



Spring 4-1-1996

**MISSOURI v. JENKINS 115 S.Ct. 2038 (1995) UNITED STATES
SUPREME COURT**

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/crsj>

Recommended Citation

MISSOURI v. JENKINS 115 S.Ct. 2038 (1995) UNITED STATES SUPREME COURT, 2 Race & Ethnic Anc. L. Dig. 79 (1996).

Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol2/iss1/10>

This Comment is brought to you for free and open access by the Washington and Lee Journal of Civil Rights and Social Justice at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Journal of Civil Rights and Social Justice by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

MISSOURI v. JENKINS
115 S.Ct. 2038 (1995)
UNITED STATES SUPREME COURT

The United States Supreme Court granted certiorari to resolve the latest dispute in a ten year long litigation battle between the State of Missouri and Kansas City schoolchildren over a court-imposed school desegregation plan.

FACTS

Prior to 1954, the State of Missouri mandated segregated schools for black and white children.¹ Immediately following *Brown v. Board of Education*,² the State's Attorney General declared Missouri's school segregation laws unenforceable;³ however, neither the State of Missouri nor the Kansas City, Missouri School District (KCMSD) moved to dismantle the system of separate education.⁴ In 1984, thirty years after *Brown*, the Federal district court for the Western District of Missouri determined that the State and the KCMSD had failed in their affirmative obligation to reform the public school system in the KCMSD,⁵ and, accordingly, the district court launched a court-supervised plan of desegregation in 1985.⁶ Neither the State nor the KCMSD appealed the district court's finding of liability, and over the next ten years, the district court entered a series of remedial orders aimed at eliminating the vestiges of segregation.⁷

The district court's desegregation plan has been described as the most ambitious and expensive remedial program in the history of school desegregation.⁸ Based upon the district court's finding that segregation caused a system-wide reduction in student achievement

as well as "white flight" from the District, the district court imposed a desegregation scheme broadly designed to provide high-quality education to the District schoolchildren and to attract non-minority students to the KCMSD schools.⁹ By 1990 the school facilities in the District were widely recognized as far superior to any other public school facilities in the country.¹⁰ Nonetheless, many of the District's schools continued to have disproportionately high numbers of black students,¹¹ and test scores of students in the District remained below the national average.¹² Accordingly, the district court continued to monitor the District and continued to approve additional, increasingly expensive educational programs.

The State of Missouri, through the operation of joint-and-several liability, bore the brunt of the costs of desegregation.¹³ As a result, the State brought multiple lawsuits,¹⁴ three of which reached the United States Supreme Court on the merits.¹⁵ The heart of the dispute in the 1995 case before the Supreme Court was whether the State of Missouri had satisfied its legal obligation under *Brown v. Board of Education* and therefore whether the State should have been released from judicial supervision notwithstanding the low test scores of students in the District and the racial imbalance in many of the District's schools.

I. QUALITY EDUCATION PROGRAMS

As part of the 1985 desegregation program, the district court ordered the adoption of a wide range of qual-

ing rooms; a 3,500-square-foot dust-free diesel mechanics room; 1,875-square-foot elementary school animal rooms for use in a zoo project; swimming pools; and numerous other facilities. *Id.* at 2045.

¹¹ *Id.* at 2050.

¹² *Id.* at 2055.

¹³ *Id.* at 2045.

¹⁴ See, e.g., *Jenkins v. Missouri*, 539 F.Supp. 1485 (W.D. Mo. 1984); *Jenkins v. Missouri*, 639 F.Supp. 19 (W.D. Mo. 1985); *Jenkins v. Missouri*, 672 F.Supp. 400 (W.D. Mo. 1987); *Jenkins v. Missouri*, 11 F.3d 755 (8th Cir. 1993); *Jenkins v. Missouri*, 13 F.3d 1170 (8th Cir. 1993); *Jenkins v. Missouri*, 19 F.3d 393 (8th Cir. 1994); *Jenkins v. Missouri*, 23 F.3d 1297 (8th Cir. 1995).

¹⁵ *Missouri v. Jenkins*, 491 U.S. 274 (1989) (challenging enhancement of attorney fee award); *Missouri v. Jenkins*, 495 U.S. 33 (1990) (challenging district court's order imposing property tax increases to fund school desegregation program); *Missouri v. Jenkins*, 115 S.Ct. 2038 (1995) (challenging court-imposed obligation to continue funding various components of school desegregation program).

¹ *Missouri v. Jenkins*, 115 S.Ct. 2038, 2052 n.6 (1995).

² 347 U.S. 483 (1954).

³ 115 S.Ct. at 2052 n.6.

⁴ *Id.* at 2074.

⁵ *Id.* at 2042 (citing *Jenkins v. Missouri*, 593 F.Supp. 1485, 1490 (W.D. Mo. 1984)).

⁶ *Id.* at 2042 (citing *Jenkins v. Missouri*, 639 F.Supp. 19, 24 (W.D. Mo. 1985)).

⁷ 115 S.Ct. at 2074.

⁸ *Id.* at 2044.

⁹ See *id.* at 2042-2045 (describing district court's desegregation plan).

¹⁰ *Id.* at 2044. In *Missouri v. Jenkins* the Supreme Court observed:

These massive expenditures have financed high schools in which every classroom will have air conditioning, an alarm system, and 15 microcomputers; a 2,000-square-foot planetarium; green houses and vivariums; a 25-acre farm with an air-conditioned meeting room for 104 people; a Model United Nations wired for language translation; broadcast capable radio and television studios with an editing and animation lab; a temperature controlled art gallery; movie editing and screen-

ity education programs for all students attending the KCMSD. These educational programs were designed to eliminate the vestiges of segregation by raising educational performance and to compensate the District's black schoolchildren by improving the quality of education provided to them.¹⁶ The total cost of the quality education programs exceeded \$220 million by 1995.¹⁷

