# Untangling *Students Doe v. Lower Merion School District*

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## *Introduction*

*Brown v. The Board of Education* is recognized as the landmark decision which drastically restructured the composition of schools and intended to provide all students access to integrated—not separate—schools, regardless of race. While successful in remedying de jure segregation, de facto segregation has continued to remain a focus of school assignment plans. *Students Doe v. Lower Merion School District*, currently on appeal in the 3rd Circuit court, is the newest in a long line of cases related to school assignments based on race, and has the potential not only to affect attempts to remedy de facto segregation, but also bring into question race-centered policies such as affirmative action.

*Students Doe* is a complex case which touches on a variety of issues: the Fourteenth Amendment Equal Protection Clause, the application of "strict scrutiny," defining "narrowly tailored" race-based policy, the identification of "compelling interests" of the state, the degree of color-blindness in the U.S. Constitution, and the distinction between individuals and groups in race-based policy. "Untangling" each of these issues is key to understanding the impact that this case will have on education law.

## *Background*

Lower Merion Township, located in the affluent suburbs of Philadelphia, is one of several municipalities which comprise the affluent "Main Line." According to the 2000 census, Lower Merion Township is "Montgomery County's most affluent and populated municipality with the highest incomes, largest labor force, highest ratio of white collar

and professional workers, most households, most single-family detached dwellings, and most married residents."[1]

The median household income for Lower Merion Township far exceeds not only neighboring Philadelphia ($86,373 vs. $37,090[2]) but is also more than double both the state ($40,106) and national ($41,994) averages.[3] The racial demographics are, predictably, in line with similar communities throughout the country. According to the 2010 census, Lower Merion Township is home to 62,107 residents of which only 3,329 (or 5.3%) are black,[4] which is less than half the national average of 12.6%.[5]

An exception to these demographics is Ardmore, a centrally-located town within Lower Merion Township with the highest proportion of black residents. Although Ardmore's total population is 20% (12,616) of the township's total population, it is home to over 43% of the township's black population (1,447).[6] Although still well above Philadelphia, state, and national median household income levels, Ardmore's median household income is only $60,966.[7]

Lower Merion School District (LMSD) oversees K-12 education for the township as well as for Borough of Narberth, an independent municipality with a population of 4,233. The district is comprised of six elementary schools, two middle schools, and two high schools.[8] The eastern third of Lower Merion Township is more densely populated, with Ardmore situated on the western edge of that third, while the western two-thirds of the district is much less densely populated. Lower Merion High School is located on the western edge of the most densely populated third of the township while Harriton High School is centrally located in the western two-thirds of the district. Until recently, Harriton was the smaller of the two high schools and served, primarily, students in the

western two-thirds of the district. However, in 2004, LMSD voted to rebuild both high schools and set a goal of more evenly distributing the student population between the two schools in order to equalize course and program offerings. Prior to building the new schools, Harriton's student population was approximately 839 while Lower Merion High School's student population was 1,345[9]. To equalize student populations, redistricting of school boundaries would need to occur.

### *Redistricting*

LMSD hired redistricting consultants to assist with the process. The school board recognized the potential for controversy in reassigning students to new schools, so they enacted a procedure to elicit community feedback while developing the redistricting plan. Included among the feedback solicited was "community values" or key components of any proposed plan that were considered integral to a successful redistricting plan. Based on the community feedback, the LMDS board identified five community values:

> (1). Social networks are at the heart of where people live, and those networks expand as people grow older; (2). Lower Merion Public Schools are known for their excellence, academic as well as extracurricular; (3). Those who walk should continue to walk while the travel time for non-walkers should be minimized; (4). Children learn best in environments where they are comfortable-socially as well as physically; and (5). Explore and cultivate whatever diversity-ethnic, social, economic, religious, and racial-there is in Lower Merion.[10]

Based on both this feedback and out of a concern for logistical requirements for a smooth transition during redistricting, the board also mandated several "non-negotiables" that any proposed plan must accommodate. These were:

