

# Affirmative Action in Admissions Part II

## *Considerations Pertinent to a Race-conscious Admissions Policy*

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# University of Michigan Cases

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- *Gratz v. Bollinger*
  - Undergraduate policy is unconstitutional
  - Points accorded on the basis of race
- *Grutter v. Bollinger*
  - Law school policy is constitutional
  - Race is one component of an individualized consideration of each applicant

# Point Scale

High School grades	0 – 80
SAT	0 – 12
High School quality	0 – 10
Difficulty of H.S. curriculum	-4 to +8
Geography	0 – 10
Achievement & Leadership	0 – 10
Legacy	0 – 4
Miscellaneous	<u>0 – 20</u>
SES (20), URM (20), Athlete (20), Provost Discretion (20), M.I.N. (5)	154

# Individualized Determination

- Holistic examination of each applicant
- Potential to contribute to intellectual and social environment
  - Letters of recommendation
  - Quality of undergraduate institution/courses
  - Race and ethnicity, representation in meaningful numbers

# Equal Protection Analysis

- Rational Basis
  - Age, disability, poverty, sexual orientation
- Intermediate Scrutiny
  - Gender, illegitimacy
- Strict scrutiny
  - Race, national origin

# Strict Scrutiny

- *Test:*
  - **Compelling** government objective
  - Means chosen must be **least restrictive** to achieve the government objective
- *Burden of Proof:*
  - Government must show that the action is constitutional
- *Result:*
  - Governmental action is almost always struck down

# Two Questions

- Is diversity in the student body a compelling government interest?
- Are the admissions policies narrowly tailored?
  - “least restrictive means”

# Compelling Interest

- Racial and ethnic diversity is a compelling interest
  - Promotes learning outcomes
  - Prepares students for increasingly diverse workforce
  - Racially diverse officer corps essential to national security
  - Global marketplace requires exposure to widely diverse people, cultures, ideas, viewpoints

# Compelling Interest: Rationale

- “Diversity” argument:
  - *Everyone* benefits from the improved quality of a workforce composed of people from many different races and cultural backgrounds
- “Social Justice” argument:
  - Redress past wrongs against certain minority groups

# Compelling Interest

*In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.*

*All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.*

-Justice Sandra Day O'Conner

# Narrowly Tailored

- Point system automatically gave 20 points to every URM solely on the basis of race
- Effectively made race a decisive factor for every minimally qualified minority applicant
- Unfairly discriminates on the basis of race; violates Equal Protection Clause

# Narrowly Tailored

- Highly individualized, holistic review of each applicant
- Race is counted as a factor, but not in a mechanical way
  - Nonminority applicants were accepted over minority applicants, despite having lower grades and test scores

# Attention to Numbers

- Strict quotas are forbidden
- “Critical Mass” concept is acceptable
  - Promotes cross-racial understanding
  - Breaks down racial stereotypes
  - Percentage ranged from 13 to 20 percent over several years

# Race-conscious Admissions

- Is diversity a compelling interest for your school?
- Is your policy narrowly tailored?

# Diversity

- University's "educational judgment that diversity is essential to its educational mission"
- Obtaining the benefits that flow from a diverse student body is sufficiently important to constitute a compelling interest

# Diversity in Higher Education

- Promote cross-racial understanding
- Break down racial stereotypes
- Enrich classroom learning: livelier, more enlightened discussion
- Prepare students for increasingly diverse workforce and society
- Develop a diverse, racially integrated leadership class

# Diversity in Health Professions

- Enhance cultural competency of the healthcare workforce
- Improve access to healthcare for underserved populations
- Reduce racial and ethnic disparities in healthcare treatment and outcomes

# Diversity in Veterinary Medicine

- Improve health status of companion animals and prevent transmission of zoonoses
- Ensure biosecurity and food safety
- Expand range of inquiry in biomedical research

# Narrowly Tailored Policy

- Competitive review of all applicants in one pool, no quotas, no separate track for minorities
- Flexible, holistic, individualized consideration of applicants; race/ethnicity is one of many factors

# Narrowly Tailored Policy

- Race-neutral alternatives considered
- No undue burden on non-minority applicants
- Review on a regular basis, attempt to end reliance on the use of race when practicable

# Newsweek

January 27, 2003 : \$3.95

[newsweek.msnbc.com](http://newsweek.msnbc.com)

**Do We  
Still  
Need**

**Affirmative  
Action?**

