalance would not be a vestige of a prior de jure (as a matter of law) system. If racial imbalance occurs in some of the Montgomery County schools because students like Jacob, for example, are permitted to transfer to magnet schools to get a better education, any racial or ethnic imbalance is a product of 'private choices (and) it does not have constitutional implications' (Freeman v. Pitts)."

The U.S. 4th Circuit Court of Appeals decided the Tuttle vs. Arlington County School Board case on Sept. 24. The ruling says: "The question before this Court is whether an oversubscribed public school may use a weighted lottery in admissions to promote racial and ethnic diversity in its student body."

The court ruled, "It is clear that the policy engages in racial balancing. The School Board attempted to distinguish its policy by arguing that, unlike other programs where a percentage of spots is reserved solely for minorities, this program allows every applicant, regardless of race, to compete for every available spot. The School Board also argued that it was not engaging in straight racial balancing because of the deviation inherent in the lottery."

"We conclude that these are distinctions without differences. Although the policy does not explicitly set aside spots solely for certain minorities, it has practically the same result by skewing the odds of selection in favor of certain minorities. Even if the final results may have some statistical variation, what drives the entire weighted lottery process - the determination of whether it applies and the values of its weights - is racial balancing. The Policy's two goals, to provide students with educational benefits of diversity and to help the School

Board better serve the diverse groups of students in its district, do not require racial balancing."

Punger said he believes the U.S. 4th Circuit Court's rulings in *Eisenberg vs. Montgomery County Public Schools* and *Tuttle vs. Arlington County School Board* generally give support to the Winston-Salem/Forsyth County school system's position regarding its Choice Pupil Assignment Plan. However, he said, "we currently have a racial preference rule that's probably a problem." He said, "We're revisiting our policy."

### History of Schools of Choice Assignment Plan

Punger wrote in a Sept. 3 letter to an official of the Presbyterian Church USA: "Beginning in the late 1980's the community and the (Winston-Salem/Forsyth County School) Board began to question the legality and appropriateness of assigning students to schools on the basis of race. There were a number of federal court decisions around the country in the late 1980's and early 1990's that raised serious questions about the legality of these policies after a school district had been declared 'unitary'."

"Pupil assignment was a pivotal issue in the 1994 election of the WS/FC Board of Education. The majority of the Board that took office in 1994 supported the implementation of a new pupil assignment (plan). Dr. Donald Martin, the new superintendent, brought to the Board, for its consideration, a new concept in pupil assignment referred to as 'school choice' or 'controlled choice.'"

"After considerable study of the choice plans in other districts and a series of eight public hearings, the Board adopted a controlled choice plan for implementation in phases beginning with the 1995-96 school year. We did not fully implement the plan until this fall, the 1999-2000 school year."

"In developing this plan, the Board set as a goal, not a quota, that the racial composition of each school should be within (plus or minus) 20% of the School District's racial ratio. As indicated on the enclosed chart, most of our schools have met or are close to meeting the Board's goal without the use of forced (busing)."

"Dr. (Carlton) Eversley (of the Winston-Salem NAACP chapter) reported that our plan has 'resulted not only in the near total resegregation of the district, but significant losses of both financial and personnel resources to the poorest, most vulnerable, exploited and oppressed Black children, dumped and languishing in the inner city.'"

"These accusations range from gross exaggerations of the truth to totally false statements."

"It is true that more schools are racially identifiable than they were in the past but it is not true that WS/FC schools are 'totally resegregated.'"

"Most inner city schools, which we have termed 'Equity+ schools,' receive more not less financial and other resources than suburban or rural schools."

"The teachers who agree to work in Equity+ schools receive a 20% salary bonus, which has resulted in a fair and equitable distribution of qualified and experienced staff members at those schools."

"Minority children have not been 'exploited' nor 'dumped' in inner city schools. For the first time in more than 25 years minority parents have been empowered to choose the school their children attend. Based on the choices they made, the overwhelming majority is happy with their choices. More Equity+ schools made their expected growth under North Carolina ABC Accountability

Program than non-Equity+ schools."

