



## The Supreme Court Decisions in the University of Michigan Cases

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*The U.S. Supreme Court today ruled that student body diversity in higher education is a compelling state interest that can justify race-conscious admissions policies. The Court upheld the University of Michigan law school admissions policy as a narrowly tailored means to achieve that interest, but held unconstitutional the University of Michigan undergraduate College of Literature, Sciences, & the Arts (LSA) admissions system.*

### **THE LAW SCHOOL DECISION: GRUTTER V. BOLLINGER**

In *Grutter v. Bollinger*, which addressed the law school admissions policy, Justice O'Connor authored the majority opinion, joined by Justices Breyer, Ginsburg, Souter and Stevens. The Court first held that the law school has a compelling interest in student body diversity. Justice O'Connor's opinion for the Court drew on Justice Powell's opinion in *Bakke v. Regents of the University of California*, and "endorse[d] Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions." Other cases addressing affirmative action in contracting, the Court said, did not rule out diversity as a permissible justification for race-based governmental action. The Court cited the deference courts give to the academic judgments of universities within constitutional limits. The benefits of diversity are "substantial," the Court said, citing evidence that diversity helps to break down stereotypes, improves classroom discussion, prepares students for the workforce and citizenship, and permits universities to "cultivate a set of leaders with legitimacy in the eyes of the citizenry." While the Court did not believe that race necessarily determines viewpoint, it acknowledged that being a member of a minority group is "likely to affect an individual's views."

The Court also held that the law school policy is narrowly tailored to meet the compelling interest in diversity. Although a university admissions system may not use quotas, have "separate admissions tracks" for minority students, or insulate minority group members from "competition for admission," an admissions system may "consider race or ethnicity more flexibly as a 'plus' factor in the context of an individualized consideration of each and every applicant." The law school policy met those criteria, the Court held:

- First, the law school policy did not use a quota system. The Court distinguished the law school's goal of attaining a "critical mass" of underrepresented minority students from a quota. The Court held that "some attention to numbers" is lawful,

- and noted that underrepresented minority enrollment at the law school varied between 13.5 and 20.1 percent, “a range inconsistent with a quota.”
- Second, the law school policy gave “individualized consideration” to applicants. It did not automatically admit or disqualify applicants based on race or award “mechanical, predetermined diversity ‘bonuses.’ ” The policy gave substantial weight to diversity factors other than race, and the law school’s weighing of those factors “can make a real and dispositive difference for nonminority applicants as well” as minorities.
  - Third, it did not “unduly harm” nonminorities because the law school took into account their potential contribution to diversity.
  - Fourth, the Court held that “all governmental use of race must have a logical end point.” In higher education, the Court said, that requirement can be met by “sunset provisions” and “periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity.” The Court said it “expect[ed] that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.”

The Court declined to require the law school to exhaust “every conceivable race-neutral alternative,” sacrifice its reputation for excellence by lowering standards, or abandon individualized review of applications. The Court said instead that narrow tailoring requires “serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks,” and found that the law school had met this burden. The Court was not convinced that race-neutral alternatives such as “percentage plans” used in undergraduate admissions in some states would work for graduate or professional schools, and noted such plans may preclude individualized review. However, the Court stated that universities in other states “can and should draw on the most promising aspects of these race-neutral alternatives as they develop.”

Justices Scalia, Thomas, and Kennedy and Chief Justice Rehnquist each wrote dissenting opinions. Justice Ginsburg authored a concurring opinion in which Justice Breyer joined.

### **THE UNDERGRADUATE (LSA) ADMISSIONS POLICY: *GRATZ V. BOLLINGER***

In a separate decision in *Gratz v. Bollinger*, the Court noted the holding in *Grutter* that diversity is a compelling state interest, but concluded that the undergraduate LSA admissions policy is not narrowly tailored and thus that it violates the Equal Protection Clause, Title VI and 42 U.S. § 1981. Chief Justice Rehnquist authored the majority opinion, which was joined by Justices O’Connor, Scalia, Kennedy and Thomas. Including Justice Breyer, who concurred in the judgment, six Justices voted that the LSA policy was unlawful.

Chief Justice Rehnquist’s opinion for the Court found that whereas Justice Powell’s opinion in *Bakke* “emphasized the importance of considering each particular applicant as

an individual,” the LSA policy “does not provide such individualized consideration.” The LSA policy automatically distributed 20 points to all minority applicants, the Court found, making the factor of race “decisive” for “virtually every minimally qualified underrepresented minority applicant.” This, the Court held, distinguished the LSA policy from the Harvard admissions policy that Justice Powell approved in *Bakke*. The Court found that the university’s practice of permitting admissions officers to flag applications of nonminorities as well as minorities for individualized review did not make the policy narrowly tailored because the point system resulted in virtually all qualified minorities being admitted without individualized review.

Justices O’Connor, Thomas and Breyer filed separate concurring opinions. Justices Stevens, Souter and Ginsburg filed dissenting opinions.

## **RELATED LINKS**

### **Text of Decisions:**

*Grutter v. Bollinger*

<http://www.supremecourtus.gov/opinions/02pdf/02-241.pdf>

*Gratz v. Bollinger*

<http://www.supremecourtus.gov/opinions/02pdf/02-516.pdf>

### **Text of Oral Arguments:**

*Grutter v. Bollinger*

[http://www.supremecourtus.gov/oral\\_arguments/argument\\_transcripts/02-241.pdf](http://www.supremecourtus.gov/oral_arguments/argument_transcripts/02-241.pdf)

*Gratz v. Bollinger*

[http://www.supremecourtus.gov/oral\\_arguments/argument\\_transcripts/02-516.pdf](http://www.supremecourtus.gov/oral_arguments/argument_transcripts/02-516.pdf)

### **ACE Background Material:**

Legal Developments Related To Affirmative Action In Higher Education: An Update For College And University Presidents, Trustees, And Administrators

[http://www.acenet.edu/washington/affirmative\\_action/2001/legal.update.html](http://www.acenet.edu/washington/affirmative_action/2001/legal.update.html)

ACE Amicus Briefs in the Cases *Gratz v. Bollinger* and *Grutter v. Bollinger*

<http://www.acenet.edu/washington/legalupdate/2003/UMich.pdf>

ACE and the Higher Education Community's Statement on the Supreme Court Decisions

[http://www.acenet.edu/news/press\\_release/2003/06june/Supreme.html](http://www.acenet.edu/news/press_release/2003/06june/Supreme.html)