**United States Supreme Court**

**GRUTTER v. BOLLINGER et al.(2003)**

**No. 02-241**

**Argued: April 1, 2003Decided: June 23, 2003**

     *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.

**BARBARA GRUTTER, PETITIONER *v.* LEE
BOLLINGER *et al*.**

**on writ of certiorari to the united states court of
appeals for the sixth circuit**

[June 23, 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**

**A**

     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." App. 110. More broadly, the Law School seeks "a mix of students with varying backgrounds and experiences who will respect and learn from each other." *Ibid*. 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 unanimous 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." App. 111. 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. *Id.*, at 83-84, 114-121. 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. *Id.*, at 112. 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." *Id.*, at 111.

     The policy makes clear, however, that even the highest possible score does not guarantee admission to the Law School. *Id.*, at 113. Nor does a low score automatically disqualify an applicant. *Ibid*. 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. *Id.*, at 114. 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." *Ibid*.

     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." *Id.*, at 118. 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." *Id.*, at 118, 120. 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." *Id.*, at 120. 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." *Id.*, at 120-121.

     The policy does not define diversity "solely in terms of racial and ethnic status." *Id.*, at 121. Nor is the policy "insensitive to the competition among all students for admission to the [L]aw [S]chool." *Ibid*. Rather, the policy seeks to guide admissions officers in "producing classes both diverse and academically outstanding, classes made up of students who promise to continue the tradition of outstanding contribution by Michigan Graduates to the legal profession." *Ibid*.. . .

**II**

**A**

     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. Four Justices would have upheld the program against all attack on the ground that the government can use race to "remedy disadvantages cast on minorities by past racial prejudice." *Id.*, at 325 (joint opinion of Brennan, White, Marshall, and Blackmun, JJ., concurring in judgment in part and dissenting in part). Four other Justices avoided the constitutional question altogether and struck down the program on statutory grounds. *Id.*, at 408 (opinion of *Stevens, J.,* joined by Burger, *C. J.,* and Stewart and *Rehnquist,* JJ., concurring in judgment in part and dissenting in part). Justice Powell provided a fifth vote not only for invalidating the set-aside program, but also for reversing the state court's injunction against any use of race whatsoever. The only holding for the Court in *Bakke* was that a "State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin." *Id.*, at 320. Thus, we reversed that part of the lower court's judgment that enjoined the university "from any consideration of the race of any applicant." *Ibid*.

     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. See, *e.g.*, Brief for Judith Areen et al. as *Amici Curiae* 12-13 (law school admissions programs employ "methods designed from and based on Justice Powell's opinion in *Bakke*"); Brief for Amherst College et al. as *Amici Curiae* 27 ("After *Bakke*, each of the *amici* (and undoubtedly other selective colleges and universities as well) reviewed their admissions procedures in light of Justice Powell's opinion ... and set sail accordingly"). We therefore discuss Justice Powell's opinion in some detail.

     Justice Powell began by stating that "[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." *Bakke*, 438 U. S.,at 289-
290. In Justice Powell's view, when governmental decisions "touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest." *Id.*, at 299. Under this exacting standard, only one of the interests asserted by the university survived Justice Powell's scrutiny.

     First, Justice Powell rejected an interest in " 'reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession' " as an unlawful interest in racial balancing. *Id.*, at 306-307. Second, Justice Powell rejected an interest in remedying societal discrimination because such measures would risk placing unnecessary burdens on innocent third parties "who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered." *Id.*, at 310. Third, Justice Powell rejected an interest in "increasing the number of physicians who will practice in communities currently underserved," concluding that even if such an interest could be compelling in some circumstances the program under review was not "geared to promote that goal." *Id.*, at 306, 310.

     Justice Powellapproved the university's use of race to further only one interest: "the attainment of a diverse student body." *Id.*, at 311. With the important proviso that "constitutional limitations protecting individual rights may not be disregarded," Justice Powell grounded 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 nothing less than the " 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Id.*, at 313 (quoting *Keyishian* v. *Board of Regents of Univ. of State of N. Y.,* 385 U. S. 589, 603 (1967)). In seeking the "right to select those students who will contribute the most to the 'robust exchange of ideas,' " a university seeks "to achieve a goal that is of paramount importance in the fulfillment of its mission." 438 U. S., at 313. Both "tradition and experience lend support to the view that the contribution of diversity is substantial." *Ibid*.

     Justice Powell was, however, careful to emphasize that in his view race "is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body." *Id.*, at 314. For Justice Powell, "[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 the use of 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.*

      In the wake of our fractured decision in *Bakke*, courts have struggled to discern whether Justice Powell's diversity rationale, set forth in part of the opinion joined by no other Justice, is nonetheless binding precedent under *Marks*. In that case, we explained that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." 511 U. S. 738, 745-746 (1994). Compare, *e.g.*, *Johnson* v. *Board of Regents of Univ. of Ga*., 263 F. 3d 1234 (CA11 2001) (Justice Powell's diversity rationale was not the holding of the Court); *Hopwood* v. *Texas*, 236 F. 3d 256, 274-275 (CA5 2000) (*Hopwood II*) (same); *Hopwood I*, 78 F. 3d 932 (same), with *Smith* v. *University of Wash. Law School,* 233 F. 3d 1199 (Justice Powell's opinion, including the diversity rationale, is controlling under *Marks*).

