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Law School Diversity as a Compelling State Interest: Justice O'Connor's Application of Strict Scrutiny and the Promise of the U.S. Supreme Court's Ruling in Grutter v. Bollinger

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I. Introduction

Diversity means more, however, than expanding access to those historically underrepresented in and underserved by legal education and the legal profession. Its objective is also to create an educational community - and ultimately a profession - that incorporates the different perspectives necessary to a more comprehensive understanding of the law and its impact on society; and to assure vigorous intellectual interchanges essential for professional development.

Statement on Diversity.

Equal Opportunity and Affirmative Action; Association of American Law Schools. n1
During the summer of 2003, the United States Supreme Court decided an academic issue that is possibly the most important one for underrepresented minority law school applicants. In Grutter v. Bollinger, Justice Sandra Day O'Connor delivered the majority opinion of the split Court and ruled that race can be used as a factor in public university admissions decisions. When the Court ruled in favor of the University of Michigan Law School's race-conscious admissions program, efforts by American law schools to pursue racially diverse student bodies, and over time, to create a racially diverse bench and bar, dodged their most significant threat to date.

Justice O'Connor's opinion is in line with the landmark Bakke decision. The Court was split in Bakke and Justice Powell delivered the majority opinion. Bakke invalidated a race-conscious admissions program at the University of California, Davis Medical School (U.C. Davis), but held that racial diversity in a public university's student body is a substantial state interest.

In their respective opinions, Justices O'Connor and Powell applied "strict scrutiny" to review the race-conscious admissions programs implemented by both schools. Under strict scrutiny a court must find that: (1) there is a compelling interest in racial diversity, and (2) the means to obtain that interest was narrowly tailored for race based admissions initiatives to be validated. In Grutter, the Court assures continued academic and professional access to the legal system for those belonging to minority groups that have been underrepresented in the law and for those whose potential for academic and professional success is not represented by their undergraduate grades and LSAT scores.

The challenge mounted against law school diversity was not just a legal threat. There were political forces at work as well. The White House criticized Michigan's program. The threat against law school diversity, and academic diversity as a whole, was substantial. However, the admissions program at the University of Michigan Law School survived, along with other race-conscious public university admissions programs. However, Grutter does not represent approval for race-conscious admissions programs that are not in line with the requirement of narrow tailoring. The same day Grutter was announced, the Court struck down a race-conscious undergraduate admissions program at the University of Michigan in Gratz v. Bollinger. The highly divided Court in Gratz held that, while undergraduate institutions do have a compelling interest in pursuing a diverse student body, the means utilized by undergraduate admissions officers at the University of Michigan were not narrowly tailored to achieve that goal. Gratz shows the importance of implementing affirmative action admissions programs in line with Grutter.

For race-conscious admissions programs in higher education to survive judicial review, university officials must consider the Court's reasoning in both Grutter and Gratz. Grutter states that it is better to conduct a more individualized analysis of an applicant's overall background and less consideration of their race alone. Both Grutter and Gratz show that if the benefit an applicant receives due to race or ethnicity is too substantial and if the review process lacks an individualized review of their background and academic credentials, the Court will not consider the admissions program to be narrowly tailored and will invalidate it for violating the Equal Protection Clause of the Fourteenth Amendment, the Civil Rights Act of 1964, and other equal protection statutes.

Lastly, Grutter says that there is a time limit to the Court's approval of the University of Michigan's law school admissions program. The Court claims that by the year 2028, race-conscious admissions will not be necessary. That is why the Court says these admissions programs must have a "termination point." If this part of the ruling is ignored by law school and college administrators, it might have a devastating long-term impact on student body diversity. The Court expressed a deep concern about the use of suspect classifications, such as, race without the imposition of time limitations. As a result, Grutter warns higher education officials that within the next twenty-five years, race-conscious admissions will have to give way to race-neutral alternatives.