- The enrollment of the two high schools and two middle schools will be equalized.
- Elementary students will be assigned so that the schools are at or under the school capacity.
- The plan may not increase the number of buses required.
- At a minimum, the class of 2010 will have the choice to either follow the redistricting plan or stay at the high school of their previous year.
- Redistricting decisions will be based upon current and expected future needs and not based upon past redistricting outcomes or perceived past promises or agreements.[11]

Working from the non-negotiable constraints defined by the board and input from the community, Dr. Ross Haber worked with the LMSD administration to generate redistricting "scenarios" detailing how neighborhoods would be assigned to the 10 district schools. During this process, attention was paid to the demographics of each neighborhood assignment even though diversity was not identified as a non-negotiable. In public meetings detailing each of the proposed redistricting plans, LMSD's presentation to the community included references to how each plan achieved racial—but not ethnic—diversity. Of the first five plans submitted for review by the board, only two were immediately rejected (Plans 1 and 4A) "due to race"—specifically, because Southeast Ardmore and Southwest Ardmore students[12] would be attending the same school, maintaining a racial imbalance between the two schools.[13] Of the remaining plans, and in the presentation of each, a pattern emerged. Each of the plans divided Ardmore in half—Southeast Ardmore students would attend Harriton HS and Southwest Ardmore students would attend Lower Merion HS. One small community would be effectively severed in two.

By January 2009, the LMSD school board approved a redistricting plan known as "Plan 3R." The community of South Ardmore felt the most impact from the adopted plan. Not only would Ardmore's tight-knit community be divided, but Southeast Ardmore students would be assigned to a high school about four times the distance—and a 30 minute bus ride—away, in spite of the fact that Lower Merion HS is located within walking distance of their homes.

Because Harriton HS offered both an International Baccalaureate program and courses through Penn State University, pre-redistricting assignments allowed students

assigned to Lower Merion HS a choice in attending either high school. With the adoption of Plan 3R, students in Southeast Ardmore lost the opportunity to choose the school that they'd like to attend, even though this choice was being afforded to nearly all other communities assigned to Lower Merion HS. Upon reviewing a map of the plan [see "Redistricting Map"], it became obvious to residents of Southeast Ardmore that the students in their community were losing choice specifically *because* of the racial demographics of their community.

The public response from the Southeast Ardmore was strong and became increasingly organized. Community volunteers—both black and white—organized to represent the interests of the South Ardmore students at school board meetings and in the media. They formed *Lower Merion Voices United for Equity in Education* (LMVUE), a grassroots community organization concerned with equity issues in the Lower Merion School District. LMVUE at first attempted to have their concerns about Plan 3R addressed through non-legal channels by participating in school board meetings, communicating directly with board members, and bringing attention to their cause through the media. However, their attempts to negotiate with the board failed. Eventually, it was decided that a civil suit was the only remaining tool available to them.

### *Students Doe v. Lower Merion School District*

The suit was filed in U.S. District Court for the Eastern District of Pennsylvania in 2009. The plaintiffs were nine African-American students in the neighborhood of Southeast Ardmore. In their suit, the plaintiffs' primary argument was that the school district violated the Equal Protection Clause of the Fourteenth Amendment by targeting the neighborhood of Southeast Ardmore for redistricting to Harriton HS because of its

racial composition. Although the defendants categorically denied that race played any part in their decision-making process, the plaintiffs introduced into evidence a variety of exhibits (email communications, school board presentations, etc.) which supported their argument that race was a significant factor in the development of the redistricting plans. Plaintiff witness testimony—including that of Dr. Haber—sufficiently proved to the court that race had factored into the decision-making process. Specifically, the court—in its findings of fact—stated that:

> Numerous emails and conversations discussing the inclusion of these two areas, the rejection of the sole redistricting Scenario that did not include one of these areas, the "candid elimination of at least two Scenarios on the basis of race," and testimony by Dr. Haber, the District's redistricting consultant, that race was considered throughout the redistricting process…indicate that the Affected Area's high concentration of African–American students factored into the District's adoption of Plan 3R. Although the Board Members did not vote on Plan 3R on the basis of race, racial demographics nonetheless factored into the District's recommendation that the Board adopt the Plan.[14]

Once it was determined that race was, in fact, a factor in the decision-making process, it fell to the court to determine whether that application violated the Equal Protection Clause of the Fourteenth Amendment. Judge Baylson explained that the mere consideration of race—along with other demographic data—is not automatically unconstitutional.