II. MAGNET SCHOOLS PLAN

In 1985 the district court ordered the implementation of a magnet school program¹⁸ and extensive capital improvements for the District's schools. Between 1985 and 1987 every high school, every middle school, and one-half of the elementary schools in the District were converted into magnet schools.¹⁹ The district court justified its magnet school program on the grounds that it would serve the dual purpose of improving student achievement in the KCMSD and desegregating the District by attracting non-minority students into the District.²⁰ The district court relied upon magnet schools, instead of imposing mandatory student reassignments because the Court found that mandatory reassignments would increase the instability of the KCMSD and reduce the potential for desegregation. Since its inception, the magnet school program has operated at a cost in excess of \$448 million.²¹

III. SALARY INCREASES

In 1985 the district court ordered the KCMSD to raise the salaries of all teachers in the District. Subsequently, the district court ordered salary increases for all but three of the approximately 5,000 KCMSD employees.²² The district court ordered these salary increases based upon its finding that high quality personnel were necessary not only to improve educational opportunities and reduce racial isolation, but also to ensure that there was no diminution in the quality of the District's

regular educational programs.²³ The total cost of this component of the desegregation plan exceeded \$200 million by 1995. Overall, the costs of running the desegregation program for the entire District approached \$200 million annually by 1995.²⁴

IV. LITIGATION HISTORY

In 1988, the State unsuccessfully brought a broad challenge to the district court's desegregation plan.²⁵ In *Jenkins v. Missouri*²⁶ the State argued that the magnet school plan constituted an interdistrict remedy for an intradistrict injury in violation of *Milliken v. Bradley*.²⁷ The United States Court of Appeals for the Eighth Circuit rejected the State's position, and in 1989 the State petitioned the United States Supreme Court for certiorari.²⁸

The State's petition for certiorari presented two issues for review. First, the petition challenged the district court's authority to order a property tax increase to fund its remedial program. Second, the petition challenged the legitimacy of the magnet school plan.²⁹ The Supreme Court accepted the taxation question and decided that while the district court had no authority to impose the tax measure itself, the court could require the District to tax property at a rate adequate to fund its share of the costs of the desegregation remedy.³⁰ The Supreme Court refused to hear the State's foundational challenge to the legitimacy of the magnet school plan.³¹

In 1992 the State again unsuccessfully contested several of the district court's remedial orders.³² Having failed to win its foundational challenge in the 1989 case before the Supreme Court, the State shifted its approach and instead challenged the need for continued district court supervision. To that end, the State contested the district court's 1992 order requiring the State to continue funding the quality education programs for the 1992-1993 school year.³³ The State also challenged an order requiring the State to finance salary increases for virtually all of the KCMSD employees.³⁴

¹⁶ *Id.* at 2042.

¹⁷ *Id.* at 2043.

¹⁸ Magnet schools are public schools designed to promote integration by drawing students away from their neighborhoods and private schools through distinctive curricula and high quality educational programs. *Id.* n.1.

¹⁹ *Id.* at 2043.

²⁰ *Id.* at 2075.

²¹ *Id.* at 2043.

²² *Id.* at 2044.

²³ 11 F.3d at 766.

²⁴ 115 S.Ct. at 2044.

²⁵ *Jenkins v. Missouri*, 855 F.2d 1295 (W.D. Mo. 1988).

²⁶ 855 F.2d 1295 (W.D. Mo. 1988).

²⁷ *Id.* at 1302 (citing *Milliken v. Bradley*, 418 U.S. 717 (1974) (*Milliken I*)). In *Milliken I* a district court had ordered an interdistrict remedy in a case involving only an intradistrict violation because "any less comprehensive solution" would "result in an all black school system immediately surrounded by

practically all white suburban school systems." 418 U.S. at 735. The Supreme Court reversed the lower court's decision, holding that before a district court can order an interdistrict remedy, there must be a showing that racially discriminatory conduct had been a substantial cause of interdistrict segregation. *Id.* at 745. Because the record contained only evidence of the *de jure* segregation in the inner-city schools, there had been no showing of significant violations by the outlying school districts, and thus no evidence of interdistrict violation or effect. *Id.* at 735.

²⁸ *Missouri v. Jenkins*, 495 U.S. 33 (1990).

²⁹ *Id.* at 45.

³⁰ *Id.* at 51.

³¹ *Id.* at 45.

³² *Jenkins v. Missouri*, 11 F.3d 755 (8th Cir. 1993) (affirming district court's orders).

³³ *Id.* at 760.

³⁴ *Id.* at 761.

The district court ordered that the programs be fully funded, without reference to the State's complaints, and the State appealed to the Eighth Circuit on several grounds. First, the State argued that the district court was required to make findings of fact on the issues raised and that by failing to do so the district court had erred as a matter of law.³⁵ The court of appeals rejected the State's argument,³⁶ giving wide deference to the district court. The court of appeals observed that although the district court had not directly addressed the State's complaints, the district court had satisfied its legal obligation to "rule" on the ultimate facts of the case; the district court had "rejected" the State's complaints when it had approved the 1992 budget for the District.³⁷ Moreover, statements contained in a *subsequent* order from the district court, "demonstrated the district court's grasp" of the issue presented by the State. Finally, statements made from the bench by the district court judge "answered the concerns" of the court of appeals.³⁸

Second, and in the alternative, the State asserted that the district court had abused its discretion by failing to withdraw judicial supervision in a timely manner.³⁹ The State argued that its sole obligation under the desegregation decree was to *implement* the quality education programs and that the quality education programs had been successfully established and were superior to programs offered in the suburban school districts.⁴⁰ Accordingly, the goal of the desegregation plan had been achieved, and the district court should return control over school policy to the local school district, notwithstanding the fact that student achievement levels in the District were still at or below national norms at many grade levels.⁴¹

The court of appeals again rejected the State's arguments, finding that the State had failed to make a showing sufficient to satisfy *Freeman v. Pitts*.⁴² Implementation of quality education programs, in and of itself, is not sufficient grounds to support a finding of "partial unitary status"⁴³ and hence to permit withdrawal of judicial supervision.⁴⁴ The district court's goal was to eliminate the vestiges of segregation to the extent practicable, and the quality education programs were simply tools used to accomplish that goal. Accordingly, the court of appeals found that because the State had failed to show

that the quality education programs had in fact succeeded in remedying lost educational opportunities and improving student achievement, the State had presented no evidence on the degree of progress it had made towards eliminating the vestiges of segregation.⁴⁵ The State had only presented evidence that "a start had been made."⁴⁶

