Supreme Court Affirmative Action Cases

1. GRUTTER v. BOLLINGER (2003)

JUSTICE O'CONNOR delivered the opinion of the Court.

This case requires us to decide whether the use of race as a factor in student admissions by the University of Michigan Law School (Law School) is unlawful.

I

The Law School ranks among the Nation's top law schools. It receives more than 3,500 applications each year for a class of around 350 students. Seeking to "admit a group of students who individually and collectively are among the most capable," the Law School looks for individuals with "substantial promise for success in law school" and "a strong likelihood of succeeding in the practice of law and contributing in diverse ways to the well-being of others." More broadly, the Law School seeks "a mix of students with varying backgrounds and experiences who will respect and learn from each other." In 1992, the dean of the Law School charged a faculty committee with crafting a written admissions policy to implement these goals. In particular, the Law School sought to ensure that its efforts to achieve student body diversity complied with this Court's most recent ruling on the use of race in university admissions. See *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978). Upon the adoption of the committee's report by the Law School faculty, it became the Law School's official admissions policy.

The hallmark of that policy is its focus on academic ability coupled with a flexible assessment of applicants' talents, experiences, and potential "to contribute to the learning of those around them." 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, and an essay describing the ways in which the applicant will contribute to the life and diversity of the Law School. In reviewing an applicant's file, admissions officials must consider the applicant's undergraduate grade point average (GPA) and Law School Admissions Test (LSAT) score because they are important (if imperfect) predictors of academic success in law school. The policy stresses that "no applicant should be admitted unless we expect that applicant to do well enough to graduate with no serious academic problems."

The policy makes clear, however, that even the highest possible score does not guarantee admission to the Law School. Nor does a low score automatically disqualify an applicant. Rather, the policy requires admissions officials to look beyond grades and test scores to other criteria that are important to the Law School's educational objectives. So-called " 'soft' variables" such as "the enthusiasm of recommenders, the quality of the undergraduate institution, the quality of the applicant's essay, and the areas and difficulty of undergraduate course selection" are all brought to bear in assessing an "applicant's likely contributions to the intellectual and social life of the institution."

The policy aspires to "achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts." The policy does not restrict the types of diversity contributions eligible for "substantial weight" in the admissions

process, but instead recognizes "many possible bases for diversity admissions." The policy does, however, reaffirm the Law School's longstanding commitment to "one particular type of diversity," that is, "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers." By enrolling a " 'critical mass' of [underrepresented] minority students," the Law School seeks to "ensur[e] their ability to make unique contributions to the character of the Law School."

Barbara Grutter is a white Michigan resident who applied to the Law School in 1996 with a 3.8 grade point average and 161 LSAT score. The Law School rejected her application. In 1997, petitioner filed suit against the Law School. Petitioner alleged that respondents discriminated against her on the basis of race in violation of the Fourteenth Amendment. Petitioner further alleged that her application was rejected because the Law School uses race as a "predominant" factor, giving applicants who belong to certain minority groups "a significantly greater chance of admission than students with similar credentials from disfavored racial groups."

II

We last addressed the use of race in public higher education over 25 years ago. In the landmark *Bakke* case, we reviewed a racial set-aside program that reserved 16 out of 100 seats in a medical school class for members of certain minority groups. 438 U.S. 265 (1978). The decision produced six separate opinions, none of which commanded a majority of the Court. Since this Court's splintered decision in *Bakke*, Justice Powell's opinion announcing the judgment of the Court has served as the touchstone for constitutional analysis of race-conscious admissions policies. Public and private universities across the Nation have modeled their own admissions programs on Justice Powell's views on permissible race-conscious policies. Justice Powell approved the university's use of race to further only one interest: "the attainment of a diverse student body." Today we endorse Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions.

We have held that all racial classifications imposed by government "must be analyzed by a reviewing court under strict scrutiny." This means that such classifications are constitutional only if they are narrowly tailored to further compelling governmental interests. We apply strict scrutiny to all racial classifications to " 'smoke out' illegitimate uses of race by assuring that [government] is pursuing a goal important enough to warrant use of a highly suspect tool." Under this exacting standard, the university's use of race to further "the attainment of a diverse student body" is a compelling state interest that can justify the use of race in university admissions.

III

The Law School's educational judgment that such diversity is essential to its educational mission is one to which we defer. The Law School's assessment that diversity will, in fact, yield educational benefits is substantiated by respondents and their amici. Our scrutiny of the interest asserted by the Law School is no less strict for taking into account complex educational judgments in an area that lies primarily within the expertise of the university. Our holding today is in keeping with our tradition of giving a degree of deference to a university's academic

decisions, within constitutionally prescribed limits.

As part of its goal of "assembling a class that is both exceptionally academically qualified and broadly diverse," the Law School seeks to "enroll a 'critical mass' of minority students." The Law School's interest is not simply "to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin." That would amount to outright racial balancing, which is patently unconstitutional. Rather, the Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.

