DOWNLOAD PDF DIVERSITY IS A COMPELLING STATE INTEREST : JUSTICE SANDRA DAY OCONNOR UPHOLDS AFFIRMATIVE ACTION

Chapter 1 : Affirmative Action

In a opinion delivered by Justice Sandra Day O'Connor, the Court held that 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.

Introduction Affirmative action is a source of heated legal, political and social debate, with much of the attention focused on higher education. In recent years, however, affirmative action programsâ€”and the diversity rationale in particularâ€”were challenged in cases at the universities of Texas, Georgia, Michigan, and Washington. In , 25 years after the Bakke decision, the Supreme Court again addressed the issue, issuing its long awaited ruling in the University of Michigan cases. It its decision the Court endorsed diversity in higher education as a rationale for affirmative action in admissions. However, while this decision is a culminating event in years of debate and litigation on this issue, it will not end the controversy. Some key factors in the review of such programs include the following: The most important current cases include challenges to the procedures used at the University of Michigan for both its undergraduate and law school admissions, the University of Georgia, and at the University of Washington law school. Department of Education has issued policy guidance setting forth the circumstances under which race-targeted financial aid is permissible under Title VI as interpreted by the federal government. A race-targeted financial aid program founded to remedy discrimination has also been struck down by a federal court based on the nature and weight of the evidence offered to support it. There has been a concerted effort in recent years to mount reverse discrimination challenges to university admissions policies around the country. Important recent cases include the following: The infamous Hopwood case continues to revive itself, never quite going away. The court also held that giving minority students a "plus" is lawful, but was concerned about a separate standard for minorities and non-minorities. State of Texas, F. The case was appealed to the Fifth Circuit, which reversed and remanded, expressly holding that any consideration of race or ethnicity for the purpose of achieving a diverse student body is not a compelling interest under the Fourteenth Amendment, and that Bakke was not controlling precedent. State of Texas, 78 F. The Fifth Circuit recognized remedying past discrimination as a compelling state interest, but decided that the applicable discrimination cannot be in the system in general, or the University as a whole, but must be specifically at the Law School. Finally, the court required the Law School to show that the plaintiffs would not have been admitted under a constitutional admissions system. The Supreme Court denied writ of certiorari in this case, noting that the challenged program was no longer in effect. On remand, the district court awarded only minimal damages, finding that none of the plaintiffs would have been admitted to the Law School under a constitutional admissions process. However, the district court also enjoined the Law School from taking racial preferences into consideration in admissions. The opinion is an interesting oneâ€”a decidedly mixed result. Moreover, the Fifth Circuit reversed the injunction issued by the district court, finding that an injunction barring the University from "using racial preferences for any reason The court then went on to note that while the first Hopwood panel went "beyond established Supreme Court precedent in several important respects," and employed "aggressive legal reasoning," "mere doubts about the wisdom of a prior decision" were not enough to overturn it unless it was "dead wrong. The case was then appealed to the Supreme Court, which denied certiorari on June 25, This case involves one of the first applications of the Hopwood decision discussed above. In October the Fifth Circuit revived a lawsuit charging that the University of Texas at Austin discriminated against white applicants to a doctoral program in counseling psychology. This decision was appealed to the Supreme Court, which reversed and remanded the case on November 29, The Supreme Court concluded that since LeSage would have been rejected under a race neutral admissions policy, and since the challenged affirmative action policy was no longer in use, LeSage had no injury deserving relief under 42 U. If LeSage had sought forward looking relief, however, the Court concluded he would not have to prove that he would have been admitted under a race neutral program,

because the relevant injury would be "the inability to compete on an equal footing. In a letter to state lawmakers, Cornyn said that his predecessor had offered too broad an interpretation of the Fifth Circuit ruling which concerned the two-track admissions program, not financial aid or other programs. The Court heard oral argument on both cases on April 1, , and a decision was issued on June 23, A history of the cases and overview of the Supreme Court decisions are below: It has since adopted new admissions guidelines that assign points to applicants for academic and non-academic factors, including race. The University asserts that the new system maintains its commitment to affirmative action and was under development before the lawsuit. The Center for Individual Rights CIR has faulted the new system for also making race too large a factor in admissions. Both suits would hold administrators involved in admissions decisions personally liable under a federal statute 42 U. The officials contended that they were obligated under state law to adopt a set-aside policy that benefited minority businesses, but a federal judge held that recent U. Supreme Court rulings striking down minority set-asides in contracting were sufficiently clear to warrant liability. The Michigan cases were important because the University of Michigan is a highly selective public institution in a state with no history of de jure segregation. Thus the state had to rely on the diversity rationale in its defense rather than remedying discrimination. The Sixth Circuit ruled in August , however, that black and Hispanic students can intervene in the lawsuits to argue that the university needs affirmative-action policies in place to remedy its own racial discrimination an argument disputed by the University itself. Regents of the University of Michigan: In December the U. Regents of the University of Michigan. Judge Duggan goes into great detail about the benefits of diversity in higher education, creating a very good basis on which to argue this point on the inevitable appeal. The attention to this issue also reflects the extensive work the University of Michigan has done in this case to document and support the benefits of diversity in higher education. The district court opinion is available. The decision of the district court was appealed to the Sixth Circuit Court of Appeals, which held oral arguments before the whole court en banc on December 6, While the Sixth Circuit has not yet issued a decision, the plaintiffs in the case took the unusual step of applying to the Supreme Court for certiorari without an appellate decision. This action, called a Rule 11 Writ of Certiorari, allows the Supreme Court to consider the Gratz case along with the Grutter law school case below. On December 2, , the Court did just that, granting certiorari in both Gratz and Grutter. The decision is available. Interestingly, no opinion was issued in Gratz; although the cases were argued together, the court indicated that it would address Gratz in a separate opinion. It has never done so. Referring to Marks v. United States, U. The court paid particular attention to the fact that the Michigan admissions system which involves reading every application individually closely tracks the "Harvard Plan" discussed in Bakke. Rather, the court noted that any system aiming at diversity will have some bottom and top number of admitted minorities, and that simply having an approximate range of minority students who are admitted each year does not turn the pursuit of a "critical mass" into a quota system. Ewing that a federal court is ill-suited "to evaluate the substance of the multitude of academic decisions that are made daily by faculty members of public education institutions-decisions that require an expert evaluation of cumulative information and are not readily adapted to the procedural tools of judicial or administrative decision making. On June 23, the U. Supreme Court finally issued its much awaited decisions in these two cases. Bakke, finding diversity in higher education to be a compelling state interest and upholding the law school admissions program. Importantly, the Gratz decision upheld the concept of affirmative action and diversity as a compelling interest. Not only did the Court uphold educational diversity as a justification for affirmative action, but it recognized the need for deference to educators to determine the best educational environment. The Grutter majority opinion affirmed 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. The brief is available in. The Supreme Court decisions are available in. Arguing that it was the official victor in the Gratz case because the Supreme Court struck down the undergraduate admissions policy at Michigan, even though no damages were awarded to the plaintiffs , CIR claimed that it was entitled to millions in attorneys fees. The district court

