

Excerpt from *Gratz v. Bollinger*, 539 U.S. 244 (2003)

Because the University's use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents' asserted interest in diversity, the policy violates the Equal Protection Clause. For the reasons set forth in *Grutter v. Bollinger*, *post*, at 327–333, the Court has today rejected petitioners' argument that diversity cannot constitute a compelling state interest. However, the Court finds that the University's current policy, which automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race, is not narrowly tailored to achieve educational diversity. In *Bakke*, Justice Powell explained his view that it would be permissible for a university to employ an admissions program in which "race or ethnic background may be deemed a 'plus' in a particular applicant's file." 438 U. S., at 317.

He emphasized, however, the importance of considering each particular applicant as an individual, assessing all of the qualities that individual possesses, and in turn, evaluating that individual's ability to contribute to the unique setting of higher education. The admissions program Justice Powell described did not contemplate that any single characteristic automatically ensured a specific and identifiable contribution to a university's diversity. See *id.*, at 315.

The current LSA [College of Literature, Science, and the Arts] policy does not provide the individualized consideration Justice Powell contemplated. The only consideration that accompanies the 20-point automatic distribution to all applicants from underrepresented minorities is a factual review to determine whether an individual is a member of one of these minority groups. Moreover, unlike Justice Powell's example, where the race of a "particular black applicant" could be considered without being decisive, see *id.*, at 317, the LSA's 20-point distribution has the effect of making "the factor of race . . . decisive" for virtually every minimally qualified underrepresented minority applicant, *ibid.*

The fact that the LSA has created the possibility of an applicant's file being flagged for individualized consideration only emphasizes the flaws of the University's system as a whole when compared to that described by Justice Powell. The record does not reveal precisely how many applications are flagged, but it is undisputed that such consideration is the exception and not the rule in the LSA's program. Also, this individualized review is only provided *after* admissions counselors automatically distribute the University's version of a "plus" that makes race a decisive factor for virtually every minimally qualified underrepresented minority applicant.

The Court rejects respondents' contention that the volume of applications and the presentation of applicant information make it impractical for the LSA to use the admissions system upheld today in *Grutter*. The fact that the implementation of a program capable of providing individualized consideration might present administrative challenges does not render constitutional an otherwise problematic system. See, *e. g.*, *Richmond v. J. A. Croson Co.*, 488 U. S. 469, 508. Nothing in Justice Powell's *Bakke*

opinion signaled that a university may employ whatever means it desires to achieve diversity without regard to the limits imposed by strict scrutiny. Pp. 268–275.

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