     We do not find it necessary to decide whether Justice Powell's opinion is binding under *Marks*. It does not seem "useful to pursue the *Marks* inquiry to the utmost logical possibility when it has so obviously baffled and divided the lower courts that have considered it." *Nichols* v. *United States*, *supra*, at 745-746. More important, for the reasons set out below, 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.

**B**

     The Equal Protection Clause provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U. S. Const., Amdt. 14, §2. Because the Fourteenth Amendment "protect[s] *persons*, not *groups*," 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." *Adarand Constructors, Inc.* v. *Peña,* 515 U. S. 200, 227 (1995) (emphasis in original; internal quotation marks and citation omitted). We are a "free people whose institutions are founded upon the doctrine of equality." *Loving* v. *Virginia,* 388 U. S. 1, 11 (1967) (internal quotation marks and citation omitted). It follows from that principle that "government may treat people differently because of their race only for the most compelling reasons." *Adarand Constructors, Inc.* v. *Peña,* 515 U. S., at 227.

     We have held that all racial classifications imposed by government "must be analyzed by a reviewing court under strict scrutiny." *Ibid*. This means that such classifications are constitutional only if they are narrowly tailored to further compelling governmental interests. "Absent searching judicial inquiry into the justification for such race-based measures," we have no way to determine what "classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." *Richmond* v. *J. A. Croson Co.,* 488 U. S. 469, 493 (1989) (plurality opinion). 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." *Ibid*.

     Strict scrutiny is not "strict in theory, but fatal in fact." *Adarand Constructors, Inc.* v. *Peña*, *supra,* at 237 (internal quotation marks and citation omitted). Although all governmental uses of race are subject to strict scrutiny, not all are invalidated by it. As we have explained, "whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection." 515 U. S., at 229-230. But that observation "says nothing about the ultimate validity of any particular law; that determination is the job of the court applying strict scrutiny." *Id.*, at 230. When race-based action is necessary to further a compelling governmental interest, such action does not violate the constitutional guarantee of equal protection so long as the narrow-tailoring requirement is also satisfied.

     Context matters when reviewing race-based governmental action under the Equal Protection Clause. See *Gomillion* v. *Lightfoot*, 364 U. S. 339, 343-344 (1960) (admonishing that, "in dealing with claims under broad provisions of the Constitution, which derive content by an interpretive process of inclusion and exclusion, it is imperative that generalizations, based on and qualified by the concrete situations that gave rise to them, must not be applied out of context in disregard of variant controlling facts"). In *Adarand Constructors, Inc.* v. *Peña,* we made clear that strict scrutiny must take " 'relevant differences' into account." 515 U. S., at 228. Indeed, as we explained, that is its "fundamental purpose." *Ibid*. 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 reasons advanced by the governmental decisionmaker for the use of race in that particular context.

**III**

**A**

     With these principles in mind, we turn to the question whether the Law School's use of race is justified by a compelling state interest. Before this Court, as they have throughout this litigation, respondents assert only one justification for their use of race in the admissions process: obtaining "the educational benefits that flow from a diverse student body." Brief for Respondents Bollinger et al. i. In other words, the Law School asks us to recognize, in the context of higher education, a compelling state interest in student body diversity.

     We first wish to dispel the notion that the Law School's argument has been foreclosed, either expressly or implicitly, by our affirmative-action cases decided since *Bakke*. It is true that some language in those opinions might be read to suggest that remedying past discrimination is the only permissible justification for race-based governmental action. See, *e.g.*, *Richmond* v. *J. A. Croson Co.,* *supra*, at 493 (plurality opinion) (stating that unless classifications based on race are "strictly reserved for remedial settings, they may in fact promote notions of racial inferiority and lead to a politics of racial hostility"). But we have never held that the only governmental use of race that can survive strict scrutiny is remedying past discrimination. Nor, since *Bakke*, have we directly addressed the use of race in the context of public higher education. Today, we hold that the Law School has a compelling interest in attaining a diverse student body.

     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. See *Regents of Univ. of Mich.* v. *Ewing,* 474 U. S. 214, 225 (1985); *Board of Curators of Univ. of Mo.* v. *Horowitz,* 435 U. S. 78, 96, n. 6 (1978); *Bakke,* 438 U. S., at 319, n. 53 (opinion of Powell, J.).

     We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition. See, *e.g.*, *Wieman* v. *Updegraff*, 344 U. S. 183, 195 (1952) (Frankfurter*, J*., concurring); *Sweezy* v. *New Hampshire,* 354 U. S. 234, 250 (1957); *Shelton* v. *Tucker*, 364 U. S. 479, 487 (1960); *Keyishian* v. *Board of Regents of Univ. of State of N. Y.,* 385 U. S., at 603. In announcing the principle of student body diversity as a compelling state interest, Justice Powell invoked our cases recognizing a constitutional dimension, grounded in the First Amendment, of educational autonomy: "The freedom of a university to make its own judgments as to education includes the selection of its student body." *Bakke*, *supra*, at 312. From this premise, Justice Powell reasoned that by claiming "the right to select those students who will contribute the most to the 'robust exchange of ideas,' " a university "seek[s] to achieve a goal that is of paramount importance in the fulfillment of its mission." 438 U. S., at 313 (quoting *Keyishian* v. *Board of Regents of Univ. of State of N. Y.,* *supra*, at 603). Our conclusion that the Law School has a compelling interest in a diverse student body is informed by our view that attaining a diverse student body is at the heart of the Law School's proper institutional mission, and that "good faith" on the part of a university is "presumed" absent "a showing to the contrary." 438 U. S., at 318-319.