These benefits are substantial. The Law School's admissions policy promotes "cross-racial understanding," helps to break down racial stereotypes, and "enables [students] to better understand persons of different races." These benefits are "important and laudable," because "classroom discussion is livelier, more spirited, and simply more enlightening and interesting" when the students have "the greatest possible variety of backgrounds."

Even in the limited circumstance when drawing racial distinctions is permissible to further a compelling state interest, government is still "constrained in how it may pursue that end: [T]he means chosen to accomplish the [government's] asserted purpose must be specifically and narrowly framed to accomplish that purpose." The purpose of the narrow tailoring requirement is to ensure that "the means chosen 'fit' th[e] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype."

To be narrowly tailored, a race-conscious admissions program cannot use a quota system–it cannot "insulat[e] each category of applicants with certain desired qualifications from competition with all other applicants." Instead, a university may consider race or ethnicity only as a " 'plus' in a particular applicant's file," without "insulat[ing] the individual from comparison with all other candidates for the available seats." In other words, an admissions program 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."

We find that the Law School's admissions program bears the hallmarks of a narrowly tailored plan. We are satisfied that the Law School's admissions program does not operate as a quota. The Law School's goal of attaining a critical mass of underrepresented minority students does not transform its program into a quota. "[S]ome attention to numbers," without more, does not transform a flexible admissions system into a rigid quota.

That a race-conscious admissions program does not operate as a quota does not, by itself, satisfy the requirement of individualized consideration. When using race as a "plus" factor in university admissions, a university's admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application. The importance of this individualized consideration in the context of a race-conscious admissions program is paramount.

Here, the Law School engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment. The Law School affords this individualized consideration to applicants of all races.

There is no policy, either de jure or de facto, of automatic acceptance or rejection based on any single "soft" variable. Unlike the program at issue in *Gratz v. Bollinger*, the Law School awards no mechanical, predetermined diversity "bonuses" based on race or ethnicity.

We also find that the Law School's race-conscious admissions program adequately ensures that all factors that may contribute to student body diversity are meaningfully considered alongside race in admissions decisions. All applicants have the opportunity to highlight their own potential diversity contributions through the submission of a personal statement, letters of recommendation, and an essay describing the ways in which the applicant will contribute to the life and diversity of the Law School. What is more, the Law School actually gives substantial weight to diversity factors besides race.

Petitioner and the United States argue that the Law School's plan is not narrowly tailored because race-neutral means exist to obtain the educational benefits of student body diversity. We disagree. Narrow tailoring does require serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks. We are satisfied that the Law School adequately considered race-neutral alternatives currently capable of producing a critical mass without forcing the Law School to abandon the academic selectivity that is the cornerstone of its educational mission.

The requirement that all race-conscious admissions programs have a termination point "assure[s] all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself." We take the Law School at its word that it would "like nothing better than to find a race-neutral admissions formula" and will terminate its race-conscious admissions program as soon as practicable. It has been 25 years since Justice Powell [in *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978)] first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

CHIEF JUSTICE REHNQUIST, with whom JUSTICES SCALIA, KENNEDY, and THOMAS join, dissenting.

I do not believe that the Law School's means are narrowly tailored to the interest it asserts. The Law School claims it must take the steps it does to achieve a " 'critical mass' " of underrepresented minority students. But its actual program bears no relation to this asserted goal. Stripped of its "critical mass" veil, the Law School's program is revealed as a naked effort to achieve racial balancing.

Although the Court recites the language of our strict scrutiny analysis, its application of that review is unprecedented in its deference. The Law School has offered no explanation for its actual admissions practices and, unexplained, we are bound to conclude that the Law School has managed its admissions program, not to achieve a "critical mass," but to extend offers of admission to members of selected minority groups in proportion to their statistical representation in the applicant pool. But this is precisely the type of racial balancing that the Court itself calls

“patently unconstitutional.”

Finally, I believe that the Law School’s program fails strict scrutiny because it is devoid of any reasonably precise time limit on the use of race in admissions. The Court suggests a possible 25-year limitation on the Law School’s current program. Respondents, on the other hand, remain more ambiguous, explaining that “the Law School of course recognizes that race-conscious programs must have reasonable durational limits. These discussions of a time limit are the vaguest of assurances. In truth, they permit the Law School’s use of racial preferences on a seemingly permanent basis. Thus, an important component of strict scrutiny—that a program be limited in time—is casually subverted.

2. GRATZ v. BOLLINGER (2003)

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court, in which JUSTICES O’CONNOR, SCALIA, KENNEDY, and THOMAS, joined.

We granted certiorari in this case to decide whether “the University of Michigan’s use of racial preferences in undergraduate admissions violate[s] the Equal Protection Clause of the Fourteenth Amendment.

Petitioners Jennifer Gratz and Patrick Hamacher both applied for admission to the University of Michigan’s (University) College of Literature, Science, and the Arts (LSA) as residents of the State of Michigan. Both petitioners are Caucasian. Gratz, who applied for admission for the fall of 1995, was notified in April that the LSA was unable to offer her admission. Hamacher applied for admission to the LSA for the fall of 1997. Hamacher’s application was denied in April 1997.