When delivering the Court's ruling, Justice O'Connor does more than just apply the strict scrutiny standard pursuant to Justice Powell's opinion in Bakke. She also communicates the significance and promise of academic diversity in all educational institutions from pre-school to law school. The importance of student-body diversity extends far beyond the foyers of academia. Grutter represents a significant step in promoting the nation's diversity and culture, and its role as leader of the free world, through properly administered academic affirmative action programs. To understand Grutter, a solid command of the events which led to the Court's ruling is essential. Thus, a review of the case's factual and procedural history is warranted.

A. Statement of Grutter's Facts

In 1992, the University of Michigan Law School adopted an admissions policy that was designed to be in accord to the Supreme Court ruling in Bakke. The Law School's administration was seeking a racially diverse student body. Under this policy, admissions officials were required "to evaluate each applicant based on all the information" in each
Even the highest grades and LSAT scores did not guarantee admission into the school. The primary goal was 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." While the Law School "does not define diversity "solely in terms of racial and ethnic status," the policy expressed a view to "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." The plaintiff in this case, Barbara Grutter, applied to the University of Michigan Law School in 1996. Her academic credentials were substantial, with high undergraduate grades and LSAT scores. However, the Law School denied her application. The following year, she filed a class action claim alleging that the University of Michigan discriminated against her because she was white, violating her rights under the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and other equal protection statutes.

Ms. Grutter asserted 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.'" She further claimed the Law School had "no compelling interest" justifying the use of race as part of the Law School's admission criteria.

The Court of Appeals reversed the U.S. District Court for the Eastern District of Michigan's decision in favor of Ms. Grutter and the U.S. Supreme Court subsequently granted certiorari. Amicus Curiae in support of the University of Michigan Law School were filed by several organizations, including the Association of American Law Schools, the National Education Association, several major universities, retired military officers, and companies in the private sector. Filing as amicus curiae in support of Ms. Grutter were the U.S. Department of Justice, the U.S. Department of Education, and other government agencies.

Justice O'Connor, joined by Justices Stevens, Souter, Ginsburg, and Breyer delivered the Court's opinion. Justice Ginsburg filed the only concurring opinion, and was joined by Justice Breyer. Chief Justice Rehnquist and Justice Kennedy each filed dissenting opinions. Despite the many differing opinions of the Court, Grutter's precedent will help to promote diversity in educational institutions. The primary focus of Justice O'Connor's opinion in Grutter is based on the Court's precedent in Bakke.

II. Bakke Revisited

Allan Bakke, a white male, applied to the medical school at U.C. Davis in 1973 and 1974. At that time, the medical school implemented two admissions programs. The first was the regular admissions program that did not take into account any claim by the applicant of an economic or educational disadvantage. The second was a special admissions program that reviewed an applicant's academic credentials, references, and other factors along with claims of disadvantage. Out of the 100 slots, sixteen were to be filled by applicants to the special admissions program. Mr. Bakke applied through the regular admissions program both years. Both applications were denied after the medical school's admissions committee interviewed him. While Mr. Bakke's scores on both interviews were high, applicants with lower scores who had applied through the medical school's special admissions program received offers of acceptance. This special program was designed to assist the admission of individuals whom U.C. Davis claimed were disadvantaged. None of the disadvantaged applicants accepted through the special program were Caucasian.

Mr. Bakke filed suit in California state court seeking to compel his admission into the medical school. Like Ms. Grutter, he claimed, inter alia, his rights under the Fourteenth Amendment of the U.S. Constitution and Title VI of the Civil Rights Act of 1964 were violated. The trial court found that the medical school's special admissions program operated as a racial quota, and ruled in favor of Mr. Bakke. However, the trial court did not compel his admission. On appeal, the California Supreme Court ordered his admission, concluding that the special admissions program was not the least intrusive means of achieving the goal of diversity.