Finally, the State challenged the court-imposed salary increases for virtually all the KCMSD employees.⁴⁷ The State argued that the salary increases were in excess of what was necessary to remedy the constitutional violations at issue⁴⁸ and that district court should have denied the salary increases under *Milliken II* and *Swan* because the increases did not directly address and relate to the State's constitutional violation. The State contended that the low teacher salaries did not flow from any earlier constitutional violations by the State and that the salaries of non-teacher personnel are simply beyond the power of the district court to reach.⁴⁹

In rejecting the State's argument, the Eighth Circuit criticized the State's approach as being too narrow.⁵⁰ Contrary to the State's characterization of Supreme Court precedent, district courts are empowered under *Milliken II* with broad authority to approve remedial programs. The district court had not acted improperly in this case, but had based its order upon logic and empirical data. Specifically, the district court had observed in its order that the desegregation plan had suffered in the past from the District's difficulty in hiring and retaining qualified personnel and had noted that high quality personnel were necessary to improve the educational opportunities in KCMSD and to reduce racial isolation. The district court had also found that the salary increases would improve desegregative attractiveness of the District, thereby facilitating the desegregation of the District.⁵¹ In short, the court of appeals determined that the salary increases were proper because, in addition to compensating the victims, the remedy was also designed to reverse white flight by offering superior educational opportunities.⁵² The court of appeals denied rehearing en banc, with five justices dissenting.⁵³

The Supreme Court granted certiorari to determine (1) whether the district court exceeded its constitutional authority when it granted salary increases to virtually all instructional and non-instructional employees and (2)

³⁵ *Id.* at 760.

³⁶ *Id.* at 761.

³⁷ *Id.* at 761.

³⁸ *Id.* at 761.

³⁹ *Id.* at 760.

⁴⁰ *Id.* at 764.

⁴¹ *Id.* at 762.

⁴² *Id.* at 765 (citing *Freeman v. Pitts*, 503 U.S. 467 (1992)).

⁴³ *Freeman v. Pitts* permits partial or total withdrawal of district court supervision in the event a formerly segregated (or "dual") school system becomes integrated (or "unitary"). 503 U.S. at 471.

⁴⁴ 11 F.3d at 764.

⁴⁵ *Id.* at 764.

⁴⁶ *Id.* at 765.

⁴⁷ *Id.* at 767.

⁴⁸ *Id.* at 766.

⁴⁹ *Id.* at 767.

⁵⁰ *Id.* at 767.

⁵¹ *Id.* at 768.

⁵² *Id.* at 768.

⁵³ *Jenkins v. Missouri*, 19 F.3d 393 (8th Cir. 1994).

whether the district court properly relied upon the fact that student achievement test scores had failed to rise to some unspecified level when it declined to find that the State had achieved partial unitary status as to the quality of education programs.⁵⁴

HOLDING

The United States Supreme Court held in a 5-4 opinion that the Missouri Federal District Court exceeded its remedial authority when it ordered the State of Missouri to fund salary increases for City School Districts and to continue to fund remedial quality education programs. The Supreme Court found that the district court's order approving salary increases was grounded in an effort to create a magnet school district and that such a goal was beyond the scope of the intradistrict violations. In addition, the Supreme Court determined that the district court's order requiring the State to continue to fund remedial quality education programs was grounded in an effort to improve student achievement levels, which was not an appropriate test for deciding whether the dual school system had achieved partial unitary status. Accordingly, the case was remanded to the district court to determine if, consistent with the Supreme Court opinion, district court supervision should be withdrawn.

ANALYSIS/APPLICATION

I. PRELIMINARY PROCEDURAL ISSUE: REVIEW OF THE DISTRICT COURT'S MAGNET SCHOOL PLAN IS PROPER AND PRUDENT

In reversing the district court's order of salary increases, the Supreme Court also reached a broader, foundational issue and invalidated the district court's magnet school plan.⁵⁵ The Respondents, Kansas City schoolchildren, initially sought to prevent the Supreme Court from reviewing this aspect of the case by challenging the Court's authority on a procedural level to review the legitimacy of the magnet school plan.⁵⁶ This foundational issue had been raised in the State's 1988 petition for certiorari, but ignored by the Supreme Court when the Court chose to hear only the taxation question. The State did not again raise this question when it returned to the Supreme Court with its 1994 petition for certiorari.⁵⁷ As a result, respondents argued, the State could no longer challenge, and the Supreme Court should not

decide, the legitimacy of the district court's magnet school plan.⁵⁸

Justice Rehnquist, writing for the majority, defended the Supreme Court's authority to decide the foundational issue, stating that the parties had fair warning that the issue would be considered by the Supreme Court and that a challenge to the district court's remedial authority was fairly included in the question presented.⁵⁹ First, the mere fact that the Supreme Court had declined to review the magnet school plan in 1988 would not preclude the Supreme Court from considering the issue later. The denial of writ of certiorari "imports no expression of opinion upon the merits of the case."⁶⁰ The Supreme Court had neither approved nor disapproved the Eighth Circuit's conclusion in 1988 that the district court's remedy was proper.⁶¹

Second, Justice Rehnquist contended that because the State challenged the district court's order of salary increases as beyond the court's remedial authority, analysis of the scope of the district court's remedial authority was necessary for a proper determination of whether the salary increases were proper. In short, review of the magnet school plan was an issue subsidiary to the Supreme Court's ultimate inquiry, and thus properly included in the question presented for review.⁶²

Justice O'Connor filed a concurring opinion in which she affirmed, in stronger language, the propriety of the Supreme Court's review of the magnet school plan. First, based upon her reading of the State's petition for certiorari, Justice O'Connor asserted that the foundational challenge was not simply an issue prior to the State's presented question, but was an issue presented in the question itself and, as such, was one that the Supreme Court appropriately and necessarily considered in answering the State's question.⁶³ Second, Justice O'Connor observed that the foundational issue had been addressed with some specificity at each stage of the litigation below and, accordingly, the respondents had ignored the issue "at their peril." In short, the Supreme Court had resolved a genuine dispute that was properly presented for decision.⁶⁴

Justice Souter, joined by Justices Stevens, Ginsburg, and Breyer, dissented, arguing that the decision to review the scope of the district court's authority was both improper and imprudent.⁶⁵ The standard under Rule 14.1, Justice Souter argued, limits issues before the Court to those issues which *must* be resolved in order to answer the question presented. The State's challenge in this case was narrow, and the dispute between the par-

⁵⁴ 115 S.Ct. at 2046.

