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Davis Wright Tremaine
By: _____

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PARENTS INVOLVED IN)	No. 01-35450
COMMUNITY SCHOOLS, a)	
Washington nonprofit corporation,)	
)	APPELLEES' RESPONSE
Appellant,)	TO APPELLANT-PICS'
)	"EMERGENCY" MOTION
vs.)	FOR INJUNCTIVE RELIEF
)	
SEATTLE SCHOOL DISTRICT)	
NO. 1, a Political subdivision of the)	
State of Washington, et al.,)	
)	
Appellees.)	

Appellees, Seattle School District No. 1 and affiliated individuals (hereinafter "the District") respectfully submit the following response to plaintiff/appellants' "Emergency" Motion for an Injunction, prohibiting the District from making high school assignments for the 2002-03 school year

using the integration tie-breaker, which was held invalid by the panel in this case.

There is no “emergency” in this case of the sort specified under Circuit Rule 27-3. Prior to the filing of appellant’s motion, the District informed PICS’ counsel that the District had no intention of circumventing the judicial process by sending out notices of school assignments based on the racial tie-breaker, and that it would not send such letters in the face of a timely motion for an injunction by the appellant. See, exhibits 1-2 to declaration of counsel filed herewith (letter to PICS’ counsel, transmitted on Sunday, April 21, 2002 via email at 3:20 PM).

Earlier, in a letter sent to PICS’ counsel two days after the panel’s decision (Exhibit A to the declaration of PICS counsel), the District informed PICS that, in the normal course, it had completed the processing of school assignments (using the integration tie-breaker) before the panel’s decision was filed, but had not and would not send those letters (again, in the normal course and without regard to the decision) until the end of April. The District also indicated that it was proceeding expeditiously to re-

process assignments without the tie-breaker and indicated that it would not be ready to send out revised assignments until approximately June 1st.

The District also stated its intention to file a petition for rehearing en banc in this case. Under FRAP 41(b), such a petition suspends the finality of the Court's judgment. Since no injunction has previously been entered, we invited PICS to seek an injunction if it wished to prevent the use of the tie-breaker in the current round of assignments.

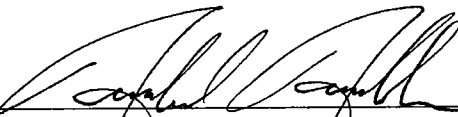
Rather than proceeding in the reckless manner described by PICS' breathless motion papers, the District has been careful to avoid creation of an "emergencies" in this case. Instead, it is simply taking steps necessary to preserve its position in this litigation by not doing anything that could later be characterized as voluntary abandonment of the integration tie-breaker.

On the merits, as we have previously indicated to PICS' counsel, the District does not contend that there are equitable reasons to deny the relief requested. However, on the underlying legal questions, for the reasons to be explained in its rehearing petition, the District believes that PICS is not entitled to relief under Wash. Rev. Code 49.60.400. That petition will be filed with the Court on or before April 30, 2002. Under the circumstances,

where the District has stated that it will not send out notices of assignment based on the integration tie-breaker and is proceeding expeditiously to re-process assignments in conformity with the panel's decision, it is respectfully suggested that the panel should consider this motion only after it has reviewed the District's rehearing petition.

Dated this 23 day of April, 2002.

BENNETT BIGELOW & LEEDOM, P.S.

By 
Michael Madden, WSBA #8747
Of Attorneys for Appellees

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