ruled, however, that the victory was not complete because the Court had rejected the main argument that all affirmative action policies were unconstitutional. Thus, the district court concluded, CIR was entitled to some but not all of its attorneys fees. The decision is available http: Plaintiffs in the case have also filed another motion in the district court asking for damages to be awarded to the thousands of white and Asian-American applicants rejected by the College of Literature, Science, and the Arts while the overturned policy was in effect. The court has not yet ruled on this motion. This case involves another challenge to affirmative action for minority students in law school admissions. In November voters approved a state initiative to ban race-conscious affirmative action in the public sector, and the University announced that it was taking steps to suspend the consideration of race and gender in admissions. The federal district court then held that the state initiative made much of the case moot, including class-action claims seeking to declare the old admissions policy unconstitutional. The decision was appealed to the Ninth Circuit regarding the applicability of the Bakke principles on diversity. Applying Bakke, the Ninth Circuit held specifically that "the Fourteenth Amendment permits University admissions programs which consider race for other than remedial purposes, and educational diversity is a compelling governmental interest that meets the demands of strict-scrutiny of race-conscious measures. Following the decision of the Ninth Circuit, the court considered diversity to be a compelling state interest sufficient to survive constitutional scrutiny, and thus evaluated the admissions program to see whether it met the requirement that it be narrowly tailored to meet that compelling interest. The court noted that the Law School had made a good faith effort to follow the "Harvard Plan" discussed in Bakke, wherein race is treated as one plus factor among many. Of course, this decision involves admissions policies in the years before the Washington state law prohibiting the granting of "preferential treatment to any individual on the basis of race" was in effect. As that state law now governs actions by schools in the state, this decision, while a good one, will have little practical effect in the state of Washington. The plaintiffs appealed the case to the 9th Circuit once again, but that court postponed decision on the case until after the Supreme Court had ruled on the Michigan cases above. The decision is available in. The University of Georgia has been the subject of numerous discrimination lawsuits, all of which have been consolidated, separated and reconsidered in such a way as to make the current legal landscape a bit of a morass. The plaintiffs sought to eliminate the "racial identifiability" of campuses in the state system and the consideration of race in admissions, hiring, and other decisions. Wooden, et al v. University of Georgia, 59 F. At the same time, the district court dismissed the complaint of one plaintiff, a white applicant Greene , on the basis that he lacked the necessary combination of grades, test scores, and other factors to be admitted. Plaintiffs appealed these district court rulings, and while the appeal was pending, the Supreme Court decided LeSage v. The district court reviewed the case s and on June 16, reaffirmed its earlier decisionsâ€”a ruling which was then appealed again. The district court had ruled that, because his record precluded him from being admitted, regardless of race issues, Green lacked standing to bring his case. On appeal, the Eleventh Circuit found that Green did have standing, and thus that he could possibly be a class representative, and remanded the case to the district court yet again for further consideration. Rather, the case turned on issues of standing to proceed. In deciding that issue, the appellate court agreed with the district court that the decision not to admit Green would have been the same regardless of racial considerations. He did not receive extra points for race. Moreover, had he received the extra points allowable for race, he still would not have met the criteria for admission. However, because he was subjected to a stage of the process that considered race, the court concluded that he had suffered "injury" sufficient to give him standing in the case.

Chapter 2 : Building on Our Greatest Strength: Diversity | HuffPost

Justice Sandra Day O'Connor, writing for the majority in a decision and joined by Justices Stevens, Souter, Ginsburg, and Breyer, ruled that the University of Michigan Law School had a compelling interest in promoting class diversity.

Blog Affirmative Action Affirmative Action began as a plan to equalize the educational, employment, and contracting opportunities for minorities and women with opportunities given to their white, male counterparts. Such race-conscious Affirmative Action programs have been the source of much controversy and sometimes violent protests. Race-conscious affirmative action programs are subject to review under Title VII of the Civil Rights Act of , if practiced by private or public employers and unions, Title VI if practiced by state or private recipients of federal funds, and the Equal Protection Clause of the 14th Amendment, if practiced by governmental agencies. At the same time, the Civil Rights Act was being enforced by the federal courts against discriminatory companies, unions, and other institutions. Through those contractor commitments, the department also could indirectly pressure labor unions, who supplied the employees at job sites, to create more ethnically balanced work crews. One key case in understanding the Civil Rights Act and its intentions was the Griggs v. Duke Power Company case of That case held that not only is intentional racial discrimination prohibited, but also hiring and employment policies that have perpetuated the effects of past discrimination. In addition, arbitrary blocks against the employment and advancement of black employees that were unintentional are prohibited and to be removed by private employers. Further, it discriminated against black applicants who, due to a history of inadequate education in racially segregated schools, would more likely fail the test than their white counterparts. The standard holds that it is not always possible to recognize those who would have been hired under employment practices that perpetuate racial exclusion. It established that companies failing to employ a workforce that reflected the racial makeup of the "local, qualified" labor force, were in violation of the act. It also set a precedent for outcome-oriented Affirmative Action policies. Prior to the fall of , universities had not given racial nor ethnic integration a top priority in awarding admission to their learning institutions. Since there were so few racial and ethnic minority students who received a Ph. At the same time, Anglo-American philosophy began to change from an indirect treatment of moral and political questions having to do with justice, to actually stating their views. Thus the debate over the legitimacy of Affirmative Action began on university campuses throughout the country, while those institutions were forced to exercise racial and gender preferences in their selection processes. Bakke, that explicit quotas violated the Equal Protection Clause. They did, however, find it legal to use race as one of many other factors in determining admissions to universities, using informal targets for minority admissions rather than strict quotas. Two differing opinions were written in the Bakke case. While both agreed that universities may use race-based affirmative action practices for admissions, they could not agree on the fundamental reasons to account for them. Contracting businesses Regarding private businesses that contract with the federal government, the Supreme Court held in Fullilove v. Klutznick of that federal funds should be set aside for a certain percentage of minority-owned businesses that are not involved in discriminatory practices. As in the Griggs case, those set-asides could not continue longer than the effects of the discrimination. It also would provide a procedure to prevent non-disadvantaged, minority businesses from claiming the set-aside, and ensure that not too great a burden is placed on fault-free, non-minority businesses. But those innocent, non-minority businesses could be required to subcontract 10 percent of their business to minority businesses. Since a number of decisions based on prohibiting the perpetuation of the effects of discrimination came after the Griggs case, the Supreme Court held that those practices performed prior to the Civil Rights Act were not illegal. Fullilove asserted that Congress has the same power over private parties contracting businesses that allows for regulating state action under Griggs-style disparate impact standards, even though Washington v. Davis does not directly allow such an action for private parties under the Equal Protection Clause. Federal agencies In the Washington v. Davis case of , the Supreme Court determined that the federal government