> A basic principle underlying this case is that pure "racial balancing" at the high school level, standing alone, would be improper, but that considering racial demographics alongside numerous race-neutral, valid educational interests—similar to the goal of achieving general diversity in higher education admissions programs, with reference to multiple factors such as race, gender, economic background, religion, and other individual characteristics—has never been held unconstitutional.[15]

However, his statement should not be interpreted to mean that public entities have free reign to include race as a factor as a matter of policy with impunity. It falls to the court to determine if the government entity did so constitutionally. Case law supports the conclusion that race-awareness can factor into government action as long as it's done so within specific constraints. To fulfill that, a court must determine 1) which level of

scrutiny applies; and, if strict scrutiny is triggered 2) if the use of racial categories is narrowly tailored; and 3) if there is a compelling government interest in considering race in school assignments.

### *Strict Scrutiny*

In cases involving potential state-enacted discrimination, the court determines if various levels of "scrutiny" (rational basis scrutiny, intermediate scrutiny, and strict scrutiny[16]) are warranted to ensure equal protection under the law. Rational basis and intermediate scrutiny are applied when the government is accused of discrimination against those in "not suspect" classifications (e.g., age or gender).[17] The most exacting level is known as strict scrutiny, which is applied when the government is accused of discrimination against those in certain suspect classifications including race.[18]

*Plessy v. Ferguson*, perhaps surprisingly, laid the foundation for the future application of strict scrutiny. In Justice Harlan's dissent, he stated that "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law."[19] Subsequent cases echoed his opinion, most notably *Brown v. Board of Education*. However, in the decade following *Brown*, de facto segregation—generally through the practice of neighborhood-based school assignments—continued. In order to remedy this, many school districts—either voluntarily or under court-order—began to evaluate the racial compositions of their schools and implement measures to equalize student populations. While this effort's ultimate goal was to minimize racial segregation, it legitimized the consideration of race in public policy. Many cases involving the use of race as a factor in school assignments followed *Brown*, and each case helped to refine and define appropriate use of racial

factors in such assignments. In these cases, courts needed to determine to what level the practice should be scrutinized.

In determining whether strict scrutiny applies to a case, courts look to case precedents to understand the limitations of its application. However, courts have applied strict scrutiny in different ways. In *Regents of the University of California (UC) v. Bakke* (1978), the Court's plurality opinion stated that "because our prior cases are in many respects inapposite to that before us now, we find it necessary to define with precision the meaning of the inexact term, 'strict scrutiny'… for purposes of the equal protection clause, racial and ethnic distinctions of any sort were inherently suspect and thus called for the most exacting judicial examination."[20] Historically, not all courts have agreed. And, even a single court may also be divided. *Parents Involved in Community Schools v. Seattle School District No. 1 (Seattle)* illustrates this. This case, factually similar in many respects to *Students Doe*, centered on whether the use of racial categories in determining school assignments is in violation of the Fourteenth Amendment Equal Protection Clause. The Supreme Court found that strict scrutiny should be applied to this case and that the student assignment plan was unlawful. However, the Court was divided on the issue. The majority opinion, authored by Chief Justice John Roberts, was joined only by three other justices, stating that any decision by a government entity which "distributes burdens or benefits on the basis of individual racial classifications . . . is reviewed under strict scrutiny."[21] Justice Stephen Breyer's dissent, also joined by three justices, called for a less exacting level of scrutiny.