     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." Brief for Respondents Bollinger et al. 13. 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." *Bakke*, 503 U. S. 467, 494 (1992) ("Racial balance is not to be achieved for its own sake"); *Richmond* v. *J. A. Croson Co.,* 488 U. S., at 507. 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. As the District Court emphasized, 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." App. to Pet. for Cert. 246a. 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." *Id.,* at 246a, 244a.

     The Law School's claim of a compelling interest is further bolstered by its *amici*, who point to the educational benefits that flow from student body diversity. In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals." Brief for American Educational Research Association et al. as *Amici Curiae* 3; see, *e.g.*, W. Bowen & D. Bok, The Shape of the River (1998); Diversity Challenged: Evidence on the Impact of Affirmative Action (G. Orfield & M. Kurlaender eds. 2001); Compelling Interest: Examining the Evidence on Racial Dynamics in Colleges and Universities (M. Chang, D. Witt, J. Jones, & K. Hakuta eds. 2003).

     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. Brief for 3M et al. as *Amici Curiae* 5; Brief for General Motors Corp. as *Amicus Curiae* 3-4. What is more, high-ranking retired officers and civilian leaders of the United States military assert that, "[b]ased on [their] decades of experience," a "highly qualified, racially diverse officer corps ... is essential to the military's ability to fulfill its principle mission to provide national security." Brief for Julius W. Becton, Jr. et al. as *Amici Curiae* 27. The primary sources for the Nation's officer corps are the service academies and the Reserve Officers Training Corps (ROTC), the latter comprising students already admitted to participating colleges and universities. *Id.*, at 5. At present, "the military cannot achieve an officer corps that is *both* highly qualified *and* racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies." *Ibid.* (emphasis in original). To fulfill its mission, the military "must be selective in admissions for training and education for the officer corps, *and* it must train and educate a highly qualified, racially diverse officer corps in a racially diverse setting." *Id.*, at 29 (emphasis in original). We agree that "[i]t requires only a small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective." *Ibid*.

     We have repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to "sustaining our political and cultural heritage" with a fundamental role in maintaining the fabric of society. *Plyler* v. *Doe*, 457 U. S. 202, 221 (1982). This Court has long recognized that "education ... is the very foundation of good citizenship." *Brown* v. *Board of Education,* 347 U. S. 483, 493 (1954). For this reason, the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity. The United States, as *amicus curiae*, affirms that "[e]nsuring that public institutions are open and available to all segments of American society, including people of all races and ethnicities, represents a paramount government objective." Brief for United States as *Amicus Curiae* 13. And, "[n]owhere is the importance of such openness more acute than in the context of higher education." *Ibid*. 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.

     Moreover, universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders. *Sweatt* v. *Painter*, 339 U. S. 629, 634 (1950) (describing law school as a "proving ground for legal learning and practice"). Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. See Brief for Association of American Law Schools as *Amicus Curiae* 5-6. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges. *Id*., at 6.

     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. As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which the law interacts." See *Sweatt* v. *Painter*, *supra*, at 634. Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.

     The Law School does not premise its need for critical mass on "any belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." Brief for Respondent Bollinger et al. 30. To the contrary, diminishing the force of such stereotypes is both a crucial part of the Law School's mission, and one that it cannot accomplish with only token numbers of minority students. Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters. The 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.

**B**

     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." *Shaw* v. *Hunt,* 517 U. S. 899, 908 (1996) (internal quotation marks and citation omitted). 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." *Richmond* v. *J. A. Croson Co.,* 488 U. S., at 493 (plurality opinion).

     Since *Bakke*, we have had no occasion to define the contours of the narrow-tailoring inquiry with respect to race-conscious university admissions programs. That inquiry must be calibrated to fit the distinct issues raised by the use of race to achieve student body diversity in public higher education. Contrary to *Justice Kennedy*'s assertions, we do not "abandon[ ] strict scrutiny," see *post*, at 8 (dissenting opinion). Rather, as we have already explained, *ante*, at 15, we adhere to *Adarand*'s teaching that the very purpose of strict scrutiny is to take such " relevant differences into account." 515 U. S., at 228 (internal quotation marks omitted).

     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." *Bakke,* *supra*, at 315 (opinion of Powell, J.). 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." *Id.,* at 317. 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." *Ibid.*

     We find that the Law School's admissions program bears the hallmarks of a narrowly tailored plan. As Justice Powell made clear in *Bakke*, truly individualized consideration demands that race be used in a flexible, nonmechanical 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. See *id.*, at 315-316. Nor can universities insulate applicants who belong to certain racial or ethnic groups from the competition for admission. *Ibid*. Universities can, however, consider race or ethnicity more flexibly as a "plus" factor in the context of individualized consideration of each and every applicant. *Ibid*.

     We are satisfied that the Law School's admissions program, like the Harvard plan described by Justice Powell, does not operate as a quota. Properly understood, a "quota" is a program in which a certain fixed number or proportion of opportunities are "reserved exclusively for certain minority groups." *Richmond* v. *J. A. Croson Co.,* *supra*, at 496 (plurality opinion). Quotas " 'impose a fixed number or percentage which must be attained, or which cannot be exceeded,' " *Sheet Metal Workers* v. *EEOC,* 478 U. S. 421, 495 (1986) (*O'Connor*, J., concurring in part and dissenting in part), and "insulate the individual from comparison with all other candidates for the available seats." *Bakke,* *supra*, at 317 (opinion of Powell, J.). In contrast, "a permissible goal ... require[s] only a good-faith effort ... to come within a range demarcated by the goal itself," *Sheet Metal Workers* v. *EEOC*, *supra*, at 495, and permits consideration of race as a "plus" factor in any given case while still ensuring that each candidate "compete[s] with all other qualified applicants," *Johnson* v. *Transportation Agency, Santa Clara Cty.,* 480 U. S. 616, 638 (1987).

