enduring lesson one should draw from Korematsu v. United States, 323 U.S. 214 (1944).... A *Korematsu*-type classification, as I read the opinions in this case, will never again survive scrutiny....

For a classification made to hasten the day when "we are just one race," (Scalia, J., concurring in part and concurring in judgment), however, the lead opinion has dispelled the notion that "strict scrutiny" is " 'fatal in fact.' " ... Properly, a majority of the Court calls for review that is searching, in order to ferret out classifications in reality malign, but masquerading as benign. The Court's once lax review of sex-based classifications demonstrates the need for such suspicion. See, e.g., Hoyt v. Florida, 368 U.S. 57, 60 (1961) (upholding women's "privilege" of automatic exemption from jury service)....

Close review also is in order for this further reason.... [S]ome members of the historically favored race can be hurt by catch-up mechanisms designed to cope with the lingering effects of entrenched racial subjugation. Court review can ensure that preferences are not so large as to trammel unduly upon the opportunities of others or interfere too harshly with legitimate expectations of persons in once-preferred groups....

* * *

While I would not disturb the programs challenged in this case, and would leave their improvement to the political branches, I see today's decision as one that allows our precedent to evolve, still to be informed by and responsive to changing conditions.

Miller v. Johnson

515 U.S. 900, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995).

[The report in this case appears infra at p. 1030]

RACIAL GERRYMANDERING AND THE VOTING RIGHTS ACT

[This Note appears infra at p. 1040.]

HUNT v. CROMARTIE, 526 U.S. 541 (1999). The report in this case appears, infra, at p. 1047.

EASLEY v. CROMARTIE, 532 U.S. 234 (2001). The report in this case appears, infra, at p. 1048.

RICE v. CAYETANO, 528 U.S. 495 (2000). The report in this case appears, infra, at p. 1075.

Grutter v. Bollinger

539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003).

Justice O'Connor delivered the opinion of the Court.

This case requires us to decide whether the use of race as a factor in student admissions by the University of Michigan Law School ... is unlawful.

I

A

The Law School['s admissions policy seeks an academically capable, diverse student body through efforts that sought to] compl[y] with this Court's most

recent ruling on the use of race in university admissions. See *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978)....

The hallmark of that policy is its focus on academic ability coupled with a flexible assessment of applicants' talents, experiences, and potential "to contribute to the learning of those around them." ... 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.... In reviewing an applicant's file, admissions officials must consider the applicant's undergraduate grade point average (GPA) and Law School Admissions Test (LSAT) score because they are important (if imperfect) predictors of academic success in law school.... 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.... Nor does a low score automatically disqualify an applicant.... Rather, the policy requires admissions officials to look beyond grades and test scores to other criteria that are important to the Law School's educational objectives.... So-called " 'soft' variables" such as "the enthusiasm of recommenders, the quality of the undergraduate institution, the quality of the applicant's essay, and the areas and difficulty of undergraduate course selection" are all brought to bear in assessing an "applicant's likely contributions to the intellectual and social life of the institution." ...

The policy aspires to "achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts." ... The policy does not restrict the types of diversity contributions eligible for "substantial weight" in the admissions process, but instead recognizes "many possible bases for diversity admissions." ... The policy does, however, reaffirm the Law School's longstanding commitment to "one particular type of diversity," that is, "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African–Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers." ... By enrolling a " 'critical mass' of [underrepresented] minority students," the Law School seeks to "ensur[e] their ability to make unique contributions to the character of the Law School." ...

. . .

B

Petitioner Barbara Grutter is a white Michigan resident who applied to the Law School in 1996 with a 3.8 grade point average and 161 LSAT score. The Law School [eventually] rejected her application [and she sued,] ... alleg[ing] that respondents discriminated against her on the basis of race in violation of the Fourteenth Amendment; Title VI of the Civil Rights Act of 1964, ... 42 U.S.C. § 2000d; and ... 42 U.S.C. § 1981.

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." ...

. . .

... The District Court ... conduct[ed] a bench trial on the extent to which race was a factor in the Law School's admissions decisions, and whether the

Law School's consideration of race in admissions decisions constituted a race-based double standard.

... [The] Director of Admissions ... testified that he did not direct his staff to admit a particular percentage or number of minority students, but rather to consider an applicant's race along with all other factors.... [He] 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) ... 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.... [He] stressed, however, that he did not seek to admit any particular number or percentage of underrepresented minority students....