> Indeed, Justice Breyer's willingness to grant deference to local school districts was so great that he even advocated a different level of scrutiny for race-based student assignment plans. This lower level of scrutiny would result in relatively little judicial evaluation of student assignment plans based on efforts of racially inclusivity.[22]

In 2010, *Students Doe* went to trial. In his opinion of *Students Doe*, Judge Baylson also seemingly struggles with determining if strict scrutiny applies to this case. Early in his opinion, he details that, contrary to the plaintiffs' argument that *Seattle* provided clear a clear precedent on the application of strict scrutiny, no cases are factually similar enough to use as an obvious precedent. Specifically, he states, "Neither the parties' briefs nor this Court's substantial research disclose another school redistricting case in which such neighborhood 'targeting' played a role in school assignments, and a court adjudicated the constitutionality of the overall redistricting scheme in light of such 'targeting.' In this sense, the current case is novel."[23] However, he continues to look to case precedents in order to determine if strict scrutiny should be applied in this case.

> Some Supreme Court decisions that have dealt with allegations of discrimination in the educational context have applied "strict scrutiny"…other Supreme Court cases not involving any individual racial discrimination, however, have applied less exacting levels of scrutiny.[24]

To Judge Baylson, the distinction seems to lie in distinguishing between discrimination of individuals vs. groups. Specifically, he states that "Justice Roberts's inability to command a majority on disapproving of any use of race in assigning students, require this Court to apply strict scrutiny to student assignment plans only if they are based on ***individual*** racial classifications."[25] In fact, he feels so strongly that *Seattle* doesn't apply to this case that he chides the plaintiffs in a footnote saying "Throughout this case, Plaintiffs' counsel ably advocated that the facts underlying the District's adoption of Plan 3R 'fit' within the *Seattle* holding. However, like the women in the Cinderella fairy tale, who unsuccessfully endeavored to squeeze their feet into Cinderella's tiny glass slipper, counsel simply cannot succeed."[26]

He then continues to evaluate if other plaintiff-cited cases "govern" the application of strict scrutiny. Again, he finds that "In sum, this Court is not convinced that the Supreme Court cases relied upon by Plaintiffs require strict scrutiny to be the operative standard for evaluating the constitutionality of the District's adoption of Plan 3R."[27] Although he questions if strict scrutiny should be applied to this case, he proceeds by focusing his attention on determining if Plan 3R passes the two separate—but interrelated—prongs of the strict scrutiny test: being narrowly tailored and meeting a compelling government interest. In essence, if Plan 3R survives the strict scrutiny test, it would also survive the intermediate scrutiny or rational basis review tests, rendering the exercise of determining if strict scrutiny should apply moot.[28] Although he applied strict scrutiny to this case, his opinion did not definitively resolve outstanding questions about the application of it, so his opinion does not provide a clear precedent for future cases.

### *Narrowly Tailored to a Compelling Government Interest*

Applying strict scrutiny to *Students Doe* is only the first step in determining the constitutionality of Plan 3R. The Court must then determine if the plan was both narrowly tailored and met a compelling government interest. First, Judge Baylson tackles the issue of narrow tailoring by examining the goals of the plan:

> The District presented ample evidence that the …redistricting aimed at addressing the following goals, each of which the Court has already found to have a valid educational interest: (a) equalizing the populations at the two high schools, (b) minimizing travel time and transportation costs, (c) fostering educational continuity, and (d) fostering walkability… Because Plan 3R is the only plan the Court is aware of that simultaneously meets these goals, it is narrowly tailored and therefore survives strict scrutiny."[29]

However, according to Justice Roberts in *Seattle*, narrow tailoring requires "serious, good faith consideration of workable race-neutral alternatives."[30] According to

the plaintiffs of *Students Doe*, each of the presented plans factored in race, and no race-neutral plans were considered.