could not be held to the same disparate impact standard, under the due process clause of the Fifth Amendment , because private employers were under the Civil Rights Act. In that case, black plaintiffs sued the Washington, D. It could not be proven effective in determining the capability of its applicants. In more recent history, President Bill Clinton signed a direct order on July 19, , avowing support of affirmative action, stating that all Affirmative Action programs be reviewed by cabinet secretaries and agency officials to determine if they met four tests. In an effort to bring the federal government into compliance with the recent Supreme Court ruling in the Adarand v. Pena case, Clinton stated that a program must be eliminated or reorganized if it: It also stated, among other things, that race-generated programs must be narrowly tailored to reach their intended goal and serve a compelling government interest. Weber case, the Supreme Court ruled that the private sector could apply voluntary racial preference programs in hiring. On the other hand, others believed that a temporary imbalance in employment and higher learning institutions helped to counteract past injustices until racial, minority, and gender equality could be achieved. Reagan believed that the government promoted reverse discrimination and stated that it should relax its efforts to reach employment equality on behalf of blacks and other minority groups. He also believed that compensating blacks and other minority groups for past discrimination with hiring quotas, numerical goals, and timetables, ought to be eliminated. As a result of those cuts, the EEOC filed 60 percent fewer cases by than it had at the beginning of the Reagan administration. Also, cases against segregation in schools or housing, prepared by the Justice Department, virtually disappeared. In support of Affirmative Action An example of the policiy succeeding is the improvement of schooling for minorities. From to , the percentage of blacks ages who graduated from college rose from 5. A survey performed in of primary-care physicians from 51 California communities found a direct relation between the ethnic or race group and the physicians who served them. Increases in African-American and Hispanic physicians have paralleled a proportional rise in the quality of health care received in communities with higher concentrations of those minorities. Many minorities and women continue to support Affirmative Action, but a growing number of them are admitting that the benefits may no longer be worth its side effect: Overall, minorities and women continue to possess the vastly lower-paying jobs and are actively discriminated against in some sectors. By requiring corporations and contracting businesses to exercise special consideration for minorities and women in their hiring practices, the end result has sometimes been a less experienced or qualified workforce, resulting in a decreased ability to compete against less racially diverse corporations. In many cases, however, with increased training opportunities, those less qualified have proven to become as effective as those more skilled. Conclusion The debate over the need for, and type of, Affirmative Action practices continues today in the courts. Many contend that the effects it was attempting to achieve have not been accomplished. In the private sector, the debate also continues with white males accusing Affirmative Action of robbing them of promotions and other opportunities. Corporations continue to voice their concerns for overall effectiveness to compete against less racially diverse corporations. Has affirmative action come to the end of its lifespan of effectiveness? Will there be other measures taken to ensure a more racially and gender-balanced society? Off-site search results for "Affirmative Action" Affirmative Action Do the beneficiaries of affirmative action deserve their benefits. Do the losers deserve their loss? Other Affirmative Action Pages Affirmative Action Information Center Center Race, Gender, and Affirmative Action:

Chapter 3 : U.S. Supreme Court rules on University of Michigan cases | University of Michigan News

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 admis- sions decisions. n2 When the Court ruled in favor of the University of Michigan Law School's race-conscious admis-.

Where there are fewer women or minorities than would be reasonably expected, the employer has to establish goals. Numerical goals do not create guarantees for specific groups or preferences, nor are they designed to achieve proportional representation or equal results. No requirement exists that any specific position be filled by a person of a particular race, gender or ethnicity. By casting a wider net and recruiting a diverse pool of qualified individuals, an affirmative action employer eliminates preferences and levels the playing field for all. The essence of affirmative action is opportunity. In seeking to achieve its goals, an employer is never required to hire a person who does not have the qualifications needed to perform the job successfully. Affirmative action prevents discrimination; it does not cause it. The Executive Order does not require that contractors treat goals as either a ceiling or a floor for the employment of particular groups. The standard is and has always been "good faith effort. Affirmative Action Programs benefit women, persons with disabilities and veterans as well. The emphasis is on opportunity: The debate over affirmative action demarcates a philosophical divide, separating those with sharply different views of the "American dilemma" -- how the nation should treat African Americans, other people of color and women. This division centers on a number of questions: The continuing need for affirmative action is demonstrated by the data. In Fiscal Year there were 88, charges of discrimination filed with the Equal Employment Opportunity Commission: According to Diversity in Higher Education. Minority representation in faculty, administrators, and governing boards do not match minority representation in the student body: These initiatives were at least modestly successful, bringing about African-American participation in elections for the first time. Sporadic efforts to remedy the results of hundreds of years of slavery, segregation and denial of opportunity have been made since the end of the Civil War. A significant number of African Americans held public office, including two U. But when the federal government withdrew its support for Reconstruction in the late s, the gains made by African Americans were quickly stripped away and replaced by a patchwork system of legal segregation including, in some instances, legal segregation of Latinos, Asians, and Native Americans as well. By , in Plessy v. Ferguson, the Supreme Court upheld the cornerstone segregationist doctrine of "separate but equal" - i. In the modern era, the concept of affirmative action was reborn on June 25, , when President Franklin Roosevelt -- seeking to avert a march on Washington organized by civil rights pioneer A. Philip Randolph -- issued Executive Order requiring defense contractors to pledge nondiscrimination in employment in government-funded projects. Two years later, President Roosevelt extended coverage of the executive order to all federal contractors and subcontractors. But it also found "the wartime gains of Negro, Mexican-American and Jewish workers. This was succeeded by another executive order Executive Order issued by President Lyndon Johnson, along with the creation of the Office of Federal Contract Compliance in the Department of Labor to enforce its non-discrimination and affirmative action requirements. The Executive Order was amended in to include prohibitions on sex discrimination by federal contractors, along with a requirement that they engage in good faith efforts to expand job opportunities for women. Executive Order remains among the most effective and far-reaching federal programs for expanding equal opportunity. Implementation of affirmative action started slowly, with the construction industry the site of one of the first tests. In , the Office of Federal Contract Compliance created government-wide programs to redress the years of discrimination in the construction industry. The series of affirmative action programs was designed to boost minority employment by emphasizing hiring results in federally funded construction jobs. In the Rehabilitation Act required federal agencies and contractors to take affirmative action in employment and promotion for people with disabilities. The Vietnam Era Veterans Readjustment Assistance Act of called for "the preferential employment of

