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SUPREME COURT OF THE UNITED STATES

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GRUTTER *v.* BOLLINGER ET AL.

539 US 306 (2003)

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

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

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,

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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 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. Four Justices would have upheld the program on the ground that the government can use race to remedy disadvantages cast on minorities by past racial prejudice. 438 U. S., at 325. Four other Justices would have struck the program down on statutory grounds. *Id.*, at 408. Justice Powell, announcing the Court’s judgment, provided a fifth vote not only for invalidating the program, but also for reversing the state court’s injunction against any use of race whatsoever. In a part of his opinion that was joined by no other Justice, Justice Powell expressed his view that attaining a diverse student body was the only interest asserted by the university that survived scrutiny. *Id.*, at 311. Grounding his analysis in the academic freedom that “long has been viewed as a special concern of the First Amendment,” *id.*, at 312, 314, Justice Powell emphasized that the “‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation.” *Id.*, at 313. 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.” *Ibid.* Since *Bakke*, Justice Powell’s opinion has

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been 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. Courts, however, have struggled to discern whether Justice Powell's diversity rationale is binding precedent. The Court finds it unnecessary to decide this issue because 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.

(b) All government racial classifications must be analyzed by a reviewing court under strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U. S. 200, 227. But not all such uses are invalidated by strict scrutiny. 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. *E.g.*, *Shaw v. Hunt*, 517 U. S. 899, 908. Context matters when reviewing such action. See *Gomillion v. Lightfoot*, 364 U. S. 339, 343–344. 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. 13–15.

(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. The Court's scrutiny of that interest is no less strict for taking into account complex educational judgments in an area that lies primarily within the university's expertise. See, *e.g.*, *Bakke*, 438 U. S., at 319, n. 53 (opinion of Powell, J.). Attaining a diverse student body is at the heart of the Law School's proper institutional mission, and its "good faith" is "presumed" absent "a showing to the contrary." *Id.*, at 318–319. 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. *E.g.*, *id.*, at 307. 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. Major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. High-ranking retired officers and civilian

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military leaders assert that a highly qualified, racially diverse officer corps is essential to national security. Moreover, because universities, and in particular, law schools, represent the training ground for a large number of the Nation's leaders, *Sweatt v. Painter*, 339 U. S. 629, 634, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity. Thus, the Law School has a compelling interest in attaining a diverse student body. 15–21.

(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. It follows that universities cannot establish quotas for members of certain racial or ethnic groups or put them on separate admissions tracks. See *id.*, at 315–316. The Law School's admissions program, like the Harvard plan approved by Justice Powell, satisfies these requirements. 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. See *Bakke, supra*, at 317 (opinion of Powell, J.). 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. There is no policy, either *de jure* or *de facto*, of automatic acceptance or rejection based on any single "soft" variable. *Gratz v. Bollinger, ante*, p. ___, distinguished. Also, the program adequately ensures that all factors that may contribute to diversity are meaningfully considered alongside race. Moreover, the Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected. The Court rejects the argument that the Law School should have used other race-neutral means to obtain the educational benefits of student body diversity, *e.g.*, a lottery system or decreasing the emphasis on GPA and LSAT scores. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative or mandate that a university choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups. See, *e.g.*, *Wygant v. Jackson Bd. of Ed.*, 476

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U. S. 267, 280, n. 6. The Court is satisfied that the Law School adequately considered the available alternatives. The Court is also satisfied that, in the context of individualized consideration of the possible diversity contributions of each applicant, the Law School's race-conscious admissions program does not unduly harm nonminority applicants. Finally, race-conscious admissions policies must be limited in time. The Court takes the Law School at its word that it would like nothing better than to find a race-neutral admissions formula and will terminate its use of racial preferences as soon as practicable. The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today. Pp. 21–31.

(e) Because the Law School's use of race in admissions decisions is not prohibited by Equal Protection Clause, petitioner's statutory claims based on Title VI and §1981 also fail. See *Bakke, supra*, at 287 (opinion of Powell, J.); *General Building Contractors Assn., Inc. v. Pennsylvania*, 458 U. S. 375, 389–391. Pp. 31–32.

288 F. 3d 732, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined, and in which SCALIA and THOMAS, JJ., joined in part insofar as it is consistent with the views expressed in Part VII of the opinion of THOMAS, J. GINSBURG, J., filed a concurring opinion, in which BREYER, J., joined. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which THOMAS, J., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which SCALIA, J., joined as to Parts I–VII. REHNQUIST, C. J., filed a dissenting opinion, in which SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., filed a dissenting opinion.