> There is no evidence in the trial record whether racially targeted magnet programs were seriously considered, whether other "choice" based programs were seriously considered, and/or whether these programs could or would not work to achieve Lower Merion's unarticulated goal.[31]

Curiously, as asserted by the *Students Doe* plaintiffs in their subsequent appeal of the decision, none of the aforementioned goals relates to race in any way. Specifically, plaintiffs question the court's finding that the use of racial categories in redistricting could help them to achieve any of the four defined goals.

> Lower Merion articulated the following interests it sought to pursue in redistricting: equal sized high schools; minimizing travel times and transportation costs; fostering educational continuity; and fostering walk-ability. Initially, none of these interests bear any relationship to the race based decisionmaking at issue in this case. In order to survive a strict scrutiny challenge, the alleged compelling state interest has to bear a relationship to a race-based policy.[32]

In addition to finding that Plan 3R is sufficiently narrowly tailored, the court also needs to find that the use of racial categories met a compelling government interest in order to satisfy the second test of strict scrutiny. In Judge Baylson's opinion, he finds that the school district does have a compelling government interest in promoting diversity in the two high schools. Given the facts of this case, Judge Baylson finds that racially-aware school assignments address the interest in promoting diversity in schools, reducing the achievement gap between black and white students, and minimizing "racial isolation" in each of the schools.[33] Case precedents support the finding that such goals are compelling government interests. In *Seattle*, Justice Kennedy addressed this in his concurring opinion:

> If school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in a different fashion solely on the basis of a systematic, individual typing by race.[34]

However, in the majority opinion of *Seattle*, Justice Roberts was quick to identify several important considerations when evaluating a potential compelling interest. First, case precedent supports only two compelling interests in the strict scrutiny test as applied to use of racial classification in schools: remedying de jure segregation (of which LMSD has never been subject to) and diversifying the student population in *higher education*.[35] Second, since the *Seattle* assignment plan recognized only two racial categories (white and nonwhite), he found that the plan was "directed only to racial balance" and that racial balancing was "an objective this Court has repeatedly condemned as illegitimate."[36] Judge Baylson acknowledges this in *Students Doe,* stating that Justice Kennedy "explained that in his view, although he believed that pursuing diversity is a compelling educational goal, the Seattle and Kentucky assignment plans were not narrowly tailored to meet that goal, because they used 'the crude categories of 'white' and 'nonwhite' as the basis for its assignment decisions.'"[37]

Unfortunately for the plaintiffs in *Students Doe*, Judge Baylson fails to draw a connection between the *Seattle* opinion and his own finding that redistricting Scenarios 1 through 5 provided race and ethnicity data pertaining only to black students.[38] Had he done so, Plan 3R also would have been found to be insufficiently narrowly tailored.

Perhaps most importantly, on appeal, the *Students Doe* plaintiffs argue that the school district cannot deny factoring race into the redistricting decision-making process while at the same time narrowly tailoring the plan to meet a compelling government interest.

> A review of the entire trial record will indicate no instance where any Lower Merion witness testified about a race related compelling state interest that justified Lower Merion's use of race as a factor in the redistricting process.[39]

> Lower Merion's defense in this case, i.e. that race was not a factor in its decision-making, precluded it from identifying a compelling state interest related to its use of race in the redistricting process; therefore, when the District Court found that race was a factor in redistricting, Lower Merion could not satisfy its burden of proof as a matter of law.[40]

> The school district's litigation strategy, to defend on the basis that race was not a factor in its actions, is legally, mutually exclusive of a defense premised on the claim that race was a factor in a school district's actions, but that such actions were taken to advance a goal that satisfied a compelling state interest. Allowing a school district to assert that race was not a factor in decision-making, while at the same time preserving the school district's right to contest a strict scrutiny challenge, is simply an invitation to a school district to play "fast and loose" with the facts.[41]

In effect, according to the plaintiffs in *Students Doe*, Judge Baylson is arguing the case for the defendants.

Finally, on appeal, *Students Doe* plaintiffs concede that even if the defendants could prove that Plan 3R served a compelling government interest, the fact that there was no "sunset" for the plan—since it is unlimited in duration—would fail the narrowly tailored test.