disabled veterans and veterans of the Vietnam era Affirmative action was understood to be the creation of opportunities to compete and not an assurance of success. The various programs culminated in the "Philadelphia Plan," implemented under President Nixon. This plan required contractors doing business with the federal government to commit themselves to self-determined numerical goals for minorities. By withstanding challenges both in Congress and the courts, the Philadelphia Plan helped establish affirmative action as a way of life for American employers. Indeed, employers often embraced affirmative action as a good business practice, enabling them to tap into larger, more diverse, and more qualified pools of talent. In a letter to President Reagan, the business group said it "believes the current executive order provides the framework for an affirmative action policy" and argued that "the business community is concerned that the elimination of goals and timetables could result in confusing compliance standards on federal, state and municipal levels and a proliferation of reverse discrimination suits. President Franklin Roosevelt issues Executive Order , which bans racial discrimination in any defense industry receiving federal contracts and established the Fair Employment Practices Committee to investigate such complaints. In , President Roosevelt broadened the coverage of Executive Order by making it applicable to all government contractors. Nearly a decade later, on December 3, , President Harry S. The committee, as its name implies, was tasked with overseeing compliance by federal contractors with the non-discrimination provisions of Executive Order This reorganization furthered the principle that "â€¦it is the obligation of the contracting agencies of the United States Government and government contractors to insure compliance with, and successful execution of, the equal employment opportunity program of the United States Government. President Kennedy meets with civil rights leaders. By the time John F. Kennedy was elected President, it was evident that to advance equal employment opportunity federal involvement needed to be broader and more proactive. On March 6, , shortly after JFK took office, he signed Executive Order , opening a new chapter in achieving access to good jobs by requiring government contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin. In his commencement address to graduates of Howard University, LBJ gave voice to his vision, declaring, "We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result. Today, Executive Order , as amended and further strengthened over the years, remains a major safeguard, protecting the rights of workers employed by federal contractors-approximately one-fifth of the entire U. In , the Nixon administration picked up a plan that the Johnson administration had put forth for the construction industry in the city of Philadelphia, referred to as the Philadelphia Plan. The Johnson administration plan was faulted for not having definite minimum standards for the required affirmative action programs. The Nixon plan did issue minimum standardsâ€”specific targets for minority employees in several trades. This allowed the administration to argue it was not setting quotas, though critics of the plan suggested the administration was in fact doing so. The Plan set the tone for affirmative action plans that followed. Soon, the standards put forth in the Philadelphia Plan were incorporated into Executive Order which affected all federal government contractors, who were required for the first time to put forth written affirmative action plans with numerical targets. After the implementation of the Philadelphia Plan, legislation was passed at the federal, state, and municipal levels implementing affirmative action plans using the Philadelphia Plan as a model. Today, almost all government affirmative action plans are offshoots of the Philadelphia Plan. The courts, however, have provided a more accurate and precise definition: Such quotas are legally impermissible and are not a component of lawful affirmative action programs. What affirmative action does sometimes involve is the establishment of a numerically expressed hiring goal, often in connection with a timetable. Indeed, as mentioned above, the Executive Order program covering federal contractors relies on the use of goals. Having established a goal, which is tied to the availability of qualified minority and women workers in the labor market, the employer pledges a "good faith" effort to achieve the goal. Failure to achieve the goal, however, does not, in and of itself, subject the employer to sanctions unless the affirmative action has been judicially ordered as a remedy to illegal discrimination. Ironically, affirmative action is used to

eliminate the effects of preferences enjoyed by some for more than three centuries. In a news release of the Leadership Conference on Civil Rights regarding the language used by the proponents of the Michigan Civil Rights Initiative in , executive director Wade Henderson stated: Placement goals serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work. Placement goals also are used to measure progress toward achieving equal employment opportunity. In the event of a substantial disparity in the utilization of a particular minority group or in the utilization of men or women of a particular minority group, a contractor may be required to establish separate goals for those groups. Quotas are expressly forbidden. Affirmative action programs prescribed by the regulations in this part do not require a contractor to hire a person who lacks qualifications to perform the job successfully, or hire a less qualified person in preference to a more qualified one. In Regents of the University of California v. At the same time, however, in an opinion written by Justice Powell, it ruled that race could lawfully be considered as one of several factors in making admissions decisions. United Steelworkers of America v. Weber involved a new in-plant training program for workers at a Louisiana plant that had hired few minorities in skilled positions. The employer and the union had agreed that 50 percent of the positions in the training program would go to African American employees and 50 percent to whites. Within each group, positions would be filled on the basis of seniority, meaning some junior African Americans would be admitted ahead of more senior whites. In rejecting the claims of a white employee that the program violated Title VII of the Civil Rights Act, the Court said the law allowed affirmative action by private parties "to eliminate traditional patterns of racial segregation". One test of lawfulness was whether the program "unduly" trampled on the interests of white workers. The Court held that the plan passed the test because it did not require firing any white workers, nor did it create an "absolute bar" to white advancement. The plan was also permissible because it was "a temporary measure; it [was] not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance. Klutznick, the Supreme Court upheld a congressionally- enacted 10 percent minority business set-aside of federal funds for state and local public works. In the ruling, the Court stressed the remedial nature of the set-aside, with Chief Justice Burger writing that the program "was designed to ensure that Memphis Fire Department the Court took on the hard issue of whether seniority would determine the order of layoffs in the Memphis fire department even at the cost of wiping out affirmative action. It ruled that Title VII "precludes a district court from displacing a non-minority employee with seniority under the contractually established seniority system absent either a finding that the seniority system was adopted with discriminatory intent or a determination that such a remedy was necessary to make whole a proven victim of discrimination. In testimony before Congress, Reynolds said the department would end the use of any goals and timetables as a remedy to correct discrimination -- a stance the department carried into its court cases, relying almost exclusively on recruitment programs as remedies for employment discrimination, but refusing to look at the number of minorities or women actually hired or promoted. At the same time, Reynolds and the department sought to undo the affirmative action remedies that had been agreed to prior to the Reagan administration. Reynolds construed Stotts as holding that any form of race or gender-conscious relief were impermissible. These views were rejected by the courts. The court in again emphasized that lawful affirmative action programs cannot require that male workers be discharged to make way for female workers. Jackson Board of Education, the Court held that a public employer may not lay off more senior white workers to protect the jobs of less senior black workers. Men and whites cannot be excluded from consideration for opportunities; all candidates must have the chance to compete and have their qualifications compared to others. Paradise and Johnson v. In Paradise, the Court upheld a one-for-one promotion requirement i. In the second case, Johnson v. The employer developed its plan after its review found that no women were employed in any of its skilled craft jobs.

