

CITATIONS

123 S.Ct. 2411
156 L.Ed.2d 257, 71 USLW 4480, 91 Fair Empl.Prac.Cas. (BNA) 1803, 84 Empl. Prac. Dec. P 41,416, 177 Ed. Law Rep. 851, 3 Cal. Daily Op. Serv. 5362, 2003 Daily Journal D.A.R. 6783, 16 Fla. L. Weekly Fed. S 387
(Cite as: 123 S.Ct. 2411)

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Briefs and Other Related Documents

Supreme Court of the United States

PARTIES

Jennifer GRATZ and Patrick Hamacher, Petitioners,
v.
Lee BOLLINGER et al.

DOCKET No [No. 02-516.

Argued April 1, 2003.
Decided June 23, 2003.

DATE FOR CITATION

WEST SUMMARY

Rejected Caucasian in-state applicants for admission to University of Michigan's College of Literature, Science and the Arts (LSA) filed class action complaint against, inter alia, board of regents alleging that university's use of racial preferences in undergraduate admissions violated Equal Protection Clause, Title VI, and § 1981 and seeking, inter alia, compensatory and punitive damages for past violations, declaratory and injunctive relief, and order requiring LSA to offer one of them admission as transfer student. Action was certified as class action and bifurcated into damages and liability phases. On cross-motions for summary judgment with respect to liability phase only, the United States District Court for the Eastern District of Michigan, 122 F.Supp.2d 811, Patrick J. Duggan, J., granted petitioners' motion with respect to admissions programs in existence from 1995 through 1998, but denied motion with respect to admissions programs for 1999 and 2000. During pendency of interlocutory appeal to the United States Court of Appeals for the Sixth Circuit, certiorari was granted. The Supreme Court, Chief Justice Rehnquist, held that: (1) petitioners had standing to seek declaratory and injunctive relief; (2) university's current freshman admissions policy violated Equal Protection Clause because its use of race was not narrowly tailored to achieve respondents' asserted compelling state interest in diversity; and (3) Title VI and § 1981 were also violated by that policy.

Reversed in part and remanded.

OPINIONS

Justice O'Connor filed concurring opinion in which Justice Breyer joined in part.

Justice Thomas filed concurring opinion.

Justice Breyer filed opinion concurring in the judgment.

Justice Souter filed dissenting opinion in which Justice Ginsburg joined in part.

Justice Ginsburg filed dissenting opinion in which Justice Souter joined and Justice Breyer joined in part.

OPINIONS

West Headnotes

[1] Constitutional Law 42.2(2)
92k42.2(2) Most Cited Cases

WEST KEY NUMBERS

Intent may be relevant to standing in Equal Protection challenge. U.S.C.A. Const. Art. 3, § 2, cl. 1; U.S.C.A. Const.Amend. 14.

[2] Constitutional Law 42.2(2)
92k42.2(2) Most Cited Cases

The injury in fact necessary to establish standing in case involving an Equal Protection challenge is denial of equal treatment resulting from imposition of barrier, not ultimate inability to obtain benefit; in face of such barrier, to establish standing party need only demonstrate that it is ready and able to perform and that discriminatory policy prevents it from doing so on equal basis. U.S.C.A. Const. Art. 3, § 2, cl. 1; U.S.C.A. Const.Amend. 14.

[3] Constitutional Law 42.2(2)
92k42.2(2) Most Cited Cases

Caucasian applicant for admission to University of Michigan College of Literature, Science and the Arts (LSA) had standing to seek prospective relief with respect to Equal Protection challenge to University's continued use of race in undergraduate admissions, regardless of whether he actually applied for admission as transfer student; when he applied to University as freshman applicant, he was denied admission even though underrepresented minority applicant with his qualifications would have been admitted, and after being denied admission he demonstrated that he was "able and ready" to apply as transfer student should University cease to use race in undergraduate admissions. U.S.C.A. Const. Art. 3, § 2, cl. 1; U.S.C.A. Const.Amend. 14.

[4] Federal Civil Procedure 187.5

170Ak187.5 Most Cited Cases

State university's use of race in undergraduate transfer admissions did not differ from its use of race in undergraduate freshman admissions, so fact that petitioner was transfer applicant did not bar his standing to represent absent class members challenging freshman admissions or make him inadequate representative of that class; guidelines used to evaluate transfer applicants specifically cross-referenced factors and qualifications considered in assessing freshman applicants, criteria used to determine whether transfer applicant would contribute to university's stated goal of diversity were identical to those used to evaluate freshman applicants, and sole difference that all underrepresented minority freshman applicants received 20 points and "virtually" all who were minimally qualified were admitted whereas "generally" all minimally qualified minority transfer applicants were admitted outright, though possibly relevant to narrow tailoring analysis, clearly had no effect on applicant's standing. U.S.C.A. Const. Art. 3, § 2, cl. 1; Fed.Rules Civ.Proc.Rule 23(a)(4), 28 U.S.C.A.