A divided U.S. Supreme Court subsequently invalidated the special admissions program at U.C. Davis. The Court ruled, however, that the state does "[have] a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin." Thus, affirmative action admissions programs in higher education are not per se unlawful but they must be "properly" implemented.
In Bakke, the Court held that racial or ethnic diversity is only one of many factors a university should consider in admissions programs designed to promote diversity. Of particular importance is the Court's assertion that "the diversity that furthers a compelling state interest encompasses a broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element." Therefore, when a classification denies an individual opportunities or benefits given to others solely because of race or ethnicity, it should be regarded as suspect. If an applicant is excluded solely on the basis of race, the admissions program is not narrowly tailored only to eliminate the effects of prior discrimination by that school and the court will invalidate it. The Court further ruled that a university must have wide discretion in making judgments on who should be admitted, but that "constitutional limitations protecting individual rights may not be disregarded."

Since Justice Powell delivered the Court's opinion in Bakke, law school and university administrators have applied the holding to "their own admissions programs" to assure the legality of proposed "race-conscious" admissions programs. Conversely, some members of the bench and bar openly disagreed with Bakke prior to Grutter. For instance, the Fifth Circuit discredited Bakke, and ruled that racial diversity in a law school setting is not a compelling government interest. Furthermore, the court stated in Hopwood v. Texas, that the Supreme Court's position in Bakke was not binding precedent. However, that decision was overruled by Grutter.

III. Strict Scrutiny Analysis

A. The Fundamentals

Generally, "all governmental action based on race - a group classification long recognized as in most circumstances irrelevant and therefore prohibited - should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection of the laws has not been infringed." Thus, "racial classifications imposed by government "must be analyzed by a reviewing court under strict scrutiny." A two prong test must be satisfied before a government racial classification will survive the strict scrutiny analysis.

Under the first prong, there must be a "compelling governmental interest" that justifies the classification. The second prong requires that the means used to achieve that compelling state interest be narrowly tailored. How do university officials know when a race-conscious admissions program has been narrowly tailored? Justice O'Connor advises that narrow tailoring requires "serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks." While narrow tailoring does not mandate a review of "every conceivable race-neutral alternative," a race-conscious admissions program should not "unduly harm members of any racial group" or individuals who "are not members of the favored racial and ethnic groups."

It is clear why such a stringent standard is used by the Court. The United States has an unimpressive track record in race relations and therefore the courts are appropriately suspicious of racial classifications of all sorts. Under strict scrutiny, whether a racial classification benefits an underrepresented minority applicant is immaterial. The strict scrutiny test is applied 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." The Court did not give deference to the views of University officials in holding that diversity is a compelling state interest. Many who filed amicus curiae on
behalf of the Law School were also cited in the opinion (including business leaders, major educational institutions, and retired military leaders). n86

Justice O'Connor stresses the point that the American workforce receives enormous benefits from diversity. One of the major roles of higher education is to educate students so that they may become productive members in their respective vocations. n87 In this regard, Justice O'Connor is indeed a pragmatist. She said that "these benefits are not theoretical but real, as 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." n88 Ultimately, Justice O'Connor was also communicating what will become the legacy of this case - that our nation can one day look at individuals and see their heart and character rather than only their color or creed.

Grutter's promise is not confined to academia or the workplace. With our nation now facing increasing threats to security, homeland security also receives substantial benefits. This is essential because the armed forces "cannot achieve an officer corps that is both highly qualified and racially diverse unless the service academies and the ROTC [use] limited race-conscious recruiting and admissions policies." n89

Since September 11th, there is no real debate over whether our military and law enforcement groups need every advantage they can obtain in fighting terrorism. Diversity within these ranks helps ensure that our military and law enforcement have the power to safeguard homeland security, as well as protect their personnel. This evidence supports the argument that "public institutions of higher education must be accessible to all individuals regardless of race or ethnicity." n90 Grutter's promise is not simply a political, social, or economic gain for those who have been underrepresented during our nation's history. It will also promote the United States' preeminence as a world leader defending freedom. This promise of increased diversity of our educated people will advance our continued efforts in the pursuit of stability in American commerce, culture, education, and government. n91