[A successor] Director of Admissions ... testified that " 'critical mass' " means " 'meaningful numbers' " or " 'meaningful representation,' " which she understood to mean a number that encourages underrepresented minority students to participate in the classroom and not feel isolated.... [She] stated there is no number, percentage, or range of numbers or percentages that constitute critical mass [and] 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....

The ... Dean of the Law School ... indicated that critical mass means numbers such that underrepresented minority students do not feel isolated or like spokespersons for their race.... In some cases, [he testified,] an applicant's race may play no role, while in others it may be a " 'determinative' " factor....

. . .

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. [P]etitioner's expert ... generated and analyzed "admissions grids" for ... 1995–2000 ... show[ing] the number of applicants and the number of admittees for all combinations of GPAs and LSAT scores.... He concluded that membership in certain minority groups " 'is an extremely strong factor in the decision for acceptance,' " and that applicants from these minority groups " 'are given an extremely large allowance for admission' " as compared to applicants who are members of nonfavored groups.... [He] conceded, however, that race is not the predominant factor in the Law School's admissions calculus....

[T]he Law School's expert ... focused on the predicted effect of eliminating race as a factor in the Law School's admission process [and concluded that] a race-blind admissions system would have a " 'very dramatic,' " negative effect on underrepresented minority admissions.... He testified that in 2000, 35 percent of underrepresented minority applicants were admitted [and] 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 2000 instead of the actual figure of 14.5 percent....

In the end, the District Court concluded that the Law School's use of race as a factor in admissions decisions was unlawful....

Sitting en banc, the Court of Appeals reversed[, four judges dissenting.] . . .

. . .

We granted certiorari . . . to resolve the disagreement among the Courts of Appeals on a question of national importance: Whether diversity is a compelling interest that can justify the narrowly tailored use of race in selecting applicants for admission to public universities. . . .

II

A

We last addressed the use of race in public higher education over 25 years ago. In the landmark *Bakke* case, we reviewed a racial set-aside program that reserved 16 out of 100 seats in a medical school class for members of certain minority groups. 438 U.S. 265 (1978). . . . The only holding for the Court in *Bakke* was that a "State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin." . . . Thus, we reversed that part of the lower court's judgment that enjoined the university "from any consideration of the race of any applicant." . . .

Since this Court's splintered decision in *Bakke*, Justice Powell's opinion announcing the judgment of the Court has served as the touchstone for constitutional analysis of race-conscious admissions policies. Public and private universities across the Nation have modeled their own admissions programs on Justice Powell's views on permissible race-conscious policies. . . . We therefore discuss Justice Powell's opinion in some detail.

. . . In Justice Powell's view, when governmental decisions "touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest." . . . Under this exacting standard, only one of the interests asserted by the university survived Justice Powell's scrutiny.

First, Justice Powell rejected an interest in " 'reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession' "as an unlawful interest in racial balancing. . . . Second, Justice Powell rejected an interest in remedying societal discrimination because such measures would risk placing unnecessary burdens on innocent third parties "who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered." . . . 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." . . .

Justice Powell approved the university's use of race to further only one interest: "the attainment of a diverse student body." . . . 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." . . . Justice Powell emphasized that nothing less than the " 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." . . . In seeking the "right to select those students who will contribute the most to the 'robust exchange of ideas,' " a university seeks "to achieve a goal that is of paramount importance

in the fulfillment of its mission." ... 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." ...

. . .

... [F]or the reasons set out below, today we endorse Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions.

B

... Because the Fourteenth Amendment "protect[s] *persons*, not *groups*," all "governmental action based on race—a *group* classification long recognized as in most circumstances irrelevant and therefore prohibited—should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995) (emphasis in original ...). ...

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. "Absent searching judicial inquiry into the justification for such race-based measures," we have no way to determine what "classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics." *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion). We apply strict scrutiny to all racial classifications to " 'smoke out' illegitimate uses of race by assuring that [government] is pursuing a goal important enough to warrant use of a highly suspect tool." ...

Strict scrutiny is not "strict in theory, but fatal in fact." *Adarand* ... 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.... Not every decision influenced by race is equally objectionable and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of race in that particular context.

III

A

With these principles in mind, we turn to the question whether the Law School's use of race is justified by a compelling state interest. [R]espondents assert only one justification for their use of race in the admissions process:

obtaining "the educational benefits that flow from a diverse student body." ... In other words, the Law School asks us to recognize, in the context of higher education, a compelling state interest in student body diversity.