⁵⁵ *Id.* at 2046-2048.

⁵⁶ *Id.* at 2046.

⁵⁷ *Id.* at 2076.

⁵⁸ *Id.* at 2046.

⁵⁹ *Id.* at 2047.

⁶⁰ *Id.* at 2046.

⁶¹ *Id.* at 2047.

⁶² *Id.* at 2047.

⁶³ *Id.* at 2056.

⁶⁴ *Id.* at 2057.

⁶⁵ *Id.* at 2077.

ties could have been resolved without reaching the validity of the magnet school plan.⁶⁶

Moreover, even if the Court were correct that the foundational issue could be reached procedurally, the case nonetheless presented a compelling case for limiting Supreme Court review to the question presented by the State. Because the respondents “naturally” did not expect the Supreme Court to focus on the State’s foundational challenge,⁶⁷ the critical question was “whether the issue may fairly be decided without clear warning, at the culmination of a course of litigation in which the Supreme Court has specifically refused to consider the issue and given no indication of any subsequent changes of mind.”⁶⁸ In Justice Souter’s opinion, the questions presented by the State could be answered readily and on their own terms, and prudence dictated that the Court refrain from addressing an issue not adequately briefed or argued by the respondents.⁶⁹

II. SCOPE OF FEDERAL COURTS’ AUTHORITY TO REMEDY DE JURE RACIAL SEGREGATION IN PUBLIC SCHOOLS

A. *Brown v. Board of Education And Its Progeny*

Fifteen years after *Brown v. Board of Education*,⁷⁰ the Supreme Court in *Green v. County School Board*⁷¹ acknowledged that the promise of *Brown* had yet to be achieved and charged school boards and district courts with the affirmative duty to take “whatever steps might be necessary” to convert dual school systems into unitary systems such that racial discrimination would be eliminated “root and branch.”⁷² Two years later, the Supreme Court in *Swan v. Charlotte-Mecklenburg Board of Education*⁷³ recognized that a district court’s discretion is not without limits and that the court’s efforts to eliminate racial discrimination in public schools should not attempt to achieve broader purposes lying beyond the jurisdiction of the school authorities.⁷⁴ In 1974, in *Milliken v. Bradley I*,⁷⁵ the Supreme Court held that a district court had exceeded its authority by fashioning

“interdistrict” relief where the surrounding school districts had not themselves been guilty of any constitutional violations.⁷⁶ Three years later, in *Milliken v. Bradley II*,⁷⁷ the Court cautioned district courts to carefully tailor their remedial schemes to the scope of the constitutional violation at issue and articulated a three-part framework to guide district courts in the exercise of their remedial authority.⁷⁸

B. *The District Court Exceeded The Scope Of Its Remedial Authority*

In *Missouri v. Jenkins* the Supreme Court relied upon *Swan*, *Milliken I*, and *Milliken II* to find that the district court had exceeded the scope of its authority when it granted salary increases to virtually all instructional and non-instructional employees.⁷⁹ The salary increases were part of the district court’s magnet school plan, and would have been proper had they been designed *solely* to remove the racial identity of the various schools in the District with disproportionately high percentages of black students, or *solely* to remedy the reduction in student achievement caused by the KCMSD’s system of *de jure* segregation.⁸⁰ However, the district court had not limited its magnet school plan to specific schools within the District, but had targeted virtually every school in the District for improvement in an acknowledged attempt to attract non-minority students from outside the District. The district court’s ambitious plan had “all but made the KCMSD itself into a magnet district.”⁸¹ As a result, the district court’s plan had an interdistrict goal without an interdistrict injury, and the remedy was improper under *Milliken I*. The district court had devised a remedy to accomplish indirectly what it admittedly lacked the remedial authority to mandate directly.⁸²

In reaching its conclusion, the Supreme Court rejected arguments offered by the respondent schoolchildren that an interdistrict remedy was justified by the district court’s findings that segregation had caused white flight from the District to the surrounding, suburban districts. The Supreme Court examined the district

⁶⁶ *Id.* at 2073.

⁶⁷ *Id.* at 2073.

⁶⁸ *Id.* at 2077.

⁶⁹ *Id.* at 2078.

⁷⁰ 347 U.S. 483 (1954).

⁷¹ 391 U.S. 430 (1969).

⁷² *Green v. County School Board*, 391 U.S. 430, 439-438 (1969).

⁷³ 402 U.S. 1 (1971).

⁷⁴ *Swan v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 22-23 (1971)

⁷⁵ 418 U.S. 717 (1974).

⁷⁶ *Milliken v. Bradley*, 418 U.S. 717, 746-747 (1974) (*Milliken I*).

⁷⁷ 423 U.S. 267 (1977).

⁷⁸ *Milliken v. Bradley II*, 423 U.S. 267, 280-281 (1977) (*Milliken II*). First, the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation, and the remedy must therefore be related to the condition alleged to offend the Constitution. Second, the decree must indeed be remedial in nature and must be designed as nearly as possible to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. Third, the federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution. *Id.*

⁷⁹ 115 S.Ct. at 2048-49.

⁸⁰ *Id.* at 2051.

⁸¹ *Id.* at 2051.

⁸² *Id.* at 2051.

court's findings on this issue, and concluded that the record was internally inconsistent and did not support the "typical supposition" that white flight patterns result from *desegregation*, not *de jure* segregation.⁸³ As a result, the district court was not justified in employing an interdistrict remedy.