Although student body diversity is important at all academic levels, it is especially important at the graduate school level. The United States needs people from every race, sex, faith, creed, and ethnicity to participate in the entrepreneurial, civic, and charitable endeavors that our nation pursues. n92 According to Justice O'Connor, those who lead in such ventures are educated at "universities, and in particular, law schools." n93 These institutions "represent the training ground for a large number of our Nation's leaders." n94 For the United States to train leaders who represent the diverse races and ethnicities that make our country great, "it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity." n95 Access to a law school education is critical because there is simply no way one can obtain a law license and succeed in the legal profession without graduating from law school and passing the bar examination. n96

Justice O'Connor observes that the University of Michigan Law School has "determined, based on its experience and expertise, that a "critical mass' of underrepresented minorities is necessary to further its compelling interest in securing the educational benefits of a diverse student body." n97 In concluding that diversity is a compelling state interest, she does not merely apply an abstract, though important, legal principle to the controversial admissions program. She provides judicial notice of the fact that a diverse student body substantially improves the overall learning experience for all students, and provides long-term benefits for business, law, government, and national security. She [*21] delivers a promise of diversity, inclusiveness, and academic access that was previously unheard of for immigrants, individuals of color, women, and other underrepresented groups. Justice O'Connor gives the promise of an America that finally lives, works, plays, and interacts as one - in this there is no ambiguity.

C. Narrow Tailoring

The Court's decision that student body diversity is a compelling state interest is insufficient to justify the law school's admissions program if the Court then finds that the program is not narrowly tailored to serve that interest. n98 The Court in Grutter ruled that the admissions program was indeed narrowly tailored, n99 but Justice O'Connor also provided examples of admissions strategies that the Court would invalidate.n100 These include employing racial quota systems, n101 placing applicants, "on separate admissions tracks," n102 or attempting to "insulate applicants who belong to certain racial or ethnic groups from the competition for admission." n103 A university may, according to Justice O'Connor, "consider race or ethnicity only as a "plus' in a particular applicant's file without, insulating the individual from comparison with all other candidates for the available seats." n104 Race-conscious admissions programs 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 .... " n105 The Court mandates narrow tailoring "to ensure that
"the means chosen fit ... the compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype." n106

[*22]  Grutter holds that universities can, "consider race or ethnicity more flexibly as a "plus' factor in the context of individualized consideration of each and every applicant." n107 For race-conscious admissions programs to survive strict scrutiny, Justice O'Connor found that:

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 race-conscious admissions program is paramount. n108

Here, Justice O'Connor highlights testimony from law school admissions officers who admitted that while race was indeed a plus factor, race was not given "any more or less weight" than other plus factors. n109 The law school admissions plan differs from the university undergraduate admissions plan in Gratz, which used a point system and was struck down for not being narrowly tailored. n110 While Justice O'Connor held that the university's law school admissions policy was "flexible enough to consider all pertinent elements of diversity," n111 she did so because the admissions personnel's evaluation procedure was indeed "highly individualized." n112 She further described the admissions review as "holistic," because a serious analysis of the applicant's credentials was conducted to determine how the individual could "contribute to a diverse educational environment." n113

One of the most important factors in Grutter was that law school admissions staff gave this same individualized attention to all applicants (both minorities and non-minorities). n114 If the admissions staff had only evaluated applicants from underrepresented minorities in this way, the admissions program probably would not have been deemed narrowly tailored; it is unlikely that it would have survived strict scrutiny. n115

In Grutter, both minority and non-minority applicants are considered to have benefited from this admissions process. Justice O'Connor noted that "the Law School [*23] actually gives substantial weight to diversity factors besides race. The Law School frequently accepts [non-minority] applicants with grades and test scores lower than underrepresented minority applicants ... who are rejected." n116 This is important in part because it illustrates how the law school's admission program differs from the one in Bakke. The race-conscious admissions program in Bakke did not admit any Caucasian applicants through its special procedures. n117

Other law schools that administer diversity-based admissions programs use factors in addition to race to pursue that goal. At Seton Hall University School of Law in New Jersey, for example, applicants who apply through the Legal Educational Opportunity Institute are evaluated on criteria including economic or educational disadvantage, regardless of race. n118 Like the program at the University of Michigan, Seton Hall has graduated individuals who have provided an enormous impact on both the university's academic experience and on the legal profession.