... [S]ome language in [our affirmative-action cases decided since *Bakke*] 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.... Today, we hold that the Law School has a compelling interest in attaining a diverse student body.

The Law School's educational judgment that such diversity is essential to its educational mission is one to which we defer. The Law School's assessment that diversity will, in fact, yield educational benefits is substantiated by respondents and their *amici*. Our scrutiny of the interest asserted by the Law School is no less strict for taking into account complex educational judgments in an area that lies primarily within the expertise of the university. Our holding today is in keeping with our tradition of giving a degree of deference to a university's academic decisions, within constitutionally prescribed limits....

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.... In announcing the principle of student body diversity as a compelling state interest, Justice Powell invoked our cases recognizing a constitutional dimension, grounded in the First Amendment, of educational autonomy: "The freedom of a university to make its own judgments as to education includes the selection of its student body." *Bakke* ... . From this premise, Justice Powell reasoned that by claiming "the right to select those students who will contribute the most to the 'robust exchange of ideas,' a university 'seek[s] to achieve a goal that is of paramount importance in the fulfillment of its mission.' ... Our conclusion that the Law School has a compelling interest in a diverse student body is informed by our view that attaining a diverse student body is at the heart of the Law School's proper institutional mission, and that 'good faith' on the part of a university is 'presumed' absent 'a showing to the contrary.'" ...

As part of its goal of "assembling a class that is both exceptionally academically qualified and broadly diverse," the Law School seeks to "enroll a 'critical mass' of minority students." ... The Law School's interest is not simply "to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin." *Bakke*, ... (opinion of Powell, J.). That would amount to outright racial balancing, which is patently unconstitutional.... Rather, the Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.

These benefits are substantial. As the District Court emphasized, the Law School's admissions policy promotes "cross-racial understanding," helps to break down racial stereotypes, and "enables [students] to better understand persons of different races." ... 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." ...

The Law School's claim of a compelling interest is further bolstered by its *amici*, who point to the educational benefits that flow from student body diversity. In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and "better prepares students for an increasingly diverse workforce

and society, and better prepares them as professionals." Brief for American Educational Research Association et al. as *Amici Curiae* 3; see, *e.g.*, W. Bowen & D. Bok, The Shape of the River (1998); Diversity Challenged: Evidence on the Impact of Affirmative Action (G. Orfield & M. Kurlaender eds. 2001); Compelling Interest: Examining the Evidence on Racial Dynamics in Colleges and Universities (M. Chang, D. Witt, J. Jones, & K. Hakuta eds. 2003).

These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. Brief for 3M et al. as *Amici Curiae* 5; Brief for General Motors Corp. as *Amicus Curiae* 3–4. What is more, high-ranking retired officers and civilian leaders of the United States military assert that, "[b]ased on [their] decades of experience," a "highly qualified, racially diverse officer corps ... is essential to the military's ability to fulfill its principle mission to provide national security." ... The primary sources for the Nation's officer corps are the service academies and the Reserve Officers Training Corps (ROTC), the latter comprising students already admitted to participating colleges and universities.... At present, "the military cannot achieve an officer corps that is *both* highly qualified *and* racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies." *Ibid.* (emphasis in original). To fulfill its mission, the military "must be selective in admissions for training and education for the officer corps, *and* it must train and educate a highly qualified, racially diverse officer corps in a racially diverse setting." ... (emphasis in original). We agree that "[i]t requires only a small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective." *Ibid.*

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

Moreover, universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders.... 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. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges....

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

The Law School does not premise its need for critical mass on "any belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." ... To the contrary, diminishing the force of such stereotypes is both a crucial part of the Law School's mission, and one that it cannot accomplish with only token numbers of minority students. Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters. The Law School has determined, based on its experience and expertise, that a "critical mass" of underrepresented minorities is necessary to further its compelling interest in securing the educational benefits of a diverse student body.

B

Even ... when drawing racial distinctions is permissible to further a compelling state interest, ... "... the means chosen to accomplish the [government's] asserted purpose must be specifically and narrowly framed to accomplish that purpose." ...

... [T]he narrow-tailoring inquiry ... must be calibrated to fit the distinct issues raised by the use of race to achieve student body diversity in public higher education. Contrary to Justice Kennedy's assertions, we do not "abandon[] strict scrutiny." Rather, ... we adhere to *Adarand*'s teaching that the very purpose of strict scrutiny is to take such "relevant differences into account." ...

...