The Supreme Court also criticized the district court for designing a remedial scheme that was not carefully tailored to the scope of the constitutional injury.⁸⁴ First, while it is theoretically possible that additional per student expenditures may function to increase non-minority enrollment, such a rationale could not serve as the basis for the district court's remedial order because it was simply not susceptible of any objective limitation. Any expenditures, for whatever reason, could theoretically make the District in some way more attractive. As a result, the district court's magnet school plan was inconsistent with *Milliken II*, in that it was not limited to restoring the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct. Instead, the district court had used its magnet school plan as a pretext for improving the quality of education in the District.⁸⁵

Finally, the majority criticized the district court for designing a remedial scheme which violated principles of federalism.⁸⁶ According to the majority, the remedial scheme upset the balance between state and local governments by making the local school district increasingly dependent upon funding from the state. Justice Rehnquist described local school district autonomy as a vital national tradition and asserted that the ultimate goal of a desegregation decree is to restore state and local authorities to control of the school district.⁸⁷ Such a result was fast becoming impossible in the case of the KCMSD because the remedial scheme had the effect of making the local school district increasingly dependent upon funding from the state. In sum, the Supreme Court reversed the district court's orders because they were beyond the district court's remedial authority and because, in design, they were too far removed from the task of eliminating racial imbalance in the District.⁸⁸

III. PARTIAL TERMINATION OF CONSENT DECREE AND WITHDRAWAL OF DISTRICT COURT SUPERVISION

A. *Freeman v. Pitts and Board of Oklahoma City Public Schools v. Dowell*

Since *Brown v. Board of Education*⁸⁹ the Supreme Court has stressed that, although district courts' desegregation programs should be designed to fully compensate the victims of discrimination, the programs' ultimate goal should be to return control over school policy to local school districts.⁹⁰ In recent years the Supreme Court has established standards for determining when withdrawal of judicial supervision is appropriate. In 1992, the Supreme Court in *Freeman v. Pitts*⁹¹ described the three-part showing a local school district must make before it may receive partial or total relief from district court supervision.⁹² In 1991, in *Board of Oklahoma City Public Schools v. Dowell*⁹³ the Court emphasized that federal supervision of local school systems should be a temporary measure and should terminate at the earliest possible date.⁹⁴ Both cases stated that the "ultimate inquiry" is whether the state or school district has complied in good faith with the desegregation decree and whether the vestiges of past discrimination have been eliminated "to the extent practicable."⁹⁵

B. *The District Court Improperly Relied Upon Low Student Scores When It Declined To Find That The State Had Achieved Partial Unitary Status As To The Quality Of Education Programs.*

In *Missouri v. Jenkins*, the State relied upon *Dowell* and *Freeman* to challenge the district court's order requiring the State to continue funding the District's quality education programs.⁹⁶ The State argued that, even assuming a mandate for improvement in student achievement was justified originally, its indefinite expansion until national standards were met was not. States are entitled to a precise statement of their obligations under a desegregation decree and the State had satisfied those obligations when it implemented the ordered programs.⁹⁷

The Supreme Court agreed with the State in principle, but observed that its review of the issue was needlessly complicated because the district court had not produced adequate findings and because the court of appeals had failed to remand the issue to the district court.⁹⁸ Observing that the district court had never identified the precise incremental effect that segregation had

⁸³ *Id.* at 2052.

⁸⁴ *Id.* at 2054.

⁸⁵ *Id.* at 2054.

⁸⁶ *Id.* at 2054.

⁸⁷ *Id.* at 2054.

⁸⁸ *Id.* at 2055.

⁸⁹ 347 U.S. 483 (1954).

⁹⁰ 115 S.Ct. at 2049.

⁹¹ 503 U.S. 467 (1992).

⁹² *Freeman v. Pitts*, 503 U.S. 467, 491 (1992).

⁹³ 498 U.S. 237 (1991).

⁹⁴ *Board of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 250 (1991).

⁹⁵ *Freeman*, 503 U.S. at 492 (quoting *Dowell*, 498 U.S. at 249-250).

⁹⁶ 115 S.Ct. at 2055.

⁹⁷ *Id.* at 2055.

⁹⁸ *Id.* at 2055.

had on minority student achievement, and faulting the court of appeals for attempting to assemble an adequate record from the district court's bench statements and unrelated orders, the Supreme Court remanded the issue to the district court for further findings.⁹⁹

The Supreme Court directed the district court to reconsider its expansive orders in light of *Freeman v. Pitts*.¹⁰⁰ The district court was reminded that the State's role with respect to the quality education program had been limited to funding of the program, not implementation of the program.¹⁰¹ Moreover, the district court was instructed to sharply limit, if not dispense with, its reliance on test scores as a factor guiding its decision making.¹⁰² Numerous "external factors" beyond the control of the KCMSD can affect minority student achievement, Justice Rehnquist asserted, and blind insistence upon academic goals unrelated to the effects of *de jure* segregation unwarrantably postpone the day when the KCMSD will be able to operate on its own.¹⁰³

The majority also instructed the district court to consider that many goals of the quality education plan had already been obtained. Accordingly, the district court should recognize that the end purpose of its remedial program was not to remedy the constitutional violation to the maximum extent possible. Rather, the district court should bear in mind that its purpose was to remedy the constitutional violation to the extent practicable and also to restore control of the school system to state and local authorities.¹⁰⁴

In sum, the majority did not expressly disqualify quality education programs from serving as a component of the district court's desegregation plan. The majority was, however, skeptical that low test scores in 1995 could properly be attributed to the State's prior constitutional violation. Accordingly, the majority was reluctant to allow the district court to rely upon low

test scores as a justification for continued judicial supervision.

C. *Practical Consequences and Ramifications For Future School Desegregation Cases*

The divergence in test scores between black and white schoolchildren was first identified in the 1950's as evidence that the education black students received at predominantly black schools was inferior to the education they received at predominantly white schools.¹⁰⁵ The fact that this divergence in test scores persists is, for many, an unfortunate indication that public schools, although purportedly integrated, have not sufficiently improved the education offered to black schoolchildren.¹⁰⁶ In *Missouri v. Jenkins*, ten years after the implementation of the most expensive remedial program in the history of school desegregation, a majority of the Supreme Court found that the persistence of low test scores in a school district could not, by itself, justify continued judicial supervision.