When designing diversity-based admission procedures, it is important for law school admissions officials to ensure that the program will "weigh many other diversity factors besides race that can make a real and dispositive difference for [non-minority] applicants ... ." n119 When evaluating credentials beyond an applicant's grades and LSAT scores, law schools should not "limit in any way the broad range of qualities and experiences that may be considered valuable contributions to student body diversity." n120

Grutter embraces the belief held by law school and university administrators across the country that a diverse student body is of paramount importance in order to maximize the power of higher education. However, officials at educational institutions must not assume that the Court's ruling provides a permanent method for pursuing a diverse student body. Justice O'Connor's opinion in Grutter shows that doing so would be a mistake. n121

D. Reasonable Durational Limits

Grutter holds that race-conscious admissions programs (like the one used by the [*24] University of Michigan Law School) must be short-term strategies to increase student body diversity and to ameliorate the long-term problems of providing academic and professional access to members of ethnic and racial groups that have been underrepresented. n122 Justice O'Connor ruled that "race-conscious admissions policies must be limited in time." n123 Concerning the Court's distrust in suspect classifications like race, she wrote that:
Racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands. Enshrining a permanent justification for racial preferences would offend this fundamental equal protection principle. We see no reason to exempt race-conscious admissions programs from the requirement that all governmental use of race must have a logical end point. n124

Justice Powell's opinion in Bakke creates the foundation for Justice O'Connor's opinion in Grutter. n125 In Grutter, decided in 2003, the Court stated that "we expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." n126 The Court has put educators on notice. Admissions programs that are based on race-conscious policies will not be around forever. Justice O'Connor's opinion places a significant burden on academia. University admissions personnel must develop acceptable programs where race does not play a factor in the university's decision. The Court has given higher education plenty of time to accomplish this, but university administrators must not procrastinate. If administrators do not voluntarily phase out admissions programs that consider race and ethnicity by 2028, litigants might ask the Supreme Court to do it for them. Thus, universities must develop admissions plans that promote student body diversity without using race as a factor.

IV. Comparing Grutter to Gratz

The court decided another affirmative action admissions case involving the University of Michigan on the same day as Grutter. In Gratz v. Bollinger, two Caucasian applicants to the University's College of Literature, Science, and the Arts, were denied admission. n127 The University used a point system as part of the admissions process. "Applicants could receive points for underrepresented minority status, socioeconomic disadvantage, or attendance at a high school with a predominantly underrepresented minority population, or underrepresentation in the unit to which the student was applying." n128 An applicant from an underrepresented minority group was automatically awarded twenty of the 100 points needed to guarantee admission. n129

Like the plaintiff in Grutter, Jennifer Gratz and Patrick Hamacher claimed that the use of racial preferences in undergraduate admissions violated their rights under the Equal Protection Clause of the Fourteenth Amendment, the Civil Rights Act of 1964, and other equal protection statutes. n130 Chief Justice Rehnquist, who dissented in Grutter, delivered the opinion of the Court, which was once again highly divided, and was joined by Justices O'Connor, Scalia, Kennedy, and Thomas. n131 Justice O'Connor filed a concurring opinion, and several other concurring and dissenting opinions were written. n132 The Court invalidated Michigan's undergraduate admissions program because unlike the Law School admissions program, it was not narrowly tailored to promote the compelling state interest in a diverse student body. n133