We find that the Law School's admissions program bears the hallmarks of a narrowly tailored plan. As Justice Powell made clear in *Bakke*, truly individualized consideration demands that race be used in a flexible, nonmechanical way. It follows ... 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.... Universities can, however, consider race or ethnicity more flexibly as a "plus" factor in the context of individualized consideration of each and every applicant....

We are satisfied that the Law School's admissions program, like the Harvard plan described by Justice Powell, does not operate as a quota. Properly understood, a "quota" is a program in which a certain fixed number or proportion of opportunities are "reserved exclusively for certain minority groups." ... Quotas " 'impose a fixed number or percentage which must be attained, or which cannot be exceeded,' " ... and "insulate the individual from comparison with all other candidates for the available seats." ... In contrast, "a permissible goal ... require[s] only a good-faith effort ... to come within a range demarcated by the goal itself," ... and permits consideration of race as a

"plus" factor in any given case while still ensuring that each candidate "compete[s] with all other qualified applicants,"....

. . .

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

The Chief Justice believes that the Law School's policy conceals an attempt to achieve racial balancing, and cites admissions data to contend that the Law School discriminates among different groups within the critical mass. 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....

That a race-conscious admissions program does not operate as a quota does not, by itself, satisfy the requirement of individualized consideration....

Here, the Law School engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment. The Law School affords this individualized consideration to applicants of all races. There is no policy, either *de jure* or *de facto*, of automatic acceptance or rejection based on any single "soft" variable. Unlike the program at issue in *Gratz v. Bollinger*, [539 U.S. 244 (2003),] the Law School awards no mechanical, predetermined diversity "bonuses" based on race or ethnicity. See [*Gratz*] (distinguishing a race-conscious admissions program that automatically awards 20 points based on race from the Harvard plan, which considered race but "did not contemplate that any single characteristic automatically ensured a specific and identifiable contribution to a university's diversity"). Like the Harvard plan, the Law School's admissions policy "is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight." ...

We also find that ... all factors that may contribute to student body diversity are meaningfully considered alongside race in admissions decisions.... [A]ll underrepresented minority students admitted ... have been deemed qualified. By virtue of our Nation's struggle with racial inequality, such students are both likely to have experiences of particular importance to the Law School's mission, and less likely to be admitted in meaningful numbers on criteria that ignore those experiences....

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....

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....

Petitioner and the United States argue that the Law School's plan is not narrowly tailored because race-neutral means exist to obtain the educational benefits of student body diversity that the Law School seeks. We disagree. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative. Nor does it require a university to choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups.... 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. The District Court took the Law School to task for failing to consider race-neutral alternatives such as "using a lottery system" or "decreasing the emphasis for all applicants on undergraduate GPA and LSAT scores." ... But these alternatives would require a dramatic sacrifice of diversity, the academic quality of all admitted students, or both.

The Law School's current admissions program considers race as one factor among many, in an effort to assemble a student body that is diverse in ways broader than race. Because a lottery would make that kind of nuanced judgment impossible, it would effectively sacrifice all other educational values, not to mention every other kind of diversity. So too with the suggestion that the Law School simply lower admissions standards for all students, a drastic remedy that would require the Law School to become a much different institution and sacrifice a vital component of its educational mission. The United States advocates "percentage plans," recently adopted by public undergraduate institutions in Texas, Florida, and California to guarantee admission to all students above a certain class-rank threshold in every high school in the State.... The United States does not, however, explain how such plans could work for graduate and professional schools. Moreover, even assuming such plans are race-neutral, they may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university. We are satisfied that the Law School adequately considered race-neutral alternatives currently capable of producing a critical mass without forcing the Law School to abandon the academic selectivity that is the cornerstone of its educational mission.

. . . .

We are satisfied that the Law School's admissions program does not [unduly harm members of any racial group]. Because the Law School considers "all pertinent elements of diversity," it can (and does) select nonminority

applicants who have greater potential to enhance student body diversity over underrepresented minority applicants.... As Justice Powell recognized in *Bakke*, so long as a race-conscious admissions program uses race as a "plus" factor in the context of individualized consideration, a rejected applicant "will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname.... His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment." ...

. . .

... [R]ace-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.... The Law School, too, concedes that all "race-conscious programs must have reasonable durational limits."....

In the context of higher education, the durational requirement can be met by sunset provisions in race-conscious admissions policies and periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity. Universities in California, Florida, and Washington State, where racial preferences in admissions are prohibited by state law, are currently engaged in experimenting with a wide variety of alternative approaches. Universities in other States can and should draw on the most promising aspects of these race-neutral alternatives as they develop. ...

