

PUBLIC POLICY AND ADVOCACY

Supreme Court Upholds Diversity as a ‘Compelling State Interest’ in University of Michigan Admissions Cases

The March 2003 issue of the **Communiqué** reported that the American Psychological Association had filed an amicus brief in support of the University of Michigan’s request to the Supreme Court to affirm its law school and undergraduate admissions policies. On June 23, 2003, the U.S. Supreme Court issued its decisions in two cases involving the admissions process at the University of Michigan’s law school and undergraduate study programs and the use of race/ethnicity in that process. The Court upheld diversity as a ‘compelling State interest in the context of university admissions’, but cautioned that the consideration of race or ethnicity in admissions decisions must involve a narrowly tailored plan wherein “...each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application” By a 5 to 4 decision related to **Grutter v. Bollinger et al.**, the Court upheld Michigan’s law school admissions program, which seeks through diversity to ensure such educational benefits as cross-racial understanding and the breaking down of racial stereotypes. By a 5-4 decision in **Gratz et al. v. Bollinger et al.**, the Court declared the Michigan undergraduate admission process violates the Equal Protection Clause and Title VI, as it “...automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single ‘underrepresented minority’ applicant solely because of race [and therefore] is not narrowly tailored to achieve educational diversity”. Excerpts of the summary of those opinions are presented below.

SUPREME COURT OF THE UNITED STATES

Excerpts of Syllabus

GRUTTER v. BOLLINGER ET AL.

No. 02–241. Argued April 1, 2003 — Decided June 23, 2003

[Background:] The University of Michigan Law School (Law School), one of the Nation’s top law schools, follows an official admissions policy that seeks to achieve student body diversity through compliance with *Regents of Univ. of Cal. v. Bakke*, 438 U. S. 265. Focusing on students’ academic ability coupled with a flexible assessment of their talents, experiences, and potential, the policy requires admissions officials to evaluate each applicant based on all the information available in the file, including a personal statement, letters of recommendation, an essay describing how the applicant will contribute to Law School life and diversity, and the applicant’s undergraduate grade point average (GPA) and Law School Admissions Test (LSAT) score. Additionally, officials must look beyond grades and scores to so-called “soft variables,” such as recommenders’ enthusiasm, the quality of the undergraduate institution and the applicant’s essay, and the areas and difficulty of undergraduate course selection. The policy does not define diversity solely in terms of racial and ethnic status and does not restrict the types of diversity contributions eligible for “substantial weight,” but it does reaffirm the Law School’s commitment to diversity with special reference to the inclusion of African-American, Hispanic, and Native-American students, who otherwise might not be represented in the student body in meaningful numbers. By enrolling a “critical mass” of underrepresented minority students, the policy seeks to ensure their ability to contribute to the Law School’s character and to the legal profession.

When the Law School denied admission to petitioner Grutter, a white Michigan resident with a 3.8 GPA and 161 LSAT score, she filed this suit, alleging that respondents had discriminated against her on the basis of race in violation of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U. S. C. §1981; that she was rejected because the Law School uses race as a “predominant” factor, giving applicants belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups; and that respondents had no compelling interest to justify that use of race. The District Court found the Law School’s use of race as an admissions factor unlawful. The Sixth Circuit reversed, holding that Justice

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Powell's opinion in *Bakke* was binding precedent establishing diversity as a compelling state interest, and that the Law School's use of race was narrowly tailored because race was merely a "potential 'plus' factor" and because the Law School's program was virtually identical to the Harvard admissions program described approvingly by Justice Powell and appended to his *Bakke* opinion.

Held: The Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body is not prohibited by the Equal Protection Clause, Title VI, or §1981. Pp. 9–32.

(a) In the landmark *Bakke* case, this Court reviewed a medical school's racial set-aside program that reserved 16 out of 100 seats for members of certain minority groups. The decision produced six separate opinions, none of which commanded a majority...Justice Powell expressed his view that attaining a diverse student body was the only interest asserted by the university that survived scrutiny...However, he also emphasized that "[i]t is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups," that can justify using race. *Id.*, at 315. Rather, "[t]he diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element"...the Court endorses Justice Powell's view that student body diversity is a compelling state interest in the context of university admissions. Pp. 9–13.

...Race-based action necessary to further a compelling governmental interest does not violate the Equal Protection Clause so long as it is narrowly tailored to further that interest ... Context matters when reviewing such action. ... Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the government's reasons for using race in a particular context. ...

(c) The Court endorses Justice Powell's view that student body diversity is a compelling state interest that can justify using race in university admissions. The Court defers to the Law School's educational judgment that diversity is essential to its educational mission. ...Enrolling a "critical mass" of minority students simply to assure some specified percentage of a particular group merely because of its race or ethnic origin would be patently unconstitutional. ...But the Law School defines its critical mass concept by reference to the substantial, important, and laudable educational benefits that diversity is designed to produce, including cross-racial understanding and the breaking down of racial stereotypes. The Law School's claim is further bolstered by numerous expert studies and reports showing that such diversity promotes learning outcomes and better prepares students for an increasingly diverse workforce, for society, and for the legal profession....