     Justice Powell's distinction between the medical school's rigid 16-seat quota and Harvard's flexible use of race as a "plus" factor is instructive. Harvard certainly had minimum *goals* for minority enrollment, even if it had no specific number firmly in mind. See *Bakke,* *supra*, at 323 (opinion of Powell, J.) ("10 or 20 black students could not begin to bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States"). What is more, Justice Powell flatly rejected the argument that Harvard's program was "the functional equivalent of a quota" merely because it had some " 'plus' " for race, or gave greater "weight" to race than to some other factors, in order to achieve student body diversity. 438 U. S., at 317-318.

     The Law School's goal of attaining a critical mass of underrepresented minority students does not transform its program into a quota. As the Harvard plan described by Justice Powell recognized, there is of course "some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted." *Id.*, at 323. "[S]ome attention to numbers," without more, does not transform a flexible admissions system into a rigid quota. *Ibid.* Nor, as *Justice Kennedy* posits, does the Law School's consultation of the "daily reports," which keep track of the racial and ethnic composition of the class (as well as of residency and gender), "suggest[ ] there was no further attempt at individual review save for race itself" during the final stages of the admissions process. See *post*, at 6 (dissenting opinion). To the contrary, the Law School's admissions officers testified without contradiction that they never gave race any more or less weight based on the information contained in these reports. Brief for Respondents Bollinger et al. 43, n. 70 (citing App. in Nos. 01-1447 and 01-1516 (CA6), p. 7336). Moreover, as *Justice Kennedy* concedes, see *post*, at 4, between 1993 and 2000, the number of African-American, Latino, and Native-American students in each class at the Law School varied from 13.5 to 20.1 percent, a range inconsistent with a quota.

     *The* *Chief Justice* believes that the Law School's policy conceals an attempt to achieve racial balancing, and cites admissions data to contend that the Law School discriminates among different groups within the critical mass. *Post*, at 3-9 (dissenting opinion). But, as *The* *Chief Justice* concedes, the number of underrepresented minority students who ultimately enroll in the Law School differs substantially from their representation in the applicant pool and varies considerably for each group from year to year. See *post*, at 8 (dissenting opinion).

     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. See *Bakke*, *supra*, at 318, n. 52 (opinion of Powell, J.) (identifying the "denial ... of th[e] right to individualized consideration" as the "principal evil" of the medical school's admissions program).

     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*, *ante*, the Law School awards no mechanical, predetermined diversity "bonuses" based on race or ethnicity. See *ante*, at 23 (distinguishing a race-conscious admissions program that automatically awards 20 points based on race from the Harvard plan, which considered race but "did not contemplate that any single characteristic automatically ensured a specific and identifiable contribution to a university's diversity"). Like the Harvard plan, the Law School's admissions policy "is 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." *Bakke,* *supra*, at 317 (opinion of Powell, J.).

     We also find that, like the Harvard plan Justice Powell referenced in *Bakke*, 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. With respect to the use of race itself, all underrepresented minority students admitted by the Law School have been deemed qualified. By virtue of our Nation's struggle with racial inequality, such students are both likely to have experiences of particular importance to the Law School's mission, and less likely to be admitted in meaningful numbers on criteria that ignore those experiences. See App. 120.

     The Law School does not, however, limit in any way the broad range of qualities and experiences that may be considered valuable contributions to student body diversity. To the contrary, the 1992 policy makes clear "[t]here are many possible bases for diversity admissions," and provides examples of admittees who have lived or traveled widely abroad, are fluent in several languages, have overcome personal adversity and family hardship, have exceptional records of extensive community service, and have had successful careers in other fields. *Id.*, at 118-119. The Law School seriously considers each "applicant's promise of making a notable contribution to the class by way of a particular strength, attainment, or characteristic--*e.g.*, an unusual intellectual achievement, employment experience, nonacademic performance, or personal background." *Id.*, at 83-84. 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. The Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected. See Brief for Respondents Bollinger et al. 10; App. 121-122. This shows that the Law School seriously weighs many other diversity factors besides race that can make a real and dispositive difference for nonminority applicants as well. 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. *Justice Kennedy* speculates that "race is likely outcome determinative for many members of minority groups" who do not fall within the upper range of LSAT scores and grades. *Post*, at 3 (dissenting opinion). But the same could be said of the Harvard plan discussed approvingly by Justice Powell in *Bakke*, and indeed of any plan that uses race as one of many factors. See 438 U. S., at 316 (" 'When the Committee on Admissions reviews the large middle group of applicants who are "admissible" and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor' ").