[5] Colleges and Universities  **9.15**
81k9.15 Most Cited Cases


[5] Constitutional Law  **220(3)**
92k220(3) Most Cited Cases

State university's interest in achieving educational diversity could constitute compelling state interest capable of supporting narrowly tailored means, for purposes of determining whether that university's policy of using race in undergraduate admissions decisions violated Equal Protection Clause of Fourteenth Amendment. U.S.C.A. Const.Amend. 14.


[6] Constitutional Law  **215**
92k215 Most Cited Cases

All racial classifications reviewable under Equal Protection Clause must be strictly scrutinized, and this standard of review is not dependent on race of those burdened or benefited by a particular classification; thus, any person, of whatever race, has right to demand that any governmental actor subject to Constitution justify any racial classification subjecting that person to unequal treatment under strictest of judicial scrutiny. U.S.C.A. Const.Amend. 14.


[7] Colleges and Universities  **9.15**
81k9.15 Most Cited Cases


[7] Constitutional Law  **220(3)**
92k220(3) Most Cited Cases

Equal protection rights of Caucasian applicants to University of Michigan's undergraduate College of Literature, Science and the Arts (LSA) were violated by University's policy of automatically distributing 20 points, or one-fifth of those needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race; that policy was not narrowly tailored to asserted compelling state interest in achieving educational diversity. U.S.C.A. Const.Amend. 14.


[8] Civil Rights  **1055**
78k1055 Most Cited Cases
 (Formerly 78k126)

Discrimination that violates Equal Protection Clause of Fourteenth Amendment committed by institution that accepts federal funds also constitutes violation of Title VI. U.S.C.A. Const.Amend. 14; Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

[9] Civil Rights  **1041**
78k1041 Most Cited Cases
 (Formerly 78k118)

[9] Civil Rights  **1061**
78k1061 Most Cited Cases
 (Formerly 78k127.1)

Section 1981 was meant, by its broad terms, to proscribe discrimination in making or enforcement of contracts against, or in favor of, any race, and contract for educational services is "contract" for purposes of that statute. 42 U.S.C.A. § 1981.

[10] Civil Rights  **1033(1)**
78k1033(1) Most Cited Cases
 (Formerly 78k111)

Purposeful discrimination that violates Equal Protection Clause of Fourteenth Amendment will also violate § 1981. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1981.

[11] Civil Rights  **1061**
78k1061 Most Cited Cases

(Formerly 78k127.1)

Because Equal Protection Clause was violated thereby, Title VI and § 1981 were also violated by state university's undergraduate admissions policy of automatically distributing 20 points, or one-fifth of those needed to guarantee admission, to every single "underrepresented minority" applicant solely because of race. 42 U.S.C.A. § 1981; Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d.

2413 Syllabus [FN]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

COURT
SYLLABUS

Petitioners Gratz and Hamacher, both of whom are Michigan residents and Caucasian, applied for admission to the University of Michigan's (University) College of Literature, Science, and the Arts (LSA) in 1995 and 1997, respectively. Although the LSA considered Gratz to be well qualified and Hamacher to be within the qualified range, both were denied early admission and were ultimately denied admission. In order to promote consistency in the *2414 review of the many applications received, the University's Office of Undergraduate Admissions (OUA) uses written guidelines for each academic year. The guidelines have changed a number of times during the period relevant to this litigation. The OUA considers a number of factors in making admissions decisions, including high school grades, standardized test scores, high school quality, curriculum strength, geography, alumni relationships, leadership, and race. During all relevant periods, the University has considered African-Americans, Hispanics, and Native Americans to be "underrepresented minorities," and it is undisputed that the University admits virtually every qualified applicant from these groups. The current guidelines use a selection method under which every applicant from an underrepresented racial or ethnic minority group is automatically awarded 20 points of the 100 needed to guarantee admission.

