

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

PARENTS INVOLVED IN COMMUNITY SCHOOLS, a Washington nonprofit corporation,	)	No. 01-35450
	)	
Appellant,	)	<b>CIRCUIT RULE 27-3</b>
	)	<b>CERTIFICATE</b>
v.	)	
	)	DECLARATION OF HARRY
SEATTLE SCHOOL DISTRICT NO. 1, a	)	KORRELL IN SUPPORT OF
political subdivision of the State of	)	APPELLANT'S MOTION FOR
Washington, <u>et al.</u> ,	)	INJUNCTION OR OTHER ACTION
	)	PREVENTING APPELLEE'S USE OF
	)	ILLEGAL, RACE-BASED
Appellees.	)	ASSIGNMENT PLAN PENDING
	)	APPELLEE'S REQUEST FOR <i>EN</i>
	)	<i>BANC</i> REVIEW

Pursuant to Circuit Rule 27-3 and in support of Appellant's emergency motion, Harry Korrell, attorney for Appellant Parents Involved in Community Schools ("PICS"), certifies and declares as follows:

1. Counsel for Appellant PICS are Daniel B. Ritter and Harry J. F. Korrell of Davis Wright Tremaine, LLP, 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101, (206) 622-3150.
2. Counsel for Appellee Seattle School District, No. 1 ("the School District"), are Michael Madden of Bennet Bigelow & Leedom, P.S., 999 Third Avenue, Suite 2150, Seattle, Washington 98104-4036, (206) 622-5511 and Mark S. Green,

General Counsel for Seattle School District, No. 1, M/S AA 151, 815 Fourth Avenue North, Seattle, Washington 98109-3902.

3. If relief is not granted within 21 days, members of PICS will suffer irreparable harm. PICS seeks an injunction or other relief on an emergency basis because, if such relief is not granted, sometime in the next week or two the School District will assign high school students for the 2002-03 school year under the race-based assignment plan held to be illegal by this court's unanimous decision in this case, issued April 16, 2002. By letter dated April 18, 2002, the School District has indicated that (a) it will seek a rehearing of this case *en banc* and (b) because the filing of the petition for review stays the mandate of this court pending action on that petition, the School District intends to make assignments for the 2002-03 school year using the race-based plan, unless this court issues an order enjoining that action. The letter further indicates that in the normal course of events, letters informing students of their assignments are sent at the end of April. A true and correct copy of that letter is attached hereto as Exhibit A.

4. If the School District is not enjoined from making assignments under the illegal, race-based plan, PICS members and other Seattle Public School students will suffer immediate and irreparable harm: the deprivation of civil rights. They will be forced to compete for school assignments under - and likely will be assigned to schools by the operation of - an illegal, race-based student assignment plan.

5. I notified counsel for the School District (by a letter faxed to Mr. Madden's office on April 19, 2002) that PICS would file this motion. A copy of this letter was sent to the Clerk of this court. A true and correct copy is attached as Exhibit B.

6. I called the Clerk's office on April 19, 2002, to inform the court that PICS would file this motion. I was referred to "motions" and I informed an attorney in that office that PICS would likely file this motion on April 22 or 23.

DECLARATION OF HARRY KORRELL IN SUPPORT OF  
EMERGENCY MOTION FOR INJUNCTION - 2

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Seattle

I declare, under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 22<sup>d</sup> day of April, 2002.

A handwritten signature in black ink, appearing to read "Harry J. F. Korrell", written above a horizontal line.

Harry J. F. Korrell

# **EXHIBIT A**



Bennett Bigelow & Leedom, P.S.

April 18, 2002

Michael Madden  
Attorney

**VIA FACSIMILE & U.S. MAIL**

Daniel B. Ritter, Esq.  
Harry J.F. Korrell, Esq.  
Davis Wright Tremaine LLP  
1501 Fourth Avenue, Ste. 2600  
Seattle, Washington 98101-1688

Re: *PICS v. Seattle School District No. 1, et al.*  
Ninth Circuit No. 01-35450

Dear Counsel:

I write to advise you of the District's intentions with regard to the opinion filed by the Ninth Circuit panel on April 16, 2002. We have been instructed to file a petition for rehearing *en banc*. As you know, timely filing of such a petition stays issuance of a mandate and thereby suspends the finality of the Court of Appeals' judgment. FRAP 41(b).

As of this date, the District has completed processing of on-time assignment requests under the assignment plan approved by its Board of Directors last fall, but has not yet sent out letters notifying parents or students of those assignments. In the normal course, these notice letters would have been sent around the end of April.

On April 17, 2002, the District's Board of Directors passed a resolution instructing that, if the District is enjoined from processing high school assignments using the integration tiebreaker, the Superintendent is to also process K-8 assignment requests without the integration tiebreaker being used.

The District will promptly re-run the assignment process without the integration tiebreaker. The actual re-computing of assignments will take a relatively short time. However, it will take several weeks thereafter to generate revised notice letters to parents and students. We anticipate that revised notices would be ready go out around the first of June. This delay will occur regardless of whether the District files a rehearing petition.

{1422.00009/MM207192.DOC, Ver. 1}

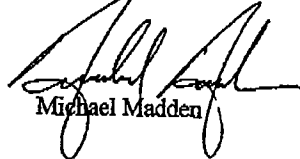
999 Third Avenue, Suite 2150 - Seattle, Washington 98104  
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Daniel B. Ritter, Esq.  
Harry J. F. Korrell, Esq.  
April 18, 2002  
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Which set of letters will be sent depends on whether the District is enjoined from using the integration tiebreaker. At this time, no such injunction has been entered. Accordingly, we believe that, in order to maintain the District's position in further proceedings, it is necessary to proceed under the duly adopted assignment plan until such time as the District is enjoined from doing so. Therefore, while the District does not intend to impose an unnecessary burden on the court or your clients and will comply with any orders of the court, PICS should seek an order enjoining use of the integration tiebreaker if it wishes to change 2002-03 assignments.

Very truly yours,

BENNETT BIGELOW & LEEDOM, P.S.



Michael Madden

MM:kjs

cc: Mark Green, Esq.

## **EXHIBIT B**



## Davis Wright Tremaine LLP

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April 19, 2002

### VIA FACSIMILE/U.S. MAIL

Michael Madden  
Bennett Bigelow & Leedom, P.S.  
999 Third Avenue, Suite 2150  
Seattle, WA 98104-4036

Re: PICS v. Seattle School District No. 1, et al.  
Ninth Circuit No. 01-35450

Dear Mr. Madden:

I have received your letter of April 18, 2002, indicating that, despite the opinion of the panel, the school district intends to continue the use of race in high school student assignments for the 2002-03 school year in the absence of an order from the court enjoining the continued use of race. Because the school district has taken that position, PICS intends to file an emergency motion seeking an injunction prohibiting the use of race in the assignments for 2002-03. You will be served with the motion as soon as it can be completed, likely in the next day or so. Please let me know immediately if you do not intend to oppose this motion so that I may inform the court. I trust no assignments will be made or letters mailed to parents until this motion can be decided. Please call if you have any questions.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to be 'Harry J. F. Korrell', written over a horizontal line.

Harry J. F. Korrell

cc: Clerk, 9th Circuit Court of Appeals  
PICS Board Members  
Mark S. Green, Esq.