> Even if this Honorable finds that all of the aforementioned arguments are unpersuasive, Lower Merion's race based redistricting plan still violates the Fourteenth Amendment because it contains no limitations on its duration. In order to survive strict scrutiny, programs that use race as a factor in their development must be limited in duration. See Grutter, 539 U.S. at 341-342 ("This requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands. Enshrining a permanent justification for racial preferences would offend this fundamental equal protection principle. We see no reason to exempt race-conscious admission programs from the requirement that all governmental use of race must have a logical end point." Id. at 342.).[42]

### *Color-blind Constitution*

Many assume that the U.S. Constitution is, or should be, "color blind." In other words, race should not be considered by public entities unless there is a compelling reason to do so. However, case history since *Brown* shows that this is not an accurate assumption as judicial and statutory interpretations of the intent of the Fourteenth Amendment Equal Protection Clause have varied. To some, equal protection under the law implies that all are created equal and should not be treated differently because of race. To others, however, the government bears responsibility in ensuring equal

opportunity and protection, and to do so, race must be considered. Considering public policy such as affirmative action provides insight into this line of reasoning. Without providing additional opportunities and benefits to those who have been discriminated against in the past, no remedy for discrimination will likely evolve independently. Because of this, the judicial system has been conflicted about "color-blindness" much in the same way is it is about the application of strict scrutiny.

> The result is that it is unclear to what extent the Court has ever affirmed the notion of a color-blind constitution. Even if the Supreme Court has indeed adopted the concept, it is uncertain what that color-blind constitution idea means in practical application since the Justices themselves have strongly disagreed on the meaning.[43]

In school assignment cases, in order to evaluate if a color-blind approach (i.e., race should not have been considered) or a race-conscious approach (i.e., development of a narrowly tailored plan to minimize racial isolation and to close the achievement gap) is a better application of the law, one must consider the repercussions of any such policy. Specifically, what are the benefits and burdens, and who is the most affected by them?

> More recently, Justice Ginsburg, dissenting with the majority in *Gratz* (2003), wrote that the Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination…Contemporary human rights documents draw just this line; they distinguish between policies of oppression and measures designed to accelerate *de facto* equality. (*Gratz*, 2003, p. 302)[44]

In *Students Doe,* one must examine the intended outcomes of the redistricting plan. If the goal of the plan is to promote diversity, who benefits more? Is it the handful of black students who would now become even more of a minority in their school? Or is it the white students who would now be exposed to a more diverse student population? On the other hand, which group of students is most burdened? Students in Southeast Ardmore were denied an opportunity to choose schools—a choice that was given to predominantly white neighboring communities. Additionally, given that the

neighborhood is also one of the most socio-economically challenged in the district, transportation to school events becomes a significant obstacle for those families.

If the white students are the beneficiaries, and the black students bear the burden, how could a race-conscious policy ever survive the strict scrutiny test?

> One articulation of the color-blind constitution is found in Justice Potter Stewart's dissenting opinion in *Fullilove v. Klutznick*, joined by Justice William Rehnquist. Justice Stewart argued that the color-blind constitution not only prohibited governmental action designed to exclude citizens on the basis of race, but that it also prohibited governmental action designed to grant preferential treatment to citizens of certain races.[45]