Petitioners filed this class action alleging that the University's use of racial preferences in undergraduate admissions violated the Equal Protection Clause of the Fourteenth Amendment,

Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1981. They sought compensatory and punitive damages for past violations, declaratory relief finding that respondents violated their rights to nondiscriminatory treatment, an injunction prohibiting respondents from continuing to discriminate on the basis of race, and an order requiring the LSA to offer Hamacher admission as a transfer student. The District Court granted petitioners' motion to certify a class consisting of individuals who applied for and were denied admission to the LSA for academic year 1995 and forward and who are members of racial or ethnic groups that respondents treated less favorably on the basis of race. Hamacher, whose claim was found to challenge racial discrimination on a classwide basis, was designated as the class representative. On cross-motions for summary judgment, respondents relied on Justice Powell's principal opinion in Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 317, 98 S.Ct. 2733, 57 L.Ed.2d 750, which expressed the view that the consideration of race as a factor in admissions might in some cases serve a compelling government interest. Respondents contended that the LSA has just such an interest in the educational benefits that result from having a racially and ethnically diverse student body and that its program is narrowly tailored to serve that interest. The court agreed with respondents as to the LSA's current admissions guidelines and granted them summary judgment in that respect. However, the court also found that the LSA's admissions guidelines for 1995 through 1998 operated as the functional equivalent of a quota running afoul of Justice Powell's Bakke opinion, and thus granted petitioners summary judgment with respect to respondents' admissions programs for those years. While interlocutory appeals were pending in the Sixth Circuit, that court issued an opinion in Grutter v. Bollinger, 288 F.3d 732, upholding the admissions program used by the University's Law School. This Court granted certiorari in both cases, even though the Sixth Circuit had not yet rendered judgment in this one.

Held:

1. Petitioners have standing to seek declaratory and injunctive relief. The Court rejects Justice STEVENS' contention that, because Hamacher did not actually apply for admission as a transfer student, his future injury claim is at best conjectural or hypothetical rather than real and immediate. The "injury in fact" necessary to establish standing in this type of case is the denial of equal treatment resulting

from the imposition of the barrier, not the ultimate inability to obtain the benefit. Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville, 508 U.S. 656, 666, 113 S.Ct. 2297, 124 L.Ed.2d 586. In the face of such a barrier, to establish standing, a party need only demonstrate that it is able and ready to perform and that a discriminatory *2415 policy prevents it from doing so on an equal basis. Ibid. In bringing his equal protection challenge against the University's use of race in undergraduate admissions, Hamacher alleged that the University had denied him the opportunity to compete for admission on an equal basis. Hamacher was denied admission to the University as a freshman applicant even though an underrepresented minority applicant with his qualifications would have been admitted. After being denied admission, Hamacher demonstrated that he was "able and ready" to apply as a transfer student should the University cease to use race in undergraduate admissions. He therefore has standing to seek prospective relief with respect to the University's continued use of race. Also rejected is Justice STEVENS' contention that such use in undergraduate transfer admissions differs from the University's use of race in undergraduate freshman admissions, so that Hamacher lacks standing to represent absent class members challenging the latter. Each year the OUA produces a document setting forth guidelines for those seeking admission to the LSA, including freshman and transfer applicants. The transfer applicant guidelines specifically cross-reference factors and qualifications considered in assessing freshman applicants. In fact, the criteria used to determine whether a transfer applicant will contribute to diversity are *identical* to those used to evaluate freshman applicants. The *only* difference is that all underrepresented minority freshman applicants receive 20 points and "virtually" all who are minimally qualified are admitted, while "generally" all minimally qualified minority transfer applicants are admitted outright. While this difference might be relevant to a narrow tailoring analysis, it clearly has no effect on petitioners' standing to challenge the University's use of race in undergraduate admissions and its assertion that diversity is a compelling state interest justifying its consideration of the race of its undergraduate applicants. See General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 159, 102 S.Ct. 2364, 72 L.Ed.2d 740; Blum v. Yaretsky, 457 U.S. 991, 102 S.Ct. 2777, 73 L.Ed.2d 534, distinguished. The District Court's carefully considered decision to certify this class action is correct. Cf. Coopers & Lybrand v. Livesay, 437 U.S. 463, 469, 98 S.Ct.

2454, 57 L.Ed.2d 351. Hamacher's personal stake, in view of both his past injury and the potential injury he faced at the time of certification, demonstrates that he may maintain the action. Pp. 2422-2426.

2. 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, ante, at - - - - -, 123 S.Ct., at 2338- 2341, 2003 WL 21433492, 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, 98 S.Ct. 2733. 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, 98 S.Ct. 2733. The current LSA policy does *2416 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, 98 S.Ct. 2733, 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, 109 S.Ct. 706, 102 L.Ed.2d 854. 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. 2426-2430.