Because Justice O'Connor delivered the opinion of the Court in Grutter, comparisons to her concurrence in Gratz are inevitable. n134 In Gratz, O'Connor focused on the undergraduate admissions program's complete lack of "a meaningful individualized review of applicants." n135 Each and every minority applicant received an "automatic 20-point bonus without consideration of the particular background, experiences, or qualities of each individual applicant." n136 Justice O'Connor is right. Awarding an applicant "automatic, predetermined" n137 points toward admission merely because of membership in a racial or ethnic group is inappropriate and violates the Equal Protection Clause of the Fourteenth Amendment, even though it substantially diversified the school's student body by increasing the numbers of students who were members of underrepresented racial and ethnic groups. It was also problematic because points were awarded if an applicant was a Michigan resident (ten points) or a child of an alumnus (four points). n138 This creates the potential for greater disparity between a nonresident Caucasian applicant and an applicant who belongs to an underrepresented minority group, lives in Michigan, and has a parent who is a University *26* graduate.

While the compelling state interest prong in the Court's strict scrutiny analysis was met, the second prong, requiring narrow tailoring to achieve the compelling state interest, was not. n139 Because there was no individualized analysis of the applicant's credentials the benefit to underrepresented minority applicants was too great so the undergraduate admissions program was invalidated. n140

The lesson of both Grutter and Gratz is simple. Race can be viewed as a "plus factor" in the interest of achieving student body diversity when an individualized analysis of an applicant's credentials is completed. n141 However, when overwhelming awards are automatically given to an applicant because of his or her race or ethnicity, the program cannot
be considered narrowly tailored and therefore violates the Equal Protection Clause of the Fourteenth Amendment, the
Civil Rights Act of 1964, and other equal protection statutes. n142

V. Conclusion

Student body diversity in university and law school settings constitutes a compelling state interest under Grutter. n143
Obtaining a diverse student body is not a luxury. It is a necessity - a mandate. Educational institutions must continue
their efforts to recruit and educate students of every race, creed, faith, sex, and color. However, Grutter also holds that
universities and law schools that implement diversity-conscious admissions programs must gradually depart from such
programs and advance towards race-neutral admissions. n144

In states where race-conscious admissions are illegal, steps are being taken to find alternatives to the use of ethnicity
and creed in the pursuit of diversity. n145 Universities and law schools located in states where race-based admis-
sions are legal would be well-advised to monitor the Court's future rulings. n146

Justice O'Connor's opinion in Grutter will provide a reference point in future cases. [**27] Other courts are likely to
note the Court's sound judgment and the significance of student body diversity as it relates to the welfare of the Ameri-
can people. Time will demonstrate that Grutter is one of the Court's most influential decisions. The success of properly
designed affirmative action programs in providing educational access to disadvantaged applicants will prove Grutter's
importance.

Educating a diverse, highly-credentialed student body and workforce has never been more important. Challenges to
race-conscious initiatives have actually highlighted the positive social impact that diversity can have on America's eco-
nomic, political, and cultural future. Grutter v. Bollinger stands for the possibility for a truly united and just America
with equal rights for all races, creeds, faiths, and sexes.

Legal Topics:

For related research and practice materials, see the following legal topics:
Civil Rights LawCivil Rights ActsCivil Rights Act of 1964Constitutional LawEqual ProtectionGeneral OverviewEdu-
cation LawDiscriminationRacial DiscriminationAdmission & Recruitment

FOOTNOTES:

n1. The Association of American Law School; Statement on Diversity, Equal Opportunity and Affirmative

of the Court, in which Stevens, Souter, Ginsburg, and Breyer, JJ., joined; Scalia and Thomas, JJ., joined in the part
of O'Connor, J.'s opinion consistent with Part VII of the opinion of Thomas, J.; Ginsburg, J., concurring, in
which Breyer, J., joined; Scalia, J., concurring in part and dissenting in part, in which Thomas, J., joined; Tho-
mas, J., concurring in part and dissenting in part, in which Scalia, J., joined in parts I-VII; Rehnquist, C.J., dis-
senting, in which Scalia, Kennedy, and Thomas, JJ., joined; Kennedy, J., dissenting.), rehearing denied, 124 S.
Ct. 35 (2003).