On a general level, *Missouri v. Jenkins* continues the trend initiated by the Supreme Court's most recent school desegregation cases, *Freeman v. Pitts* and *Oklahoma v. Dowell*, in that the *Jenkins* opinion urges federal courts to be skeptical of traditional rationales offered to explain continued judicial supervision and instructs federal courts to give greater weight to evidence of good faith compliance by the states.¹⁰⁷ More practically, although the Supreme Court stopped short of expressly dismantling the challenged components of the district court's desegregation plan,¹⁰⁸ the district court's discretion will be more limited on remand, and the district court will most likely be required to establish a closer nexus between the State's former system of school segregation and the low test scores in the District.¹⁰⁹ The

⁹⁹ *Id.* at 2055.

¹⁰⁰ *Id.* at 2055. The three-part test guides district courts in determining when the objectives of *Brown v. Board of Education* have been met, and, hence, when a district court may withdraw supervision of a school system previously found to have operated in violation of the Constitution. In *Freeman v. Pitts*, the Court stated:

Among the factors which must inform the sound discretion of the court in ordering partial withdrawal are the following: (1) whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; (2) whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the school system; and (3) whether the school district has demonstrated, to the public and the parents and students of the once disfavored race, its good-faith commitment to the whole of the courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance. 503 U.S. at 491.

¹⁰¹ 115 S.Ct. at 2055.

¹⁰² *Id.* at 2055.

¹⁰³ *Id.* at 2056.

¹⁰⁴ *Id.* at 2056.

¹⁰⁵ See Robert L. Carter, *Public School Desegregation: A Contemporary Analysis*, 37 ST. LOUIS L.J. 885, 889 n.18 (1993) (describing emergent reliance on test scores as barometer of educational opportunity).

¹⁰⁶ Carter, *supra* note 134.

¹⁰⁷ See Murray Dry, *Brown v. Board Of Education At Forty: Where Are We? Where Do We Go From Here?*, 1 R.E.A.L. DIGEST 8 (1995) (describing trends in recent Supreme Court desegregation cases).

¹⁰⁸ Commentary, *Missouri v. Jenkins Redux: The End Of The Road For School Desegregation Or Another Stop On An Endless Journey?*, 103 ED. LAW REP. 1 (1995).

¹⁰⁹ See Celia M. Ruiz, *Equity Excellence and School Reform: A New Paradigm For Desegregation*, 101 ED. LAW REP. 1, (1995) (observing that *Missouri v. Jenkins* opinion appears to require plaintiffs to establish causal connection between evidence of low student achievement and past unlawful discrimination in order to defeat finding of full or partial unitary status, and

district court may in fact be forced to abandon supervision of its educational programs in spite of its own belief that such programs are still necessary and warranted.¹¹⁰

IV. JUSTICE SOUTER'S DISSENT

In a dissenting opinion in which he was joined by Justices Stevens, Ginsburg, and Breyer, Justice Souter criticized the majority for deciding issues not properly before the Court, for mischaracterizing the lower courts' decisions, and for taking an unduly restrictive view of Supreme Court precedent.¹¹¹ Nothing in the record below persuaded Justice Souter that the district court's factual basis was obviously incorrect, and accordingly the district court's orders were entitled to deference.¹¹² Moreover, nothing in Supreme Court precedent persuaded Justice Souter that the district court's use of a magnet school plan was impermissible.¹¹³ In short, the Supreme Court's decision in *Missouri v. Jenkins* was "anchored in neither the findings and evidence contained in the record, nor in controlling precedent, which is squarely at odds with the Court's holding today."¹¹⁴

A. *The District Court Did Not Err In Rejecting The State's Plea For Partial Unitary Status*

Justice Souter disagreed with the majority's resolution of the test score issue, and characterized the majority's decision as grounded in word play, not substance.¹¹⁵ Contrary to the assertions of the majority, Justice Souter contended that test scores had not played a dispositive role in the lower courts' decisions and orders.¹¹⁶ None of the lower courts' opinions or orders required a certain level of test scores to be achieved before unitary status could be found, and none of the proceedings below indicated that test scores were a dispositive factor. Indeed, any references in the record to test scores related to an entirely different and subsequent district court order which was not under review and which was quoted in the Court of Appeals' opinion only because that court canvassed *subsequent* district court orders during its review of the district court's 1992 order.¹¹⁷

Test scores, then, did not explain the lower courts'

refusal to find in favor of the State on the issue of partial unitary status. Rather, the district court had rejected the State's plea for partial release from judicial supervision because the State did not even attempt to make the showing required under *Freeman v. Pitts* for the relief requested.¹¹⁸ The duty and responsibility of the State in this case was to take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system of school segregation, and the burden of showing that the State's duties have been met rests squarely on the State.¹¹⁹ In short, the Supreme Court has established an orderly procedural course for petitions requesting partial termination of a desegregation decree, and the State's failure to meet or even recognize its burden under *Freeman* led to the result below.¹²⁰

B. *Deference To The District Court's Salary Orders Was Proper*

Justice Souter also disagreed with the majority's rejection of the district court's order of salary increases. Contrary to the majority's assertion, the district court did not ground its order *solely* in the goal of attracting non-minority students back to the KCMSD.¹²¹ Rather, the district court consistently treated salary increases as an important element in remedying the system-wide reduction in student achievement resulting from segregation in the District,¹²² a proper objective under *Milliken I*.¹²³ Accordingly, the district court's order was entitled to deference, and the only issue properly presented for review was whether the salary increases were reasonably related to achieving their stated goal.¹²⁴

C. *The Majority's Review Of The Magnet School Plan Was Unduly Restrictive*

Finally, Justice Souter faulted the majority for rejecting the district court's magnet school plan.¹²⁵ First, Justice Souter argued that the Supreme Court was not justified in overturning the district court's findings of fact on the issue of white flight.¹²⁶ Normally, a district court's findings of fact are entitled to deference on appellate review.¹²⁷ Here, not only had the majority not shown that the lower courts were wrong on the facts,

noting that same requirement may also apply to other vestiges of discrimination plaintiffs may raise). See also Daniel B. Kohnman & Kathryn M. Woodruff, *The 1994-5 Term Of The United States Supreme Court And Its Impact Upon Public Schools*, 102 ED. LAW REP. 421, (1995) (observing that *Missouri v. Jenkins* opinion favors detailed articulation of links between broad desegregation goals and specific remedial measures).