3. Because the University's use of race in its current freshman admissions policy violates the Equal Protection Clause, it also violates Title VI and § 1981. See, e.g., *Alexander v. Sandoval*, 532 U.S. 275, 281, 121 S.Ct. 1511, 149 L.Ed.2d 517; *General Building Contractors Assn. v. Pennsylvania*, 458 U.S. 375, 389-390, 102 S.Ct. 3141, 73 L.Ed.2d 835. Accordingly, the Court reverses that portion of the District Court's decision granting respondents summary judgment with respect to liability. Pp. 2430-2431.

Reversed in part and remanded.

REHNQUIST, C.J. delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. O'CONNOR, J., filed a concurring opinion, in which BREYER, J., joined in part. THOMAS, J., filed a concurring opinion. BREYER, J., filed an opinion concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which SOUTER, J., joined. SOUTER, J., filed a dissenting opinion, in which GINSBURG, J., joined as to Part II. GINSBURG, J., filed a dissenting opinion, in which SOUTER, J., joined, and in which BREYER, J., joined as to Part I.

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COURT OPINION

Chief Justice REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case to decide whether "the University of Michigan's use of racial preferences in undergraduate admissions violate[s] the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), or 42 U.S.C. § 1981." Brief for Petitioners i. Because we find that the manner in which the University considers the race of applicants

ATTORNEYS

in its undergraduate admissions guidelines violates these constitutional and statutory provisions, we reverse that portion of the District Court's decision upholding the guidelines.

I

A

Petitioners Jennifer Gratz and Patrick Hamacher both applied for admission to the University of Michigan's (University) College of Literature, Science, and the Arts (LSA) as residents of the State of Michigan. Both petitioners are Caucasian. Gratz, who applied for admission for the fall of 1995, was notified in January of that year that a final decision regarding her admission had been delayed until April. This delay was based upon the University's determination that, although Gratz was " 'well qualified,' " she was " 'less competitive than the students who ha[d] been admitted on first review.' " App. to Pet. for Cert. 109a. Gratz was notified in April that the LSA was unable to offer her admission. She enrolled in the University of Michigan at Dearborn, from which she graduated in the spring of 1999.

Hamacher applied for admission to the LSA for the fall of 1997. A final decision as to his application was also postponed because, though his " 'academic credentials [were] in the qualified range, they [were] not at the level needed for first review admission.' " *Ibid.* Hamacher's application was subsequently denied in April 1997, and he enrolled at Michigan State University. [FN1]

[FN1]. Although Hamacher indicated that he "intend[ed] to apply to transfer if the [LSA's] discriminatory admissions system [is] eliminated," he has since graduated from Michigan State University. App. 34.

In October 1997, Gratz and Hamacher filed a lawsuit in the United States District Court for the Eastern District of Michigan *2418 against the University of Michigan, the LSA, [FN2] James Duderstadt, and Lee Bollinger. [FN3] Petitioners' complaint was a class-action suit alleging "violations and threatened violations of the rights of the plaintiffs and the class they represent to equal protection of the laws under the Fourteenth Amendment ..., and for racial discrimination in violation of 42 U.S.C. § § 1981, 1983, and 2000d et seq." App. 33. Petitioners sought, *inter alia*, compensatory and punitive

damages for past violations, declaratory relief finding that respondents violated petitioners' "rights to nondiscriminatory treatment," an injunction prohibiting respondents from "continuing to discriminate on the basis of race in violation of the Fourteenth Amendment," and an order requiring the LSA to offer Hamacher admission as a transfer student. [FN4] *Id.*, at 40.

[FN2]. The University of Michigan Board of Regents was subsequently named as the proper defendant in place of the University and the LSA. See *id.*, at 17.

[FN3]. Duderstadt was the president of the University during the time that Gratz's application was under consideration. He has been sued in his individual capacity. Bollinger was the president of the University when Hamacher applied for admission. He was originally sued in both his individual and official capacities, but he is no longer the president of the University. *Id.*, at 35.

[FN4]. A group of African-American and Latino students who applied for, or intended to apply for, admission to the University, as well as the Citizens for Affirmative Action's Preservation, a nonprofit organization in Michigan, sought to intervene pursuant to Federal Rule of Civil Procedure 24. See App. 13-14. The District Court originally denied this request, see *id.*, at 14-15, but the Sixth Circuit reversed that decision. See *Gratz v. Bollinger*, 188 F.3d 394 (1999).

The District Court granted petitioners' motion for class certification after determining that a class action was appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2). The certified class consisted of "those individuals who applied for and were not granted admission to the College of Literature, Science and the Arts of the University of Michigan for all academic years from 1995 forward and who are members of those racial or ethnic groups, including Caucasian, that defendants treated less favorably on the basis of race in considering their application for admission." App. 70-71. And Hamacher, whose claim the District Court found to challenge a " 'practice of racial discrimination