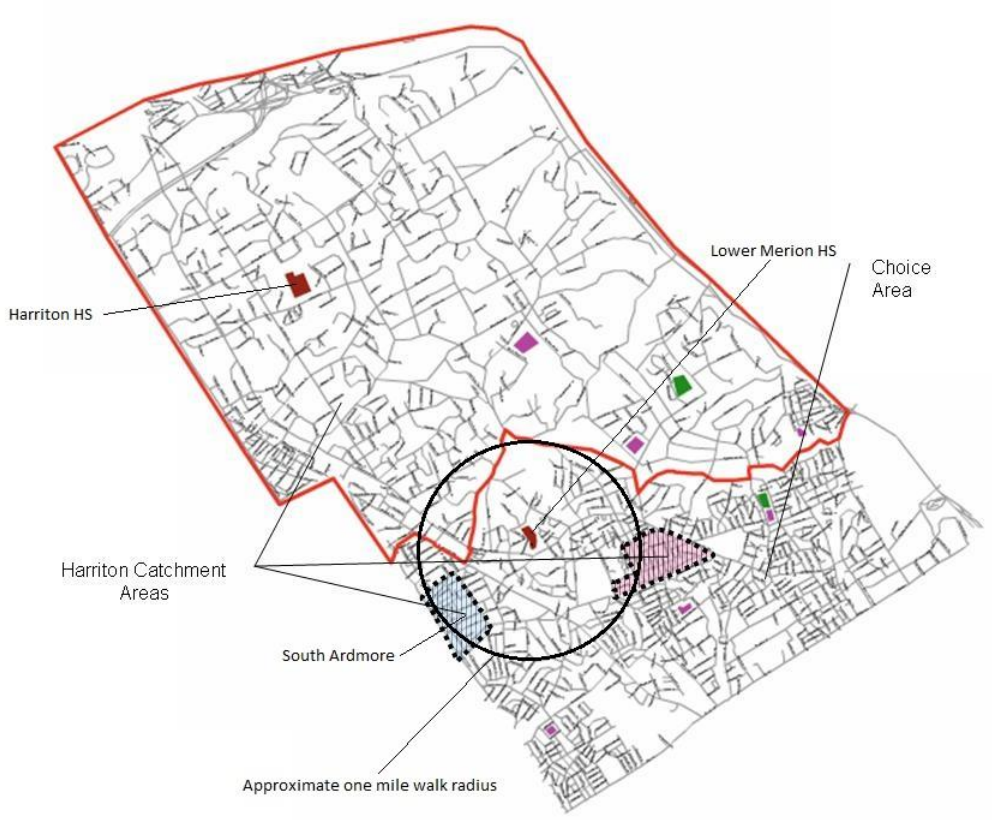
The implication of this line of reasoning in *Students Doe* is apparent in the filing on appeal of an amicus curiae brief authored jointly by NAACP Legal Defense Fund and the ACLU. Perhaps surprisingly, the brief was filed in support of the school district. While they do not question the finding of fact that race was a factor in the redistricting process, they are asking that the Court of Appeals return the case to the trial court due to the incorrect application of strict scrutiny. Specifically, because strict scrutiny was invoked in a situation where a neighborhood's racial demographics—instead of an individual's race—was considered, it should not apply. Their arguments suggest that invoking strict scrutiny in this case would jeopardize the ability for school districts to consider race in determining neighborhood assignments, effectively resulting in their inability to remedy de facto segregation.[46]

## *Conclusion*

*Students Doe v. Lower Merion School District* opens the door to the reevaluation of a variety of constitutional questions. While eliminating all forms of segregation—de jure or de facto—remains a noble endeavor, the U.S. Constitution requires that we do so judiciously and thoughtfully. Relying on case precedent in determining the correct application of strict scrutiny is an arduous task, and one in which the findings of this case

will make even more challenging. Coupled with the as yet unresolved interpretation of the extent of color-blindness of the U.S. Constitution, *Students Doe v. LMSD* has the potential to significantly alter education law.