¹¹⁰ See Commentary, *supra* note 137.

¹¹¹ *Id.* at 2074.

¹¹² *Id.* at 2084.

¹¹³ *Id.* at 2087.

¹¹⁴ *Id.* at 2078.

¹¹⁵ *Id.* at 2078.

¹¹⁶ *Id.* at 2078.

¹¹⁷ *Id.* at 2078.

¹¹⁸ *Id.* at 2079.

¹¹⁹ *Id.* at 2080.

¹²⁰ *Id.* at 2080.

¹²¹ *Id.* at 2081.

¹²² *Id.* at 2078.

¹²³ *Id.* at 2082.

¹²⁴ *Id.* at 2081.

¹²⁵ *Id.* at 2082.

¹²⁶ *Id.* at 2083-2087.

¹²⁷ *Id.* at 2084.

but it had also based its findings upon “arbitrary suppositions” about the causes of white flight in the KCMSD.¹²⁸ The Supreme Court’s decision rested upon “shaky grounds” and proceeded from a series of questionable assumptions. Under such circumstances, reversal of the lower courts’ findings of fact was “simply rash.”¹²⁹

Second, Justice Souter argued that the majority’s rejection of the magnet school plan followed from an erroneous interpretation of Supreme Court precedent. In particular, Justice Souter disputed the Court’s assertion that *Milliken I* applied to this case simply because the district court’s remedy was meant to produce effects outside the district in which the violation occurred.¹³⁰ Although precedent does limit district courts’ ability to impose compulsory interdistrict remedies on surrounding school districts, precedent does not define an interdistrict remedy as *any* remedy that takes into account conditions outside of the district.¹³¹ To the contrary, *Milliken I* left open the possibility that a district court might impose a remedy with intended effects extending beyond the district in cases where such a remedy was necessary to redress the harms flowing from the constitutional violation.¹³² In short, the majority mischaracterized *Milliken I* as categorically forbidding imposition of any remedy with intended effects outside of the offending district, and therefore substantially limited the remedies that a district court may impose in school desegregation cases.¹³³

Justice Souter also asserts that, in addition to re-writing *Milliken I*, the majority opinion also effectively overruled another established Supreme Court precedent, *Hills v. Gautreaux*.¹³⁴ In *Gautreaux*, the Supreme Court applied *Milliken I* to a case challenging the segregation of public housing.¹³⁵ The Supreme Court held that a district court may subject a governmental perpetrator of segregative practices to an order for relief with intended consequences beyond the perpetrator’s own subdivision, even in the absence of effects outside the subdivision, so long as the decree does not bind the authorities of other governmental units that are free of violations and segregative effects.¹³⁶ Once a district is found guilty of a constitutional violation, the district court is authorized to make every effort to achieve the greatest possible degree of relief. Those efforts may include remedial plans that have an intended impact beyond the boundaries of the district where the violation occurred, so long as the surrounding districts are not themselves

bound by the district court’s order.¹³⁷

Justice Souter concluded by observing that the majority’s unfortunate distortion of *Hills v. Gautreaux* demonstrated the major peril of addressing important and complex questions without adequate notice to the parties.¹³⁸ *Gautreaux* was mentioned only in passing by the respondents, was mischaracterized in the State’s brief, and was effectively overruled by the Court’s opinion. Justice Souter would reserve final judgment on the issue until the subject was given adequate briefing and a full hearing.¹³⁹

V. JUSTICE O’CONNOR’S CONCURRENCE

In a concurring opinion, Justice O’Connor addressed specific arguments raised in Justice Souter’s dissenting opinion. In doing so, Justice O’Connor emphasized the limits placed upon federal courts by Supreme Court precedent and by Article III of the Constitution.

A. *Hills v. Gautreaux*

Justice O’Connor disputed Justice Souter’s assertion that *Hills v. Gautreaux* was effectively overruled.¹⁴⁰ *Gautreaux* followed *Milliken I* and did not dispense with the requirement that an interdistrict remedy is permissible only upon a showing that there has been a constitutional violation within one district that produced a significant segregative effect in another district. *Gautreaux* is an affirmation of, not a deviation from, *Milliken I*.¹⁴¹ Both cases stand for the proposition that the scope of desegregative remedies are determined by the nature and extent of the constitutional violation, and neither case gives federal courts “a blank check to impose unlimited remedies upon a constitutional violator.”¹⁴²

B. *The Court’s Resolution Of the Dispute Did Not Impose An Unduly Limited View Of Segregative Effects*

Justice O’Connor also disputed Justice Souter’s assertion that the majority took an unduly restrictive approach to the magnet school plan. According to Justice Souter, the majority erroneously disallowed an interdistrict remedy in this case because it failed to recognize that white flight from the District had signifi-

¹²⁸ *Id.* at 2084.

¹²⁹ *Id.* at 2086.

¹³⁰ *Id.* at 2083.

¹³¹ *Id.* at 2087.

¹³² *Id.* at 2087-2088.

¹³³ *Id.* at 2088.

¹³⁴ 425 U.S. 284 (1976).

¹³⁵ See 115 S.Ct. at 2088 (Souter, J., dissenting) (describing *Gautreaux*).

¹³⁶ *Id.* at 2088.

¹³⁷ *Id.* at 2089.

¹³⁸ *Id.* at 2089.

¹³⁹ *Id.* at 2090.

¹⁴⁰ *Id.* at 2057. See also *id.* at 2053 (Rehnquist, J.) (disputing Justice Souter’s *Gautreaux* arguments).

¹⁴¹ *Id.* at 2059.