     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 that the Law School seeks. We disagree. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative. Nor does it require a university to choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups. See *Wygant* v. *Jackson Bd. of Ed.,* 476 U. S. 267, 280, n. 6 (1986) (alternatives must serve the interest " 'about as well' "); *Richmond* v. *J. A. Croson Co.,* 488 U. S., at 509-
510 (plurality opinion) (city had a "whole array of race-neutral" alternatives because changing requirements "would have [had] little detrimental effect on the city's interests"). Narrow tailoring does, however, require serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks. See *id.*, at 507 (set-aside plan not narrowly tailored where "there does not appear to have been any consideration of the use of race-neutral means"); *Wygant* v. *Jackson Bd. of Ed.*, *supra*, at 280, n. 6 (narrow tailoring "require[s] consideration" of "lawful alternative and less restrictive means").

     We agree with the Court of Appeals that the Law School sufficiently considered workable race-neutral alternatives. The District Court took the Law School to task for failing to consider race-neutral alternatives such as "using a lottery system" or "decreasing the emphasis for all applicants on undergraduate GPA and LSAT scores." App. to Pet. for Cert. 251a. But these alternatives would require a dramatic sacrifice of diversity, the academic quality of all admitted students, or both.

     The Law School's current admissions program considers race as one factor among many, in an effort to assemble a student body that is diverse in ways broader than race. Because a lottery would make that kind of nuanced judgment impossible, it would effectively sacrifice all other educational values, not to mention every other kind of diversity. So too with the suggestion that the Law School simply lower admissions standards for all students, a drastic remedy that would require the Law School to become a much different institution and sacrifice a vital component of its educational mission. The United States advocates "percentage plans," recently adopted by public undergraduate institutions in Texas, Florida, and California to guarantee admission to all students above a certain class-rank threshold in every high school in the State. Brief for United States as *Amicus Curiae* 14-18. The United States does not, however, explain how such plans could work for graduate and professional schools. More-over, even assuming such plans are race-neutral, they may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university. 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.

     We acknowledge that "there are serious problems of justice connected with the idea of preference itself." *Bakke,* 497 U. S. 547, 630 (1990) (*O'Connor*, J., dissenting).

     We are satisfied that the Law School's admissions program does not. Because the Law School considers "all pertinent elements of diversity," it can (and does) select nonminority applicants who have greater potential to enhance student body diversity over underrepresented minority applicants. See *Bakke,* *supra*, at 317 (opinion of Powell, J.). As Justice Powell recognized in *Bakke*, so long as a race-conscious admissions program uses race as a "plus" factor in the context of individualized consideration, a rejected applicant

"will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname... . His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment." 438 U. S., at 318.

We agree that, in the context of its individualized inquiry into the possible diversity contributions of all applicants, the Law School's race-conscious admissions program does not unduly harm nonminority applicants.

     We are mindful, however, that "[a] core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race." *Palmore* v. *Sidoti,* 466 U. S. 429, 432 (1984). Accordingly, race-conscious admissions policies must be limited in time. This requirement reflects 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. The Law School, too, concedes that all "race-conscious programs must have reasonable durational limits." Brief for Respondents Bollinger et al. 32.

     In the context of higher education, the durational requirement can be met by sunset provisions in race-conscious admissions policies and periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity. Universities in California, Florida, and Washington State, where racial preferences in admissions are prohibited by state law, are currently engaged in experimenting with a wide variety of alternative approaches. Universities in other States can and should draw on the most promising aspects of these race-neutral alternatives as they develop. Cf. *United States* v. *Lopez,* 514 U. S. 549, 581 (1995) (*Kennedy*, J., concurring) ("[T]he States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear").

     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." *Richmond* v. *J. A. Croson Co.,* 488 U. S., at 510 (plurality opinion); see also Nathanson & Bartnik, The Constitutionality of Preferential Treatment for Minority Applicants to Professional Schools, 58 Chicago Bar Rec. 282, 293 (May-June 1977) ("It would be a sad day indeed, were America to become a quota-ridden society, with each identifiable minority assigned proportional representation in every desirable walk of life. But that is not the rationale for programs of preferential treatment; the acid test of their justification will be their efficacy in eliminating the need for any racial or ethnic preferences at all").

     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. See Brief for Respondents Bollinger et al. 34; *Bakke,* *supra*, at 317-318 (opinion of Powell, J.) (presuming good faith of university officials in the absence of a showing to the contrary). It has been 25 years since JusticePowell 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. See Tr. of Oral Arg. 43. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

**IV**

     In summary, the Equal Protection Clause does not prohibit 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. Consequently, petitioner's statutory claims based on Title VI and 42 U. S. C. §1981 also fail. See *Bakke,* *supra*, at 287 (opinion of Powell, J.) ("Title VI ... proscribe[s] only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment"); *General Building Contractors Assn., Inc.* v. *Pennsylvania,* 458 U. S. 375, 389-391 (1982) (the prohibition against discrimination in §1981 is co-extensive with the Equal Protection Clause). The judgment of the Court of Appeals for the Sixth Circuit, accordingly, is affirmed.

It is so ordered.

**BARBARA GRUTTER, PETITIONER *v.* LEE
BOLLINGER *et al*.**

**on writ of certiorari to the united states court of
appeals for the sixth circuit**

[June 23, 2003]

     *Justice Ginsburg*, with whom *Justice Breyer* joins, concurring.

     The Court's observation that race-conscious programs "must have a logical end point," *ante*, at 29, accords with the international understanding of the office of affirmative action . . .