n3. Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) (5-4 decision) (Powell, J., delivered the opinion
of the Court; Brennan, White, Marshall, and Blackmun, JJ., concurring in part and dissenting in part; Stevens, J.,
concurring in part and dissenting in part, in which Burger, C.J., Stewart and Rehnquist, JJ., joined.).

n4. Id. at 265.
n5. Id. at 320; see also Grutter, 123 S. Ct. at 2336 (the holding was different, but the same proposition about diversity was supported).

n6. Grutter, 123 S. Ct. at 2337-38; Bakke, 438 U.S. at 279.


n8. Id.


n11. Id.

n12. See Grutter, 123 S. Ct. at 2343.

n13. Id. (citing Bakke, 438 U.S. at 315-16); see also Gratz, 123 S. Ct. 2427.


n15. Id.

n16. Id. at 2346.

n17. Id.

n18. Id.

n19. Id. at 2331.

n20. Grutter, 123 S. Ct. at 2331.

n21. Id.
n22. Id. at 2332.

n23. Id. (quoting Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 118 (1978)).

n24. Id. (quoting Bakke, 438 U.S. at 121).

n25. Id. (quoting Bakke, 438 U.S. at 120).


n27. Id. at 2331.

n28. Id. at 2332.

n29. Id.

n30. Id. at 2332-33 (quoting Brief for Appellant at 33-34).

n31. Id. at 2333 (quoting Brief for Appellant at 34).


n33. Grutter, 123 S. Ct. at 2335.


n35. Id.

n36. Grutter, 123 S. Ct. at 2330.

n37. Id. at 2330.

n38. Id. at 2331.

n39. Id. at 2330-31 (See note 3 for complete information on the Justices' opinions in Grutter.).
n40. Id. at 2325.


n42. Id. at 265.

n43. Id.

n44. Id. at 274-75.

n45. Id. at 275.

n46. Id. at 276.

n47. Bakke, 438 U.S. at 277.

n48. Id. at 276-77.

n49. Id. at 277.

n50. See id. at 272-73.

n51. Id. at 276.

n52. Id. at 270.

n53. Bakke, 438 U.S. at 270.

n54. Id. at 270.

n55. Id. at 271; see also Bakke v. Regents of Univ. of Cal., 18 Cal. 3d 34, 39 (1976).


n57. Id. (emphasis added).
n58. Id. at 314, cited in Grutter, 123 S. Ct. at 2337.

n59. Id. at 315, cited in Grutter, 123 S. Ct. at 2337.

n60. See generally Bakke, 438 U.S. at 289, cited in Grutter, 123 S. Ct. at 2336.

n61. Id. at 314, cited in Grutter, 123 S. Ct. at 2336.

n62. Id.

n63. Grutter, 123 S. Ct. at 2336.


n65. Id.

n66. Grutter, 123 S. Ct. at 2337.

n67. Id. (quoting Adarand Constructors Inc. v. Pena, 515 U.S. 200, 227 (1995)).

n68. Id.

n69. Id. at 2336.

n70. Id.

n71. Id. at 2345 (citing Richmond v. J.A. Croson Co., 488 U.S. 469, 507 (1989) (plurality opinion)).

n72. Grutter, 123 S. Ct. at 2330.

n73. Id. at 2345.

n74. Id. (citing Metro Broadcasting Inc. v. FCC, 497 U.S. 547, 630 (1990) (O'Connor J., dissenting)).

n75. See id. at 2338.
n76. Id. at 2338 (quoting Richmond, 488 U.S. at 493) (internal quotations omitted) (emphasis added).

n77. Id. at 2339.


n79. See id. at 2338.

n80. See id. at 2339 (citing Bakke, 438 U.S. at 307).

n81. Id.

n82. Id.

n83. Id.

n84. Grutter, 123 S. Ct. at 2339 (citing Bakke, 438 U.S. at 312).