Chapter 4 : GRUTTER V. BOLLINGER

Justice Sandra Day O'Connor (J. O'Connor). No. Without a showing that a race-based initiative was created to remedy past racial discrimination and that it supports a compelling governmental interest, the race-based initiative is unconstitutional and cannot withstand strict-scrutiny.

More broadly, the Law School seeks "a mix of students with varying backgrounds and experiences who will respect and learn from each other. In , the dean of the Law School charged a faculty committee with crafting a written admissions policy to implement these goals. See Regents of Univ. 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. 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. The policy makes clear, however, that even the highest possible score does not guarantee admission to the Law School. Nor does a low score automatically disqualify an applicant. The policy does not define diversity "solely in terms of racial and ethnic status. Nor is the policy "insensitive to the competition among all students for admission to the [L]aw [S]chool. 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. The Law School initially placed petitioner on a waiting list, but subsequently rejected her application. Petitioner alleged that respondents discriminated against her on the basis of race in violation of the Fourteenth Amendment; Title VI of the Civil Rights Act of , 78 Stat. Petitioner further alleged 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. Petitioner also alleged that respondents "had no compelling interest to justify their use of race in the admissions process. Petitioner requested compensatory and punitive damages, an order requiring the Law School to offer her admission, and an injunction prohibiting the Law School from continuing to discriminate on the basis of race. Petitioner clearly has standing to bring this lawsuit. Contractors of America v. Shields testified that at the height of the admissions season, he would frequently consult the so-called "daily reports" that kept track of the racial and ethnic composition of the class along with other information such as residency status and gender. This was done, Shields testified, to ensure that a critical mass of underrepresented minority students would be reached so as to realize the educational benefits of a diverse student body. Shields stressed, however, that he did not seek to admit any particular number or percentage of underrepresented minority students. Munzel stated there is no number, percentage, or range of numbers or percentages that constitute critical mass. Munzel also asserted that she must consider the race of applicants because a critical mass of underrepresented minority students could not be enrolled if admissions decisions were based primarily on undergraduate GPAs and LSAT scores. Like the other Law School witnesses, Lehman did [] not quantify critical mass in terms of numbers or percentages. He indicated that critical mass means numbers such that underrepresented minority students do not feel isolated or like spokespersons for their race. When asked about the extent to which race is considered in admissions, Lehman testified that it varies from one applicant to another. The District Court heard extensive testimony from Professor Richard Lempert, who chaired the faculty committee that drafted the policy. Lempert emphasized that the Law School seeks students with diverse interests and backgrounds to enhance classroom discussion and the educational experience both inside and outside the classroom. Lempert acknowledged that other groups, such as Asians and Jews, have experienced discrimination, but explained they were not mentioned in the policy because individuals who are members of those groups were already being admitted to the Law School in significant numbers. Syverud was a professor at the Law School when the admissions policy was adopted and is now Dean of Vanderbilt Law School. In addition to his testimony at

trial, Syverud submitted several expert reports on the educational benefits of diversity. In an attempt to quantify the extent to which the Law School actually considers race in making admissions decisions, the parties introduced voluminous evidence at trial. Kinley Larntz, generated and analyzed "admissions grids" for the years in question He testified that in , 35 percent of underrepresented minority applicants were admitted. Raudenbush predicted that if race were not considered, only 10 percent of those applicants would have been admitted. Under this scenario, underrepresented minority students would have constituted 4 percent of the entering class in instead of the actual figure of The District Court went on to hold that even if diversity were compelling, the Law School had not narrowly tailored its use of race to further that interest. The Court of Appeals entered a stay of the injunction pending appeal. United States, U. We granted certiorari, U. Whether diversity is a compelling interest that can justify the narrowly tailored use of race in selecting applicants for admission to public universities. Law School, F. 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 seats in a medical school class for members of certain minority groups. 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. Four other Justices avoided the constitutional question altogether and struck down the program on statutory grounds. 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 involv- [] ing the competitive consideration of race and ethnic origin. 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, U. Second, Justice Powell rejected an interest in remedying societal dis- [] crimination 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. 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. 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. Board of Regents of Univ. Both "tradition and experience lend support to the view that the contribution of diversity is substantial. 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. 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. 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. 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. As the divergent opinions of the lower courts demonstrate, however, "[t]his test is more easily stated than applied to the various opinions supporting the result in [Bakke]. 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. United States, supra, at 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. We are a "free people whose institutions are founded upon the doctrine of equality. It follows from that principle that "government may treat people differently because of their race only for the most compelling reasons. We have

held that all racial classifications imposed by government "must be analyzed by a reviewing court under strict scrutiny. This means that such classifications are constitutional only if they are narrowly tailored to further compelling governmental interests. Strict scrutiny is not "strict in theory, but fatal in fact. Although all gov- [] ernmental uses of race are subject to strict scrutiny, not all are invalidated by it. But that observation "says nothing about the ultimate validity of any particular law; that determination is the job of the court applying strict scrutiny. 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. In Adarand Constructors, Inc. Indeed, as we explained, that is its "fundamental purpose. 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. Before this Court, as they have [] throughout this litigation, respondents assert only one justification for their use of race in the admissions process: In other words, the Law School asks us to recognize, in the context of higher education, a compelling state interest in student body diversity. 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. 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. 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. 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. New Hampshire, U. 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: That would amount to outright racial balancing, which is patently unconstitutional. These benefits are substantial. 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. 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. Evidence on the Impact of Affirmative Action G. Brief for 3M et al. 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. 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. 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 educational setting. 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. This Court has long recognized that "education. Board of Education, U. 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. And, "[n]owhere is the importance of such openness more acute than in the context of higher education.

Chapter 5 : Affirmative Action (Stanford Encyclopedia of Philosophy)

Alan B Krueger Economic Scene column on affirmative action in college admissions; discusses earnings outlook for blacks in light of Supreme Court Justice Sandra Day O'Connor's stand in University.