     However strong the public's desire for improved education systems may be, see P. Hart & R. Teeter, A National Priority: Americans Speak on Teacher Quality 2, 11 (2002) (public opinion research conducted for Educational Testing Service); The No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425 , 20 U. S. C. A. §7231 (2003 Supp. Pamphlet), it remains the current reality that many minority students encounter markedly inadequate and unequal educational opportunities. Despite these inequalities, some minority students are able to meet the high threshold requirements set for admission to the country's finest undergraduate and graduate educational institutions. As lower school education in minority communities improves, an increase in the number of such students may be anticipated. From today's vantage point, one may hope, but not firmly forecast, that over the next generation's span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action.\*[\*](https://caselaw.findlaw.com/us-supreme-court/539/306.html#FNconcurrence1.*)

**BARBARA GRUTTER, PETITIONER *v.* LEE
BOLLINGER *et al*.**

**on writ of certiorari to the united states court of
appeals for the sixth circuit**

[June 23, 2003]

     *Chief Justice Rehnquist*, with whom *Justice Scalia, Justice Kennedy,* and *Justice Thomas* join, dissenting.

     I agree with the Court that, "in the limited circumstance when drawing racial distinctions is permissible," the government must ensure that its means are narrowly tailored to achieve a compelling state interest. *Ante*, at 21; see also *Fullilove* v*. Klutznick*, 448 U. S. 448, 498 (1980) (Powell, J., concurring) ("[E]ven if the government proffers a compelling interest to support reliance upon a suspect classification, the means selected must be narrowly drawn to fulfill the governmental purpose"). I do not believe, however, that the University of Michigan Law School's (Law School) 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. Brief for Respondents Bollinger et al. 13. 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.

     As we have explained many times, " ' "[a]ny preference based on racial or ethnic criteria must necessarily receive a most searching examination." ' " *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 223 (1995) (quoting *Wygant* v. *Jackson Bd. of Ed*., 476 U. S. 267, 273 (1986) (plurality opinion of Powell, J.)). Our cases establish that, in order to withstand this demanding inquiry, respondents must demonstrate that their methods of using race " 'fit' " a compelling state interest "with greater precision than any alternative means." *Id.*, at 280, n. 6; *Regents of Univ. of Cal.* v. *Bakke*, 438 U. S. 265, 299 (1978) (opinion of Powell, J.) ("When [political judgments] touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest").

     Before the Court's decision today, we consistently applied the same strict scrutiny analysis regardless of the government's purported reason for using race and regardless of the setting in which race was being used. We rejected calls to use more lenient review in the face of claims that race was being used in "good faith" because " '[m]ore than good motives should be required when government seeks to allocate its resources by way of an explicit racial classification system.' " *Adarand*, *supra*, at 226; *Fullilove*, *supra*, at 537 (*Stevens*, J., dissenting) ("Racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification"). We likewise rejected calls to apply more lenient review based on the particular setting in which race is being used. Indeed, even in the specific context of higher education, we emphasized that "constitutional limitations protecting individual rights may not be disregarded." *Bakke*, *supra*, at 314.

     Although the Court recites the language of our strict scrutiny analysis, its application of that review is unprecedented in its deference.

     Respondents' asserted justification for the Law School's use of race in the admissions process is "obtaining 'the educational benefits that flow from a diverse student body.' " *Ante*, at 15 (quoting Brief for Respondents Bollinger et al. i). They contend that a "critical mass" of underrepresented minorities is necessary to further that interest. *Ante*, at 17. Respondents and school administrators explain generally that "critical mass" means a sufficient number of underrepresented minority students to achieve several objectives: To ensure that these minority students do not feel isolated or like spokespersons for their race; to provide adequate opportunities for the type of interaction upon which the educational benefits of diversity depend; and to challenge all students to think critically and reexamine stereotypes. See App. to Pet. for Cert. 211a; Brief for Respondents Bollinger et al. 26. These objectives indicate that "critical mass" relates to the size of the student body. *Id*., at 5 (claiming that the Law School has enrolled "critical mass," or "enough minority students to provide meaningful integration of its classrooms and residence halls"). Respondents further claim that the Law School is achieving "critical mass." *Id.*, at 4 (noting that the Law School's goals have been "greatly furthered by the presence of ... a 'critical mass' of " minority students in the student body).

     In practice, the Law School's program bears little or no relation to its asserted goal of achieving "critical mass." Respondents explain that the Law School seeks to accumulate a "critical mass" of *each* underrepresented minority group. See, *e.g*., *id.*, at 49, n. 79 ("The Law School's ... current policy ... provide[s] a special commitment to enrolling a 'critical mass' of 'Hispanics' "). But the record demonstrates that the Law School's admissions practices with respect to these groups differ dramatically and cannot be defended under any consistent use of the term "critical mass." . . .

     (He then reviews admission data arguing )

Indeed, the ostensibly flexible nature of the Law School's admissions program that the Court finds appealing, see *ante*, at 24-26, appears to be, in practice, a carefully managed program designed to ensure proportionate representation of applicants from selected minority groups.

     I do not believe that the Constitution gives the Law School such free rein in the use of race. 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." *Ante,* at 17.

     Finally, I believe that the Law School's program fails strict scrutiny because it is devoid of any reasonably precise time limit on the Law School's use of race in admissions. We have emphasized that we will consider "the planned duration of the remedy" in determining whether a race-conscious program is constitutional. *Fullilove,* 480 U. S. 149, 171 (1987) ("In determining whether race-conscious remedies are appropriate, we look to several factors, including the ... duration of the relief "). Our previous cases have required some limit on the duration of programs such as this because discrimination on the basis of race is invidious.