¹⁴² *Id.* at 2058.

cant effects on the surrounding districts; just because the departing students had been absorbed into wholly unitary systems did not mean that there had been no significant effects outside the district and that an interdistrict remedy was not justified.¹⁴³ Justice O'Connor rejected this reasoning, arguing that the relevant inquiry under *Milliken I* and *Gautreaux* is not whether the intradistrict violation produced effects of any sort beyond the district, but rather whether such violation directly caused significant *segregative* effects across district boundaries.¹⁴⁴

Significant segregative effects occur, for example, where surrounding school districts actively contribute to the constitutional violation by acts intended to segregate the races — *e.g.*, where those districts arrange for students residing in one district to attend schools in surrounding districts.¹⁴⁵ Similarly, in cases where the intradistrict violation causes white schoolchildren to flee the district, an interdistrict remedy may be appropriate.¹⁴⁶ Where, as here, a district court explicitly finds that the system of *de jure* segregation caused neither an interdistrict violation nor significant interdistrict segregative effects, the district court may not make desegregative attractiveness an underlying goal of its remedy for the specific purpose of reversing white flight into the surrounding school districts. However troubling white flight may be, Justice O'Connor insisted, remedying it is not within a district court's authority unless the white flight is shown to be directly caused by the constitutional violation.¹⁴⁷

C. Federal Courts Do Not Have The Authority To Remedy The Myriad Factors Of Human Existence Which Can Cause Racial Discrimination

Justice O'Connor concluded with words of caution to federal courts. The district court's authority in *Missouri v. Jenkins*, like other school desegregation litigation, was limited to elimination of a constitutional violation — *i.e.*, the elimination of the dual school system — not “the myriad factors of human existence which can cause discrimination in a multitude of ways.”¹⁴⁸ Those myriad factors are not readily corrected by judicial intervention, but are best addressed by the representative branches.¹⁴⁹ Federal courts, unlike the legislature, are constrained by Article III from prescribing “palliatives for societal ills.”¹⁵⁰ Unlike Congress, which enjoys discretion in determining whether and what legislation is

needed to secure the guarantees of the Fourteenth Amendment, the federal courts have no comparable license and must always observe their limited judicial role.¹⁵¹

VI. JUSTICE THOMAS' CONCURRENCE

Justice Thomas joined the majority decision on the two remedial issues presented for review, but wrote separately to “add a few thoughts with respect to the overall course of this litigation.”¹⁵² In particular, Justice Thomas identified two branches of Supreme Court jurisprudence which have “produced this unfortunate situation in which a district court has taken it upon itself to experiment with the education of KCMSD's black youth.”¹⁵³ First, the district court misread Supreme Court precedent “to support the theory that black students suffer an unspecified psychological harm from segregation that retards their mental and educational development,” an approach which “not only relies upon questionable social science, but . . . also rests upon an assumption of black inferiority.”¹⁵⁴ Second, Supreme Court precedent has, in the past, permitted federal courts to exercise virtually unlimited equitable powers to remedy “the alleged constitutional violation” of school segregation.¹⁵⁵ The exercise of that authority has “trampled upon” principles of federalism and separation of powers and has freed federal courts to pursue other agendas unrelated to the narrow purpose of remedying a constitutional harm.¹⁵⁶

VII. JUSTICE GINSBURG'S DISSENT

Justice Ginsburg joined Justice Souter's dissent, but wrote separately to emphasize a consideration key to the controversy, namely the State of Missouri's “deep, inglorious history of segregation.”¹⁵⁷ Justice Ginsburg described the more than two centuries of firmly entrenched official discrimination in Missouri public schools, and noted that the first federal remedial order in this case was issued only ten years ago. Viewed against this historical backdrop, the Supreme Court's decision vitiating the desegregation efforts at this time was “an action at once too swift and too soon.”¹⁵⁸

CONCLUSION

In *Missouri v. Jenkins* the United States Supreme Court rejected a district court's reliance on low student test scores as a justification for continued judicial super-

¹⁴³ *Id.* at 2059.

¹⁴⁴ *Id.* at 2059 (emphasis added).

¹⁴⁵ *Id.* at 2059.

¹⁴⁶ *Id.* at 2060.

¹⁴⁷ *Id.* at 2060.

¹⁴⁸ *Id.* at 2061.

¹⁴⁹ *Id.* at 2060.

¹⁵⁰ *Id.* at 2061.

¹⁵¹ *Id.* at 2061.

¹⁵² *Id.* at 2062.

¹⁵³ *Id.* at 2062.

¹⁵⁴ *Id.* at 2062.

¹⁵⁵ *Id.* at 2062.

¹⁵⁶ *Id.* at 2062.

¹⁵⁷ *Id.* at 2091.

¹⁵⁸ *Id.* at 2091.

vision and invalidated a magnet school program as beyond the scope of the district court's remedial authority. *Missouri v. Jenkins* therefore adds both to Supreme Court precedent defining the limits of a district court's remedial power in school desegregation cases, as well as to precedent defining the circumstances under which withdrawal of judicial supervision in school desegregation cases is appropriate.

Perhaps more generally, *Missouri v. Jenkins* also re-describes the difficult balancing act which district courts must perform in school desegregation cases. In *Brown v. Board of Education* the Supreme Court established that on the one hand district courts must ensure that equal educational opportunities are restored to black school-children and on the other hand district courts must ensure that control and autonomy are restored to local school districts. In *Freeman v. Pitts*, the Supreme Court reminded district courts that the burden rests entirely on the constitutional violator to show good faith com-

pliance with the Constitution. In *Missouri v. Jenkins*, the Supreme Court cautioned district courts to avoid waging campaigns for social justice and instructed district courts to avoid remedial programs which, although justified, might somehow impair the balance between state and local power. In effect, the Supreme Court seemed more willing to believe in the good faith compliance of the State and seemed less willing to defer to the district court's judgment that educational disparities in the District were, in fact, causally related to constitutional violations. The end result is that *Missouri v. Jenkins* limits the discretion of federal district courts and rebalances the equities in favor of local school districts.

Summary and Analysis Prepared by:
Rachel E. Berry