In the Beginning In , affirmative action became an inflammatory public issue. But what did this mandate amount to? The Executive Order assigned to the Secretary of Labor the job of specifying rules of implementation. Through these contractor commitments, the Department could indirectly pressure recalcitrant labor unions, who supplied the employees at job sites. Its predecessor, Order No. At first, university administrators and faculty found the rules of Order No. The number of racial and ethnic minorities receiving PhDs each year and thus eligible for faculty jobs was tiny. Any mandate to increase their representation on campus would require more diligent searches by universities, to be sure, but searches fated nevertheless largely to mirror past results. The Revised Order, on the other hand, effected a change that punctured any campus complacency: Some among the professoriate exploded in a fury of opposition to the new rules, while others responded with an equally vehement defense of them. For several decades Anglo-American philosophy had treated moral and political questions obliquely. First, John Rawls published in A Theory of Justice, an elaborate, elegant, and inspiring defense of a normative theory of justice Rawls Properly understood, affirmative action did not require or even permit the use of gender or racial preferences. Affirmative action, if it did not impose preferences outright, at least countenanced them. Among the yea-sayers, opinion divided between those who said preferences were morally permissible and those who said they were not. The Controversy Engaged The essays by Thomson and Nagel defended the use of preferences but on different grounds. Thomson endorsed job preferences for women and African-Americans as a form of redress for their past exclusion from the academy and the workplace. Preferential policies, in her view, worked a kind of justice. Nagel, by contrast, argued that preferences might work a kind of social good, and without doing violence to justice. Institutions could for one or another good reason properly depart from standard meritocratic selection criteria because the whole system of tying economic reward to earned credentials was itself indefensible. Justice and desert lay at the heart of subsequent arguments. Preferential hiring seen as redress looks perverse, they contended, since it benefits individuals African-Americans and women possessing good educational credentials least likely harmed by past wrongs while it burdens individuals younger white male applicants least likely to be responsible for past wrongs Simon , â€”19; Sher , ; Sher , 81â€”82; and Goldman , â€”1. What rights were at issue? Defenders of preferences were no less quick to enlist justice and desert in their cause. Justice and individual desert need not be violated. Warren , Likewise, James Rachels defended racial preferences as devices to neutralize unearned advantages by whites. Given the pervasiveness of racial discrimination, it is likely, he argued, that the superior credentials offered by white applicants do not reflect their greater effort, desert, or even ability. Rather, the credentials reflect their mere luck at being born white. Rachels was less confident than Warren that preferences worked uniformly accurate offsets. Reverse discrimination might do injustice to some whites; yet its absence would result in injustices to African-Americans who have been unfairly handicapped by their lesser advantages. If racial and gender preferences for jobs or college admissions were supposed to neutralize unfair competitive advantages, they needed to be calibrated to fit the variety of backgrounds aspirants brought to any competition for these goods. Simply giving blanket preferences to African-Americans or women seemed much too ham-handed an approach if the point was to micro-distribute opportunities fairly Sher , ff. Rights and Consistency To many of its critics, reverse discrimination was simply incoherent. To count by race, to use the means of numerical equality to achieve the end of moral equality, is counterproductive, for to count by race is to deny the end by virtue of the means. The means of race counting will not, cannot, issue in an end where race does not matter Eastland and Bennett , Neither he nor other critics thought so. Principle must hold firm. Alan Goldman did more than anyone in the early debate to formulate and ground a relevant principle. Using a contractualist

framework, he surmised that rational contractors would choose a rule of justice requiring positions to be awarded by competence. On its face, this rule would seem to preclude filling positions by reference to factors like race and gender that are unrelated to competence. Goldman explained the derivation of the rule and its consequent limit this way: The rule for hiring the most competent was justified as part of a right to equal opportunity to succeed through socially productive effort, and on grounds of increased welfare for all members of society. Since it is justified in relation to a right to equal opportunity, and since the application of the rule may simply compound injustices when opportunities are unequal elsewhere in the system, the creation of more equal opportunities takes precedence when in conflict with the rule for awarding positions. Thus short-run violations of the rule are justified to create a more just distribution of benefits by applying the rule itself in future years. Where can such an unyielding principle be found? I postpone further examination of this question until I discuss the Bakke case, below, whose split opinions constitute an extended debate on the meaning of constitutional equality. The Workplace The terms of the popular debate over racial and gender preferences often mirrored the arguments philosophers and other academics were making to each other. Critics of preferences retorted by pointing to the law. And well they should, since the text of the Civil Rights Act of seemed a solid anchor even if general principle proved elusive. How could they be justified legally? The federal courts had to do that job themselves, and the cases before them drove the definition in a particular direction. Many factories and businesses prior to , especially in the South, had in place overtly discriminatory policies and rules. If, after passage of the Civil Rights Act, the company willingly abandoned its openly segregative policy, it could still carry forward the effects of its past segregation through other already-existing facially neutral rules. The objective of Congress in the enactment of Title VIIâ€¦was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to exclude on the basis of racial or other impermissible classification. Since many practices in most institutions were likely to be exclusionary, rejecting minorities and women in greater proportion than white men, all institutions needed to reassess the full range of their practices to look for, and correct, discriminatory effect. Against this backdrop, the generic idea of affirmative action took form: In order to make its monitoring and revising effective, an institution ought to predict, as best it can, how many minorities and women it would select over time, were it successfully nondiscriminating. There may still remain practices that ought to be modified or eliminated. However, suppose this self-monitoring and revising fell short? In early litigation under the Civil Rights Act, courts concluded that some institutions, because of their histories of exclusion and their continuing failure to find qualified women or minorities, needed stronger medicine. In all these cases, the use of preferences was tied to a single purpose: Courts carved out this justification for preferences not through caprice but through necessity. They found themselves confronted with a practical dilemma that Congress had never envisaged and thus never addressed when it wrote the Civil Rights Act. The dilemma was this: Reasonably enough, the federal courts resolved this dilemma by appeal to the broad purposes of the Civil Rights Act and justified racial preferences where needed to prevent ongoing and future discrimination. Its purpose was not to compensate for past wrongs, offset unfair advantage, appropriately reward the deserving, or yield a variety of social goods; its purpose was to change institutions so they could comply with the nondiscrimination mandate of the Civil Rights Act. The University In the s, while campuses were embroiled in debate about how to increase African-Americans and women on the faculty, universities were also putting into effect schemes to increase minority presence within the student body. Very selective universities, in particular, needed new initiatives because only a handful of African-American and Hispanic high school students possessed test scores and grades good enough to make them eligible for admission. These institutions faced a choice: Most elected the second path. The Medical School of the University of California at Davis exemplified a particularly aggressive approach. It reserved sixteen of the one hundred slots in its entering classes for minorities. In and again in , Allan Bakke, a white applicant, was denied admission although his test scores and grades were better than