     The Court suggests a possible 25-year limitation on the Law School's current program. See *ante*, at 30. 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, and the Sixth Circuit properly found such a limit in the Law School's resolve to cease considering race when genuine race-neutral alternatives become available." Brief for Respondents Bollinger et al. 32. 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.

     The Court, in an unprecedented display of deference under our strict scrutiny analysis, upholds the Law School's program despite its obvious flaws. We have said that when it comes to the use of race, the connection between the ends and the means used to attain them must be precise. But here the flaw is deeper than that; it is not merely a question of "fit" between ends and means. Here the means actually used are forbidden by the Equal Protection Clause of the Constitution.

**BARBARA GRUTTER, PETITIONER *v.* LEE
BOLLINGER *et al*.**

**on writ of certiorari to the united states court of
appeals for the sixth circuit**

[June 23, 2003]

     *Justice Kennedy*, dissenting, , ,

     It is regrettable the Court's important holding allowing racial minorities to have their special circumstances considered in order to improve their educational opportunities is accompanied by a suspension of the strict scrutiny which was the predicate of allowing race to be considered in the first place. If the Court abdicates its constitutional duty to give strict scrutiny to the use of race in university admissions, it negates my authority to approve the use of race in pursuit of student diversity. The Constitution cannot confer the right to classify on the basis of race even in this special context absent searching judicial review. For these reasons, though I reiterate my approval of giving appropriate consideration to race in this one context, I must dissent in the present case.

**BARBARA GRUTTER, PETITIONER *v.* LEE
BOLLINGER *et al*.**

**on writ of certiorari to the united states court of
appeals for the sixth circuit**

[June 23, 2003]

     *Justice Scalia*, with whom *Justice Thomas* joins, concurring in part and dissenting in part.

     I join the opinion of *The* *Chief Justice*. As he demonstrates, the University of Michigan Law School's mystical "critical mass" justification for its discrimination by race challenges even the most gullible mind. The admissions statistics show it to be a sham to cover a scheme of racially proportionate admissions.

     I also join Parts I through VII of *Justice Thomas'*s opinion.[\*](https://caselaw.findlaw.com/us-supreme-court/539/306.html#FNother1.*) I find particularly unanswerable his central point: that the allegedly "compelling state interest" at issue here is not the incremental "educational benefit" that emanates from the fabled "critical mass" of minority students, but rather Michigan's interest in maintaining a "prestige" law school whose normal admissions standards disproportionately exclude blacks and other minorities. If that is a compelling state interest, everything is.

     I add the following: The "educational benefit" that the University of Michigan seeks to achieve by racial discrimination consists, according to the Court, of " 'cross-racial understanding,' " *ante*, at 18, and " 'better preparation of] students for an increasingly diverse workforce and society,' " *ibid*., all of which is necessary not only for work, but also for good "citizenship," *ante*, at 19. This is not, of course, an "educational benefit" on which students will be graded on their Law School transcript (Works and Plays Well with Others: B+) or tested by the bar examiners (Q: Describe in 500 words or less your cross-racial understanding). For it is a lesson of life rather than law--essentially the same lesson taught to (or rather learned by, for it cannot be "taught" in the usual sense) people three feet shorter and twenty years younger than the full-grown adults at the University of Michigan Law School, in institutions ranging from Boy Scout troops to public-school kindergartens. If properly considered an "educational benefit" at all, it is surely not one that is either uniquely relevant to law school or uniquely "teachable" in a formal educational setting. *And therefore:* If it is appropriate for the University of Michigan Law School to use racial discrimination for the purpose of putting together a "critical mass" that will convey generic lessons in socialization and good citizenship, surely it is no less appropriate--indeed, *particularly* appropriate--for the civil service system of the State of Michigan to do so. There, also, those exposed to "critical masses" of certain races will presumably become better Americans, better Michiganders, better civil servants. And surely private employers cannot be criticized--indeed, should be praised--if they also "teach" good citizenship to their adult employees through a patriotic, all-American system of racial discrimination in hiring. The nonminority individuals who are deprived of a legal education, a civil service job, or any job at all by reason of their skin color will surely understand.

     Unlike a clear constitutional holding that racial preferences in state educational institutions are impermissible, or even a clear anticonstitutional holding that racial preferences in state educational institutions are OK, today's *Grutter*-*Gratz* split double header seems perversely designed to prolong the controversy and the litigation. Some future lawsuits will presumably focus on whether the discriminatory scheme in question contains enough evaluation of the applicant "as an individual," *ante*, at 24, and sufficiently avoids "separate admissions tracks" *ante*, at 22, to fall under *Grutter* rather than *Gratz*. Some will focus on whether a university has gone beyond the bounds of a " 'good faith effort' " and has so zealously pursued its "critical mass" as to make it an unconstitutional *de facto* quota system, rather than merely " 'a permissible goal.' " *Ante*, at 23 (quoting *Sheet Metal Workers* v. *EEOC*, 478 U. S 421, 495 (1986) (*O'Connor*, J., concurring in part and dissenting in part)). Other lawsuits may focus on whether, in the particular setting at issue, any educational benefits flow from racial diversity. (That issue was not contested in *Grutter*; and while the opinion accords "a degree of deference to a university's academic decisions," *ante*, at 16, "deference does not imply abandonment or abdication of judicial review," *Miller-El* v. *Cockrell*, 537 U. S. 322, 340 (2003).) Still other suits may challenge the bona fides of the institution's expressed commitment to the educational benefits of diversity that immunize the discriminatory scheme in *Grutter*. (Tempting targets, one would suppose, will be those universities that talk the talk of multiculturalism and racial diversity in the courts but walk the walk of tribalism and racial segregation on their campuses--through minority-only student organizations, separate minority housing opportunities, separate minority student centers, even separate minority-only graduation ceremonies.) And still other suits may claim that the institution's racial preferences have gone below or above the mystical *Grutter*-approved "critical mass." Finally, litigation can be expected on behalf of minority groups intentionally short changed in the institution's composition of its generic minority "critical mass." I do not look forward to any of these cases. The Constitution proscribes government discrimination on the basis of race, and state-provided education is no exception.