"We agree that access to a quality education is every child's right. We believe our schools of choice plan assures every child, both black and white, that right by empowering them to choose the school their child attends. If any parent believes that his/her child is not receiving a quality education, that parent has the right to send their child to one of the other schools in his/her zone, with transportation."

"Dr. Eversley has yet to specify what type of pupil assignment policy he and his supporters prefer instead of the schools of choice plan. However, if his goal is 'racially balanced' schools, that can be accomplished only by the use of race-based pupil assignment policies that utilize satellite attendance zones and forced busing. It is our belief that the citizens of Forsyth County, both black and white, no longer want that type of pupil assignment policy."

"If the Presbyterian Church is so concerned about the integration of the public schools, perhaps the church should consider adopting a nation-wide policy of integrating its Sunday Schools. Perhaps children should be 'assigned' by the local session to the various churches throughout a community to produce racially balanced Sunday schools."

"In the absence of, due process, decisions may be made on half-truths, misinformation and/or false information. I would assume that a body as august as the General Assembly of the Presbyterian

Church USA would want to hear from both sides before supporting a lawsuit against the duly elected representatives of the people of a school district."

"The members of the Committee or General Assembly that voted in support of this resolution have a right to hear all the facts and the position of my client. ..."

Eversley has said that the school's system's redistricting plan has led to the resegregation of schools. Eversley wrote in recent columns in *The Chronicle*:

"The NAACP does not believe this School Board and this superintendent will do right by our all-black schools without the coercive power of a lawsuit; nor will they show any real interest in desegregating all of this county's schools without a lawsuit. We believe underlying all of this is a steadfast devaluing of the black community's parents, administrators, teachers, students, pastors, business persons, etc."

"The NAACP has always known there is deep ambivalence in the black community about busing for racial balance. There are hundreds and thousands of black people who feel it's absolutely necessary for black and white children to go to school together. There may be an equal number of black folk who feel that's not important at all as long as the black schools have equal resources. We don't believe these two groups will ever agree, but we believe both groups ought to support our lawsuit."

"This is so because if you're in the second 'equal resources' group, you must understand that

equity of resources has to be negotiated, in good faith, between the black community and the school system. Those of us in the NAACP (especially President Bill Tatum and myself) who've fought to negotiate with the majority of the School Board and Superintendent Donald Martin for the last five years do not believe we can trust them to do so in good faith without a club of coercion we can wield at them such as the lawsuit. These matters have real consequences for the children attending our schools."

"Often, we use Atkins Middle School as an example of what happens to our students under the board's and Dr. Martin's redistricting resegregation scheme. When Atkins was brought into this plan in the last school year, large numbers of 'exceptional children' (students with behavioral, educational or emotional difficulties) were dumped into Atkins from several feeder elementary schools. Virtually all of these schools stopped providing any exceptional services (counseling, individual education plans, etc.) and simply shifted them to Atkins."

"Additionally, when Atkins was a desegregated school, the PTA fund-raiser netted between \$10,000 and \$12,000. Last year as a resegregated school, the money was about a tenth of the previous year's. What did this mean in the lives of Atkins students in the class of 1998-99? Seniors had been taking a beach trip. There was no trip. Graduates had been getting a middle school yearbook. There was no yearbook. There

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## Ball

from page A5

move forward. That's what's really important - taking steps to make the university the best in the nation."

Carter-Rozier was supported by a host of alumni who traveled from New York for homecoming festivities.

"It's the energy I get from coming back that makes me come to the school that gave me some of my greatest memories," said Lulu King, a 1955 graduate.

King sat at a table filled with members of her class. Many attend

homecoming annually. A few like King, who has attended 10 times, come as often as they can.

"I saw a boy I helped raise," she said. "Where else can you see something like that?"

Gladys Wilson, one of the event's organizers, deemed the ball was a huge success. Wilson spent most of the night rushing about the expansive ballroom, making sure everyone was having a good time.

"We're so glad people came out to support the university," she said. "I think everyone's just looking forward to seeing people they haven't seen for a long time."

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