

ABSTRACT

This article analyzes the concept of racial stigma in Justice Kennedy's controlling opinion in *Parents Involved v. Seattle*. The article reveals that Kennedy's fundamental concern is that using racial classifications to achieve voluntary desegregation racially stigmatizes students. In particular, he assumes that the classifications undermine individualism and reduce children to "racial chits." He fails, however, to recognize the purpose of voluntary desegregation and the unique characteristics that distinguish it from other race-conscious programs. Kennedy is not alone. Commentators and schools may have "over-defended" voluntary desegregation, articulating multiple justifications rather than focusing on the core justification. Thus, this article refines voluntary desegregation's purpose. Voluntary desegregation is not an attempt to obtain the benefits of diversity. It is an attempt to manage an educational crisis that undermines equal and quality education. The lingering effects of past school segregation continue to stigmatize predominantly minority schools. As a result, quality teachers and middle income students flee to other schools, depriving minority schools of the key resources for success. Money cannot solve this problem. The only way to solve the problem is to create a racially balanced system where race is irrelevant in parents' and teachers' school choices. Voluntary desegregation uses creative measures, but those measures include race classifications. Relying on Supreme Court precedent and leading scholarship, this article assesses whether voluntary desegregation stigmatizes by: 1) promoting notions of racial inferiority, whites as racists, or any other stereotypes; 2) inciting racial politics; 3) undermining individuality; 4) relying on inappropriate racial labels; or 5) subordinating relevant values. The article concedes that Kennedy raises a valid concern in regard to the particular racial labels, but concludes that the labels can easily be remedied without effecting desegregation. In regard to the more substantive concerns, this article demonstrates that rather than reinforcing stigma, voluntary desegregation actually sends an anti-stigmatic message. The article suggests that Kennedy's drive to secure compromise between competing ideologies causes him to miss the distinct characteristics and message of voluntary desegregation. But the article emphasizes that lower courts must respect the compromise to ensure that schools are not prohibited in their effort to deliver basic educational opportunities.