**BARBARA GRUTTER, PETITIONER *v.* LEE
BOLLINGER *et al*.**

**on writ of certiorari to the united states court of
appeals for the sixth circuit**

[June 23, 2003]

     *Justice Thomas*, with whom *Justice Scalia* joins as to Parts I-VII, concurring in part and dissenting in part.

     Frederick Douglass, speaking to a group of abolitionists almost 140 years ago, delivered a message lost on today's majority:

"[I]n regard to the colored people, there is always more that is benevolent, I perceive, than just, manifested towards us. What I ask for the negro is not benevolence, not pity, not sympathy, but simply *justice*. The American people have always been anxious to know what they shall do with us... . I have had but one answer from the beginning. Do nothing with us! Your doing with us has already played the mischief with us. Do nothing with us! If the apples will not remain on the tree of their own strength, if they are worm-eaten at the core, if they are early ripe and disposed to fall, let them fall! ... And if the negro cannot stand on his own legs, let him fall also. All I ask is, give him a chance to stand on his own legs! Let him alone! ... [Y]our interference is doing him positive injury." What the Black Man Wants: An Address Delivered in Boston, Massachusetts, on 26 January 1865, reprinted in 4 The Frederick Douglass Papers 59, 68 (J. Blassingame & J. McKivigan eds. 1991) (emphasis in original).

Like Douglass, I believe blacks can achieve in every avenue of American life without the meddling of university administrators. Because I wish to see all students succeed whatever their color, I share, in some respect, the sympathies of those who sponsor the type of discrimination advanced by the University of Michigan Law School (Law School). The Constitution does not, however, tolerate institutional devotion to the status quo in admissions policies when such devotion ripens into racial discrimination. Nor does the Constitution countenance the unprecedented deference the Court gives to the Law School, an approach inconsistent with the very concept of "strict scrutiny.". . .

     Indeed, the very existence of racial discrimination of the type practiced by the Law School may impede the narrowing of the LSAT testing gap. An applicant's LSAT score can improve dramatically with preparation, but such preparation is a cost, and there must be sufficient benefits attached to an improved score to justify additional study. Whites scoring between 163 and 167 on the LSAT are routinely rejected by the Law School, and thus whites aspiring to admission at the Law School have every incentive to improve their score to levels above that range. See App. 199 (showing that in 2000, 209 out of 422 white applicants were rejected in this scoring range). Blacks, on the other hand, are nearly guaranteed admission if they score above 155. *Id*., at 198 (showing that 63 out of 77 black applicants are accepted with LSAT scores above 155). As admission prospects approach certainty, there is no incentive for the black applicant to continue to prepare for the LSAT once he is reasonably assured of achieving the requisite score. It is far from certain that the LSAT test-taker's behavior is responsive to the Law School's admissions policies.[16](https://caselaw.findlaw.com/us-supreme-court/539/306.html#FNother2.16) Nevertheless, the possibility remains that this racial discrimination will help fulfill the bigot's prophecy about black underperformance--just as it confirms the conspiracy theorist's belief that "institutional racism" is at fault for every racial disparity in our society.

     I therefore can understand the imposition of a 25-year time limit only as a holding that the deference the Court pays to the Law School's educational judgments and refusal to change its admissions policies will itself expire. At that point these policies will clearly have failed to " 'eliminat[e] the [perceived] need for any racial or ethnic' " discrimination because the academic credentials gap will still be there. *Ante*, at 30 (quoting Nathanson & Bartnika, The Constitutionality of Preferential Treatment for Minority Applicants to Professional Schools, 58 Chicago Bar Rec. 282, 293 (May-June 1977)). The Court defines this time limit in terms of narrow tailoring, see *ante*, at 30, but I believe this arises from its refusal to define rigorously the broad state interest vindicated today. Cf. Part II, *supra*. With these observations, I join the last sentence of Part III of the opinion of the Court.

**\* \* \***

     For the immediate future, however, the majority has placed its *imprimatur* on a practice that can only weaken the principle of equality embodied in the Declaration of Independence and the Equal Protection Clause. "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." *Plessy* v. *Ferguson,* 163 U. S. 537, 559 (1896) (Harlan, J., dissenting). It has been nearly 140 years since Frederick Douglass asked the intellectual ancestors of the Law School to "[d]o nothing with us!" and the Nation adopted the Fourteenth Amendment. Now we must wait another 25 years to see this principle of equality vindicated. I therefore respectfully dissent from the remainder of the Court's opinion and the judgment.

Bottom of Form

Top of Form

[Learn more](https://newsletters.findlaw.com) about FindLaw’s newsletters, including our terms of use and privacy policy.

This site is protected by reCAPTCHA and the Google [Privacy Policy](https://policies.google.com/privacy) and [Terms of Service](https://policies.google.com/terms) apply.

Bottom of Form