## *Redistricting Map*




[1] http://www.lowermerion.org/Index.aspx?page=202 (captured 4/15/2011)
[2] U.S. Census (2000)
[3] Ibid.
[4] U.S. Census (2010)
[5] Ibid.
[6] U.S. Census (2000)
[7] Ibid.
[8] *Students Doe v. Lower Merion School District* (E.D. Pa., 2010). In his opinion, Justice Baylson notes that both high schools are of equal quality: "At trial, the Court observed that, in light of the outstanding nature of both high schools in the District, forcing students to attend one school versus the other resembles forcing one to drive a Rolls Royce or a Bentley, when most people are driving Chevrolets or Toyotas." [footnote 3 on page 5 of the opinion].
[9] U.S. Census (2000)
[10] *Students Doe v. Lower Merion School District* (3d Cir., 2010). [Appeal pp.25-26]
[11] http://www.lmsd.org/sections/redistricting/default.php?t=pages&p=redist accessed 4/14/11
[12] It should be noted that Justice Baylson, in his opinion, incorrectly referenced the names of the neighborhoods. Ardmore is divided roughly in two: North Ardmore (with a very low black population) and South Ardmore (with a very high black population). South Ardmore is approximately ½ mile long and ¼ mile wide. For the purposes of this paper, the western and eastern halves of South Ardmore are called "Southwest Ardmore" and "Southeast Ardmore" respectively.

[13] *Students Doe v. Lower Merion School District* (3d Cir., 2010). [Appeal p.27]
[14] *Students Doe v. Lower Merion School District* (E.D. Pa., 2010). [Opinion pp.17-18]
[15] Ibid. p.4
[16] Riccucci, Norma M. "Moving Away From a Strict Scrutiny Standard for Affirmative Action: Implications for Public Management." The American Review of Public Administration (2007): p.124
[17] Ibid. p.124-125
[18] Ibid p.125
[19] *Plessy v. Ferguson* (1896)
[20] Riccucci, Norma M. "Moving Away From a Strict Scrutiny Standard for Affirmative Action: Implications for Public Management." The American Review of Public Administration (2007): p.126
[21] *Parents Involved in Community Schools v. Seattle School District No. 1 (at 720)*
[22] Daniel, Philip T. K. and Gooden, Mark A. "Conflict on the United States Supreme Court: Judicial Confusion and Race-Conscious School Assignments." Brigham Young University Education & Law Journal (2010): p.90 [citing Justice Breyer's Dissent in *Parents Involved in Community Schools v. Seattle School District No. 1*]
[23] *Students Doe v. Lower Merion School District* (3d Cir., 2010). [Opinion p.3]
[24] Ibid. p.4
[25] Ibid. p.10 [emphasis added]
[26] Ibid. p.10 [footnote 5]
[27] Ibid. p.14
[28] Ibid. pp.17-18
[29] Ibid. p.21
[30] *Parents Involved in Community Schools v. Seattle School District No. 1* [p.5]
[31] *Students Doe v. Lower Merion School District* (3d Cir., 2010). [Appeal p.53]
[32] Ibid. p.50
[33] *Students Doe v. Lower Merion School District* (E.D. Pa., 2010). [Opinion p.29]
[34] *Parents Involved in Community Schools v. Seattle School District No. 1* [p.6]
[35] Ibid. p.83
[36] Ibid. pp.84-85
[37] *Students Doe v. Lower Merion School District* (E.D. Pa., 2010). [Opinion p.9]
[38] *Students Doe v. Lower Merion School District* (E.D. Pa., 2010) [Memorandum of Factual Findings appendix A16-A24].
[39] *Students Doe v. Lower Merion School District* (3d Cir., 2010). [Appeal p.47]
[40] Ibid. p.45
[41] Ibid. p.49
[42] Ibid. p.56
[43]Daniel, Philip T. K. and Gooden, Mark A. "Conflict on the United States Supreme Court: Judicial Confusion and Race-Conscious School Assignments." Brigham Young University Education & Law Journal (2010): p.89
[44] Riccucci, Norma M. "Moving Away From a Strict Scrutiny Standard for Affirmative Action: Implications for Public Management." The American Review of Public Administration (2007): p.135
[45] Daniel, Philip T. K. and Gooden, Mark A. "Conflict on the United States Supreme Court: Judicial Confusion and Race-Conscious School Assignments." Brigham Young University Education & Law Journal (2010): p.88
[46] *Students Doe v. Lower Merion School District* (3d Cir., 2010). [Amicus curiae brief]