

The Two Cases Decided

Because the issues of diversity and affirmative action in higher education are so important and because federal courts of appeal had issued conflicting decisions, the U.S. Supreme Court granted *certiorari* and agreed to hear both Michigan cases in 2003. In analyzing both cases, a majority of the justices agreed that racial discrimination was involved and that the Court had to apply strict judicial scrutiny. This meant that the state had to show a compelling state interest in support of the use of race and that race could only be used to further that interest if it did not unduly burden disfavored groups. For example, a race-conscious admission program cannot use a quota system that sets aside a certain number of places in the entering class for members of selected racial or ethnic minority groups, although race or ethnicity could be considered a “plus” in a particular applicant’s file.

A majority of the justices agreed that student body diversity is a compelling state interest that can justify using race in university admissions. In a 5–4 decision, the Court found that Michigan’s law school admissions policy did not violate Barbara Grutter’s rights. Having a critical mass (essential number) of students from underrepresented groups can enrich classroom discussion, produce cross-racial understanding, and break down racial stereotypes.

Rather than emphasizing diversity as justified by past or present discrimination, the Court’s opinion in the law school case looked to the future and related diversity to the challenges the nation faces: “Because universities, and in particular, law schools, represent the training ground for a large number of the Nation’s leaders, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity.” The Court also noted that “the Law School engaged in 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.”

Four justices dissented in the law school case, believing that the “critical mass” notion was simply a disguise for an illegal quota. To the dissenters, the Constitution’s prohibition against racial discrimination protects both White and non-White people. They also believed there were nondiscriminatory ways to achieve diversity.

In contrast, Michigan’s undergraduate admissions policy was found unconstitutional by a vote of 6–3. The majority objected to the program’s failure to consider applicants on an individual basis as required by the Court’s decision in the *Bakke* case. While the undergraduate admissions program could use race-conscious affirmative action, it had to be in a form that was individualized and not mechanical.

The dissenters in the undergraduate case would have allowed the use of automatic points to achieve diversity because it was an honest, open approach to the role race plays in the admissions process.