(d) The Law School's admissions program bears the hallmarks of a narrowly tailored plan. To be narrowly tailored, a race-conscious admissions program cannot "insulat[e] each category of applicants with certain desired qualifications from competition with all other applicants." *Bakke, supra*, at 315 (opinion of Powell, J.). Instead, it may consider race or ethnicity only as a " 'plus' in a particular applicant's file"; *i.e.*, it must be "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight," *id.*, at 317. ...Moreover, the program is flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application. ...Finally, race-conscious admissions policies must be limited in time. ...The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today. ...

Complete Supreme Court Opinion at:

<http://a257.g.akamaitech.net/7/257/2422/23jun20030800/www.supremecourtus.gov/opinions/02pdf/02-241.pdf>

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SUPREME COURT OF THE UNITED STATES

Excerpts of Syllabus

GRATZ ET AL. v. BOLLINGER ET AL

No. 02–516. Argued April 1, 2003 — Decided June 23, 2003

[Background:] Petitioners Gratz and Hamacher, both of whom are Michigan residents and Caucasian, applied for admission to the University of Michigan’s (University) College of Literature, Science, and the Arts (LSA) in 1995 and 1997, respectively. Although the LSA considered Gratz to be well qualified and Hamacher to be within the qualified range, both were denied early admission and were ultimately denied admission. In order to promote consistency in the review of the many applications received, the University’s Office of Undergraduate Admissions (OUA) uses written guidelines for each academic year. The guidelines have changed a number of times during the period relevant to this litigation. The OUA considers a number of factors in making admissions decisions, including high school grades, standardized test scores, high school quality, curriculum strength, geography, alumni relationships, leadership, and race. During all relevant periods, the University has considered African-Americans, Hispanics, and Native Americans to be “underrepresented minorities,” and it is undisputed that the University admits virtually every qualified applicant from these groups. The current guidelines use a selection method under which every applicant from an underrepresented racial or ethnic minority group is automatically awarded 20 points of the 100 needed to guarantee admission.

Petitioners filed this class action alleging that the University’s use of racial preferences in undergraduate admissions violated the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U. S. C. §1981. They sought compensatory and punitive damages for past violations, declaratory relief finding that respondents violated their rights to nondiscriminatory treatment, an injunction prohibiting respondents from continuing to discriminate on the basis of race, and an order requiring the LSA to offer Hamacher admission as a transfer student. ...

Held: 1. Petitioners have standing to seek declaratory and injunctive relief. The Court rejects JUSTICE STEVENS’ contention that, because Hamacher did not actually apply for admission as a transfer student, his future injury claim is at best conjectural or hypothetical rather than real and immediate. The “injury in fact” necessary to establish standing in this type of case is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit. ...

2. Because the University’s use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents’ asserted interest in diversity, the policy violates the Equal Protection Clause. For the reasons set forth in *Grutter v. Bollinger*, *post*, at 15– 21, the Court has today rejected petitioners’ argument that diversity cannot constitute a compelling state interest. However, the Court finds that the University’s current policy, which automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single “underrepresented minority” applicant solely because of race, is not narrowly tailored to achieve educational diversity. In *Bakke*, Justice Powell explained his view that it would be permissible for a university to employ an admissions program in which “race or ethnic background may be deemed a ‘plus’ in a particular applicant’s file.” 438 U. S., at 317. He emphasized, however, the importance of considering each particular applicant as an individual, assessing all of the qualities that individual possesses, and in turn, evaluating that individual’s ability to contribute to the unique setting of higher education. ...The fact that the LSA has created the possibility of an applicant’s file being flagged for individualized consideration only emphasizes the flaws of the University’s system...but it is undisputed that such consideration is the exception and not the rule in the LSA’s program. Also, this individualized review is only provided *after* admissions counselors automatically distribute the University’s version of a “plus” that makes race a decisive factor for virtually every minimally qualified underrepresented minority applicant. The Court rejects respondents’ contention that the volume of applications and the presentation of applicant information make it impractical for the LSA to use the admissions system upheld today in *Grutter*. The fact that the implementation of a program capable of providing individualized consideration might present administrative challenges does not render constitutional an otherwise problematic system. ...

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3. Because the University's use of race in its current freshman admissions policy violates the Equal Protection Clause, it also violates Title VI and §1981. ...

Complete Supreme Court Opinion at:

<http://a257.g.akamaitech.net/7/257/2422/23jun20030800/www.supremecourtus.gov/opinions/02pdf/02-516.pdf>