most or all of those admitted through the special program. In , his case, Regents of the University of California v. Bakke, reached the Supreme Court. The Court rendered its decision a year later U. So, too, thought four justices on the Supreme Court, who voted to order Bakke admitted to the Medical School. Led by Justice Stevens, they saw the racially segregated, two-track scheme at the Medical School a recipient of federal funds as a clear violation of the plain language of the Title. Four other members of the Court, led by Justice Brennan, wanted very keenly to save the Medical School program. To find a more attractive terrain for doing battle, they made an end-run around Title VI, arguing that, whatever its language, it had no independent meaning itself. It meant in regard to race only what the Constitution meant. His vote, added to the four votes of the Stevens group, meant that Allan Bakke won his case and that Powell got to write the opinion of the Court. Powell, with this standard in hand, then turned to look at the four reasons the Medical School offered for its special program: Did any or all of them specify a compelling governmental interest? Did they necessitate use of racial preferences? As to the first reason, Powell dismissed it out of hand. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. As to the second reason, Powell allowed it more force. A state has a legitimate interest in ameliorating the effects of past discrimination. Even so, contended Powell, the Court, has never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations Bakke, at And the Medical School does not purport to have made, and is in no position to make, such findings. Its broad mission is education, not the formulation of any legislative policy or the adjudication of particular claims of illegality. As to the third reason, Powell found it, too, insufficient. The Medical School provided no evidence that the best way it could contribute to increased medical services to underserved communities was to employ a racially preferential admissions scheme. Indeed, the Medical School provided no evidence that its scheme would result in any benefits at all to such communities Bakke, at This left the fourth reason. Here Powell found merit. The 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.

Chapter 6 : High court upholds affirmative action â€“ People's World

Sandra Day O'Connor, the retired Supreme Court justice, has struck a raw nerve among critics of affirmative action in a new essay about her landmark decision in a case involving the U. of.

Munzel stated there is no number, percentage, or range of numbers or percentages that constitute critical mass. Munzel also asserted that she must consider the race of applicants because a critical mass of underrepresented minority students could not be enrolled if admissions decisions were based primarily on undergraduate GPAs and LSAT scores. Like the other Law School witnesses, Lehman did not quantify critical mass in terms of numbers or percentages. He indicated that critical mass means numbers such that underrepresented minority students do not feel isolated or like spokespersons for their race. When asked about the extent to which race is considered in admissions, Lehman testified that it varies from one applicant to another. The District Court heard extensive testimony from Professor Richard Lempert, who chaired the faculty committee that drafted the policy. Lempert emphasized that the Law School seeks students with diverse interests and backgrounds to enhance classroom discussion and the educational experience both inside and outside the classroom. Lempert acknowledged that other groups, such as Asians and Jews, have experienced discrimination, but explained they were not mentioned in the policy because individuals who are members of those groups were already being admitted to the Law School in significant numbers. Syverud was a professor at the Law School when the admissions policy was adopted and is now Dean of Vanderbilt Law School. In addition to his testimony at trial, Syverud submitted several expert reports on the educational benefits of diversity. In an attempt to quantify the extent to which the Law School actually considers race in making admissions decisions, the parties introduced voluminous evidence at trial. He testified that in , 35 percent of underrepresented minority applicants were admitted. Raudenbush predicted that if race were not considered, only 10 percent of those applicants would have been admitted. Under this scenario, underrepresented minority students would have comprised 4 percent of the entering class in instead of the actual figure of The District Court went on to hold that even if diversity were compelling, the Law School had not narrowly tailored its use of race to further that interest. The Court of Appeals entered a stay of the injunction pending appeal. United States, U. We granted certiorari, U. Whether diversity is a compelling interest that can justify the narrowly tailored use of race in selecting applicants for admission to public universities. Law School, F. 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 seats in a medical school class for members of certain minority groups. The decision produced six separate opinions, none of which commanded a majority of the Court. Four other Justices avoided the constitutional question altogether and struck down the program on statutory grounds. If both are not accorded the same protection, then it is not equal. Board of Regents of Univ. This means that such classifications are constitutional only if they are narrowly tailored to further compelling governmental interests. Although all governmental uses of race are subject to strict scrutiny, not all are invalidated by it. 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. In Adarand Constructors, Inc. 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. Before this Court, as they have throughout this litigation, respondents assert only one justification for their use of race in the admissions process: In other words, the Law School asks us to recognize, in the context of higher education, a compelling state interest in student body diversity. 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. 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. 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. See Regents of Univ. 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. New Hampshire, U. 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: That would amount to outright racial balancing, which is patently unconstitutional. These benefits are substantial. Evidence on the Impact of Affirmative Action G. Board of Education, U. 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. 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. 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. The pattern is even more striking when it comes to highly selective law schools. 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. Painter, supra, at 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. 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. 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. Nor can universities insulate applicants who belong to certain racial or ethnic groups from the competition for admission. Transportation Agency, Santa Clara Cty. Harvard certainly had minimum goals for minority enrollment, even if it had no specific number firmly in mind. See Bakke, supra, at opinion of Powell, J. See post, at 6 dissenting opinion. Moreover, as Justice Kennedy concedes, see post, at 4, between and , the number of African-American, Latino, and Native-American students in each class at the Law School varied from 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. The importance of this individualized consideration in the context of a race-conscious admissions program is paramount. See Bakke, supra, at , n. The Law School affords this individualized consideration to applicants of all races. Unlike the program at issue in Gratz v. With respect to the use of race itself, all underrepresented minority students admitted by the Law School have been deemed qualified. 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. 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. 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. 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. 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. Narrow tailoring does, however, require serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university seeks. We agree with the Court of Appeals that the Law School sufficiently considered workable race-neutral alternatives. But these alternatives would require a dramatic sacrifice of diversity, the academic quality of all admitted students, or both. 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 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. Narrow tailoring, therefore, requires that a race-conscious admissions program not unduly harm members of any racial group. His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment. 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. 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.

Chapter 7 : Eric Liu on What Asian Americans Reveal About Affirmative Action | calendrierdelascience.com

It was the first ruling on affirmative action since the Supreme Court's Bakke decision in and Justice Sandra Day O'Connor, writing for the majority, cited Justice Lewis Powell's opinion.

