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District Permitted to Continue Implementing Court-Ordered Desegregation Plan Because The Plan Pre-Dates Proposition 209 And Is Therefore Exempt From Prohibition Of Racial Consideration

In *American Civil Rights Foundation v. Los Angeles Unified School Dist.*, (--- Cal.Rptr. 3d ---, Cal. App. 2 Dist., Dec. 19, 2008), a California Court of Appeal considered a challenge to a school district's magnet school and transportation programs on the grounds that the racial preferences used in determining enrollment in the programs violated the prohibition on racial preferences contained in Proposition 209, enacted by California's voters in 1996. The Court ruled that the programs are exempt from Proposition 209 because they were part of an existing court-ordered integration plan, which is expressly exempted by Proposition 209.

Facts

The United States Supreme Court upheld a 1981 superior court order approving the Los Angeles Unified School District's ("District") desegregation plan. (*Crawford v. Board of Education* (1982) 458 U.S. 527.) The court order included provisions for magnet schools and Permit with Transportation ("PWT") programs. The magnet schools were intended to desegregate the District by allowing students to enroll in schools in other areas of the district. In evaluating applications to attend the magnet schools, priority points were awarded to students attending schools that were designated Predominantly Hispanic, Black, Asian, and Other Non-Anglo ("PHBAO"). Additionally, magnet schools were required to have 60 to 70 percent PHBAO students, and if vacancies occurred, those students were given priority in order to meet that requirement. Free transportation, or PWT, was also provided to PHBAO students. As of the 2007-08 school year, the district operated 162 magnet schools.

In 1996, California voters approved Proposition 209, which prohibits discrimination against or preferential treatment for any person or group on the basis of race. It also contained the provision: "Nothing in this Section shall be interpreted as invalidating any court order or

consent decree which is in force as of the effective date of this section."

American Civil Rights Foundation ("ACRF") filed suit against the District, alleging that the racial considerations in its magnet school and PWT programs violated the prohibition of Proposition 209. The trial court found that the 1981 court order exempted the programs from Proposition 209 and granted summary judgment for the District. ACRF appealed.

Decision

The court first addressed ACRF's contention that the 1981 court order ended the court's jurisdiction over the District's desegregation plan, and therefore Proposition 209 applied. The 1981 order has never been reversed, overruled, vacated, revoked, modified, or withdrawn, the court said. In *Board of Education of Oklahoma City Public Schools v. Dowell* (1991) 498 U.S. 237, the United States Supreme Court ruled that a court-ordered desegregation program remains valid in the absence of a clear directive from the court. In the absence of such a directive here, the 1981 court order remained valid at the time Proposition 209 was enacted.

In addition, the court reasoned, the nature of desegregation efforts requires that they be ongoing, and not limited to a short period of time. The court also noted that the State Controller continued to reimburse the District for court-ordered costs relating to the plan when Proposition 209 was passed. Further, the Legislative Analyst, in the 1996 voters' guide, stated that court-ordered desegregation costs would not be affected by the measure. That evidence clearly demonstrated that the 1981 order was in effect when Proposition 209 was passed and was therefore exempt from the measure's ban on racial preferences. The trial court's ruling was affirmed.

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