In October 1997, Gratz and Hamacher filed a lawsuit in the United States District Court for the Eastern District of Michigan alleging “violations of the rights of the plaintiffs to equal protection of the laws under the Fourteenth Amendment.”

The University has changed its admissions guidelines a number of times during the period relevant to this litigation. The University’s Office of Undergraduate Admissions (OUA) oversees the LSA admissions process. In order to promote consistency in the review of the large number of applications received, the OUA uses written guidelines for each academic year. Admissions counselors make admissions decisions in accordance with these guidelines.

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, and leadership. OUA also considers race. During all periods relevant to this litigation, 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.

Beginning with the 1998 academic year, the OUA [adopted] a “selection index,” on which an applicant could score a maximum of 150 points. This index was divided linearly into ranges generally calling for admissions dispositions as follows: 100–150 (admit); 95– 99 (admit or postpone); 90–94 (postpone or admit); 75–89 (delay or postpone); 74 and below (delay or reject).

Each application received points based on high school grade point average, standardized test scores, academic quality of an applicant's high school, strength or weakness of high school curriculum, in-state residency, alumni relationship, personal essay, and personal achievement or leadership. Of particular significance here, under a "miscellaneous" category, an applicant was entitled to 20 points based upon his or her membership in an underrepresented racial or ethnic minority group. The University explained that the " 'development of the selection index in 1998 changed only the mechanics, not the substance of how race and ethnicity were considered in admissions.' "

It is by now well established that "all racial classifications reviewable under the Equal Protection Clause must be strictly scrutinized." This " 'standard of review is not dependent on the race of those burdened or benefited by a particular classification.' " Thus, "any person, of whatever race, has the right to demand that any governmental actor justify any racial classification subjecting that person to unequal treatment under the strictest of judicial scrutiny."

To withstand our strict scrutiny analysis, respondents must demonstrate that the University's use of race in its current admission program employs "narrowly tailored measures that further compelling governmental interests." Because "[r]acial classifications are simply too pernicious to permit any but the most exact connection between justification and classification," our review of whether such requirements have been met must entail " 'a most searching examination.' " We find that the University's 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 the interest in educational diversity.

In *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978), Justice Powell explained that in his view 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." He explained that such a program might allow for "[t]he file of a particular black applicant [to] be examined for his potential contribution to diversity without the factor of race being decisive. Such a system would be "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant."

Justice Powell's opinion in *Bakke* emphasized 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 admissions program Justice Powell described, however, did not contemplate that any single characteristic automatically ensured a specific and identifiable contribution to a university's diversity. Instead, each characteristic of a particular applicant was to be considered in assessing the applicant's entire application.

The LSA policy does not provide such individualized consideration. The LSA's policy automatically distributes 20 points to every applicant from an "underrepresented minority" group, as defined by the University. The only consideration that accompanies this distribution of points is a factual review of an application to determine whether an individual is a member of one of these minority groups. Moreover, unlike Justice Powell's example, where the race of a "particular black applicant" could be considered without being decisive, the LSA's automatic

distribution of 20 points has the effect of making "the factor of race decisive" for virtually every minimally qualified underrepresented minority applicant. Instead of considering how the differing backgrounds, experiences, and characteristics of students might benefit the University, admissions counselors reviewing applications simply award 20 points because applications indicate that they are African-American.

Respondents contend that "[t]he volume of applications and the presentation of applicant information make it impractical for [LSA] to use the admissions system" upheld by the Court today in *Grutter*. But 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.

We conclude that because the University's use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents' asserted compelling interest in diversity, the admissions policy violates the Equal Protection Clause.

JUSTICE GINSBURG, with whom JUSTICE SOUTER joins, dissenting.

Our jurisprudence ranks race a "suspect" category, "not because [race] is inevitably an impermissible classification, but because it is one which usually, to our national shame, has been drawn for the purpose of maintaining racial inequality." But where race is considered "for the purpose of achieving equality," no automatic proscription is in order. For, as insightfully explained, "[t]he 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."

The mere assertion of a laudable governmental purpose should not immunize a race-conscious measure from careful judicial inspection. Close review is needed "to ferret out classifications in reality malign, but masquerading as benign," and to "ensure that preferences are not so large as to trammel unduly upon the opportunities of others or interfere too harshly with legitimate expectations of persons in once-preferred groups."

Examining in this light the admissions policy employed by the College of Literature, Science, and the Arts, I see no constitutional infirmity. Like other top-ranking institutions, the College has many more applicants than it can accommodate. Every applicant admitted under the current plan, petitioners do not dispute, is qualified to attend the College. The racial and ethnic groups to which the College accords special consideration historically have been relegated to inferior status by law and social practice; their members continue to experience class-based discrimination to this day. There is no suggestion that the College adopted its current policy to limit or decrease enrollment by any particular racial or ethnic group, and no seats are reserved on the basis of race. Nor has there been any demonstration that the College's program unduly constricts admissions opportunities for students who do not receive special consideration based on race.

The stain of generations of racial oppression is still visible in our society and the determination to hasten its removal remains vital.