Lee Bollinger then-President of the University of Michigan , was the named defendant of this case. They argued that this aims 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 re-examine stereotypes. District Court Judge Bernard A. Friedman ruled that the admissions policies were unconstitutional because they "clearly consider" race and are "practically indistinguishable from a quota system. The plaintiffs subsequently requested the Supreme Court review. The Court agreed to hear the case, the first time the Court had heard a case on affirmative action in education since the landmark Bakke decision of 25 years prior. The Court allowed the recordings of the arguments to be released to the public the same day, only the second time the Court had allowed same-day release of oral arguments. The first time was Bush v. Gore , U. It implied that affirmative action should not be allowed permanent status and that eventually a "colorblind" policy should be implemented. The opinion read, "race-conscious admissions policies must be limited in time. The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today. Justice Thomas, writing that the system was "illegal now", concurred with the majority only on the point that he agreed the system would still be illegal 25 years hence. Bakke , which allowed race to be a consideration in admissions policy, but held that quotas were illegal. Public universities and other public institutions of higher education across the nation are now allowed to use race as a plus factor in determining whether a student should be admitted. As long as the program is "narrowly tailored" to achieve that end, it seems likely that the Court will find it constitutional. The case was heard in conjunction with Gratz v. Bollinger , U. The case generated a record number of amicus curiae briefs from institutional supporters of affirmative action. A lawyer who filed an amicus curiae brief on behalf of members and former members of the Pennsylvania legislature , State Rep. Bollinger was a "ringing affirmation of the goal of an inclusive society. He noted that "[f]rom through , the Law School admitted Native American[s], between 91 and African American[s], and between 47 and Moreover, Justice Thomas noted that in United States v. Virginia , U. Justice Thomas concurred that racial preferences would be unlawful in 25 years, however, he noted that in fact the Court should have found race-based affirmative action programs in higher education unlawful now: 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. Ferguson , U. It has been nearly years since Frederick Douglass asked the intellectual ancestors of the Law School to "[d]o nothing with us! Now we must wait another 25 years to see this principle of equality vindicated. The measure, called the Michigan Civil Rights Initiative , or Proposal 2, passed in November and prohibited the use of race in the Law School admissions processes. Coalition to Defend Affirmative Action. University of Texas , in June In this case, the Court reaffirmed that universities were entitled to deference on their judgment that diversity is a compelling state interest. Importantly, though, the Court ruled that a university was entitled to "no deference" on its judgment that race-based affirmative action was necessary to achieve diversity and its educational benefits. The plaintiff again appealed to the Supreme Court, which agreed to rehear the case in its term. These cases are pending in U. District Courts and are partially on hold until the Supreme Court provides further guidance in its second UT Austin ruling.

Chapter 8 : The end of affirmative action

In , a federal appeals court in Texas suspended the university's affirmative action program, ruling that "educational diversity is not recognized as a compelling state interest.".

Donate We go to the steps of the University of Michigan student union and hear the reaction. Students hail the decision as the most important victory in affirmative action in 25 years. Michigan lawyer and an opponent of affirmative action, leading race critic Manning Marable argues the Supreme Court backed affirmative action to help the U. That is, the majority court did not support affirmative action because it is a way of redressing past oppression and injustice, or because it is a way of leveling the socio-economic playing field. Rather, the justices backed it because they felt it is in the interest of the state, that college campuses and professional schools achieve diversity. Back in the Bakke case, Powell was the lone author of the controlling opinion in the case. The Supreme Court itself appeared to undermine his position in subsequent rulings over the years, and some lower federal courts flat out rejected the idea. Big business, labor, major colleges, and the military filed friend-of-the-court briefs urging the court to uphold affirmative action, including General Motors, the AFL-CIO, the Massachusetts Institute of Technology and retired Gen. The undergraduate school awards 20 points on a scale of to an applicant if she or he is a person of color. Fixed numbers of points are also awarded for other factors, including alumni connections. Chief Justice William Rehnquist, writing for the majority, rejected the point system because race factors in a non-individual, mechanical way. But the justices affirmed that race can be used as a factor in admissions. Taken together, the rulings are a slap in the face to President Bush. The Bush administration had intervened in the case, asking the court to invalidate both Michigan programs. She was named defendant in Grutter v. She became a defendant while a Detroit public school student in high school; beneficiary of affirmative action. Organized University of Michigan student contingent for the April 1st march. Yesterday, jubilant students gathered on the steps of the University of Michigan student union after hearing the decision. We spoke with some of them there: Students react to historic Supreme Court Ruling, June 23, Jodi Masley, graduate of the University of Michigan, U of Michigan law student, student intervenor in the case, and a founding member of Law Students for Affirmative action. She says she herself benefited from affirmative action as a poor, white woman. Right now, a roundtable discussion, with Miranda Massie, lead attorney for the student defenders in the University of Michigan Law School Case, affirmative action opponent Edward Blum with the Center for Equal Opportunity, and leading race critic and historian Manning Marable.

Chapter 9 : The Supreme Court may be on the verge of ending affirmative action | MSNBC

University of Texas, No. , concerned an unusual program and contained a warning to other universities that not all affirmative action programs will pass constitutional muster. But the ruling.

Follow TIMEIdeas As the Supreme Court prepare to reopen the issue of affirmative action, we can expect another fierce debate about whether college admissions should be color blind. But that debate itself is blind. Consider Asian Americans, who make up a large part of the student body at selective colleges and universities. Most people assume that the dismantling of affirmative action would benefit Asian Americans by opening up even more slots for Asian high-achievers. It is true that if admission were based solely on test scores, more students of Asian descent would be admitted. In one recently published study , Asian American students who enrolled in Duke averaged out of on the math and reading portions of the SAT, compared to for whites, for Hispanics and for blacks. Opponents of affirmative action cite such statistics to tell a story in which deserving yellows lose slots to undeserving blacks and browns. Instead, it reveals three more important realities that we need to face: Merit Is Not A Number. We all want merit to mean something, and we all may be tempted to reduce that meaning to something measurable and concrete like an SAT score. The reality, though, is that who deserves entry into an institution depends on what the institution exists to do. Imagine filling a college with the first 1, students to get perfect SATs. Whatever the racial composition of that class would be, the notion seems absurd because we know that college in America is supposed to be about creating citizens and leaders in a diverse nation. There are other factors to weigh than test-taking aptitude, some of them intangible. To be sure, racism sometimes lurks in those same intangibles: But what that calls for is not a misplaced faith that merit can be quantified and that the number should displace all else. It calls for a transparent description of the qualitative factors that shape selection. How Affirmative Action Backfires at Universities 2. Social scientist Scott Page has shown that diverse teams perform better than more talented but less diverse teams. It is not just nice but necessary for our universities to diversify. Of course, diversity comes in many forms. The ethnic and socioeconomic diversity within Asian America is usually overlooked in the media. Their situation argues for the consideration of class in affirmative action, so that all people who lack social capital can get a fairer shot at social mobility. It also reveals how the current debate is too narrowly focused on the elite. In the end, arguing about affirmative action in selective colleges is like arguing about the size of a spigot while ignoring the pool and the pipeline that feed it. Slots at Duke and Princeton and Cal are finite. The bigger question is why there are so few perceived paths to opportunity and why so few people of any color are moving along these paths. We are nine years into her challenge â€” too early, perhaps, for the Roberts Court to discard her carefully constructed precedent; but getting late, certainly, if we are to deliver on the promise of race-neutral opportunity by Asian Americans can help lead that shift now. And that would be a great American success story. He was a speechwriter and policy adviser to President Clinton. The views expressed are solely his own.