n85. Id.

n86. Id. at 2340; see also id. at 2329; see also id. at 2340 (citing Brief of Amici Curiae Julius W. Becton, Jr. et al. at 27).

n87. Id. (citing Brief of Amici Curiae Am. Educ. Research Ass'n et al. at 3).

n88. Id.

n89. Id.

n90. Grutter, 123 S. Ct. at 2340.

n91. See id. (quoting Plyer v. Doe, 457 U.S. 202, 221 (1982)); ("This Court has long recognized that "education ... is the very foundation of good citizenship."" Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954)).

n92. Id. at 2340-41 ("Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.").
n93. Id. at 2341.

n94. Id.

n95. Id.

n96. *Grutter, 123 S. Ct. at 2341* ("Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity ... .").

n97. Id.

n98. Id. ("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: The means chosen to accomplish the [government’s] asserted purpose must be specifically and narrowly framed to accomplish that purpose.""") (citing *Shaw v. Hunt*, 517 U.S. 899, 908 (1996)).

n99. Id. at 2342 ("We find that the Law School’s admissions program bears the hallmark of a narrowly tailored plan.").

n100. Id. at 2342-46.

n101. Id. at 2342 (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978)); see also id. at 2343 ("That a race-conscious admissions program does not operate as a quota does not, by itself, satisfy the requirement of individualized consideration.").

n102. *Grutter, 123 S. Ct. at 2342* ("Truly individualized consideration demands that race be used in a flexible, non mechanical way. It follows from this mandate that universities cannot establish quotas for members of certain racial groups or put members of those groups on separate admissions tracks.") (citing *Bakke 438 U.S. at 315-16*).

n103. Id. (citing *Bakke, 438 U.S. at 315-16*).

n104. Id. (citing *Bakke, 438 U.S. at 317*) (internal quotations omitted).

n105. Id. (citing *Bakke, 438 U.S. at 317*) (emphasis added).

n106. Id. at 2341 (citing *Richmond v. J.A. Croson Co., 488 U.S. at 469, 493 (1989* (plurality opinion)) (emphasis added).
n107. Id. at 2342 (citing *Bakke*, 438 U.S. at 315-16) (emphasis added).


n109. Id. ("There is no policy, either de jure or de facto, of automatic acceptance or rejection based on any single "soft' variable."’) (quoting *Gratz v. Bollinger*, 123 S. Ct. 2411, 2432 (2003)).


n111. *Grutter*, 123 S. Ct. at 2342.

n112. Id. at 2343.

n113. Id.

n114. Id. at 2344.

n115. See id. at 2337.

n116. Id. at 2344. ("The Law School considers "all pertinent elements of diversity,' it can (and does) select [non-minority] applicants who have greater potential to enhance student body diversity over underrepresented minority applicants." (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 317 (1978)) (emphasis added).


n118. The full name of Seton Hall’s program is the Msgr. Thomas Fahy Legal Educational Opportunity Institute.

n119. *Grutter*, 123 S. Ct. at 2344 ("By this flexible approach, the Law School sufficiently takes into account, in practice as well as in theory, a wide variety of characteristics besides race and ethnicity that contribute to a diverse student body.’”).

n120. Id.

n121. Id. at 2346.

n122. Id.

n123. Id.
n124. Id.


n128. *Id. at 2419*.

n129. Id.

n130. *Id. at 2418*.

n131. *Id. at 2411*; see also *Grutter*, 123 S. Ct. at 2365.


n133. *Id. at 2430-31*.

n134. *Id. at 2431*; see also *Grutter*, 123 S. Ct. at 2331.


n136. Id.

n137. *Id. at 2432*.

n138. See id. at 2419.

n139. Id. at 2427.

n140. Id. at 2427-28.

n141. *Gratz*, 123 S. Ct. at 2441.

n143. Grutter, 123 S. Ct. at 2337-38.

n144. Id. at 2346.

n145. Id.

n146. See id.