The requirement that all race-conscious admissions programs have a termination point "assure[s] all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself." *Richmond v. J. A. Croson Co.*,....

We take the Law School at its word that it would "like nothing better than to find a race-neutral admissions formula" and will terminate its race-conscious admissions program as soon as practicable.... It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased.... We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

... The judgment ... is affirmed.

. . .

Justice Ginsburg, with whom Justice Breyer joins, concurring.

. . .

The Court ... observes that "[i]t has been 25 years since Justice Powell ... first approved the use of race to further an interest in student body diversity in the context of public higher education." For at least part of that time, however, the law could not fairly be described as "settled," and in some regions of the Nation, overtly race-conscious admissions policies have been proscribed.... Moreover, it was only 25 years before *Bakke* that this Court declared public school segregation unconstitutional, a declaration that, after prolonged resistance, yielded an end to a law-enforced racial caste system, itself the legacy of centuries of slavery....

It is well documented that conscious and unconscious race bias, even rank discrimination based on race, remain alive in our land, impeding realization of

our highest values and ideals.... As to public education, data for the years 2000–2001 show that 71.6% of African–American children and 76.3% of Hispanic children attended a school in which minorities made up a majority of the student body.... And schools in predominantly minority communities lag far behind others measured by the educational resources available to them....

... [I]t remains the current reality that many minority students encounter markedly inadequate and unequal educational opportunities. Despite these inequalities, some minority students are able to meet the high threshold requirements set for admission to the country's finest undergraduate and graduate educational institutions. As lower school education in minority communities improves, an increase in the number of such students may be anticipated. From today's vantage point, one may hope, but not firmly forecast, that over the next generation's span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action.

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

... I do not believe ... that the University of Michigan Law School's ... means are narrowly tailored to the interest it asserts. The Law School claims it must take the steps it does to achieve a " 'critical mass' " of underrepresented minority students.... But its actual program bears no relation to this asserted goal. Stripped of its "critical mass" veil, the Law School's program is revealed as a naked effort to achieve racial balancing.

... Our cases establish that ... respondents must demonstrate that their methods of using race " 'fit' " a compelling state interest "with greater precision than any alternative means." ...

. . .

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

. . .

In practice, the Law School's program bears little or no relation to its asserted goal of achieving "critical mass." Respondents explain that the Law School seeks to accumulate a "critical mass" of *each* underrepresented minority group.... But the record demonstrates that the Law School's admissions practices with respect to these groups differ dramatically and cannot be defended under any consistent use of the term "critical mass."

From 1995 through 2000, the Law School admitted between 1,130 and 1,310 students. Of those, between 13 and 19 were Native American, between 91 and 108 were African–Americans, and between 47 and 56 were Hispanic. If the Law School is admitting between 91 and 108 African–Americans in order to achieve "critical mass," thereby preventing African–American students from feeling "isolated or like spokespersons for their race," one would think that a number of the same order of magnitude would be necessary to accomplish the same purpose for Hispanics and Native Americans. Similarly, even if all of the Native American applicants admitted in a given year matriculate, which the record demonstrates is not at all the case, how can this possibly constitute a "critical mass" of Native Americans in a class of over 350 students? In order for this pattern of admission to be consistent with the Law School's explanation of "critical mass," one would have to believe that the objectives of "critical mass" offered by respondents are achieved with only half the number of Hispanics and one-sixth the number of Native Americans as compared to African–Americans. But respondents offer no race-specific reasons for such

disparities. Instead, they simply emphasize the importance of achieving "critical mass," without any explanation of why that concept is applied differently among the three underrepresented minority groups.

These different numbers, moreover, come only as a result of substantially different treatment among the three underrepresented minority groups, as is apparent in an example offered by the Law School and highlighted by the Court: The school asserts that it "frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected." ... Specifically, the Law School states that "[s]ixty-nine minority applicants were rejected between 1995 and 2000 with at least a 3.5 [Grade Point Average (GPA)] and a [score of] 159 or higher on the [Law School Admissions Test (LSAT)]" while a number of Caucasian and Asian–American applicants with similar or lower scores were admitted....

Review of the record reveals only 67 such individuals[, of whom] *56* were Hispanic, while only 6 were African–American, and only 5 were Native American. This discrepancy reflects a consistent practice. For example, in 2000, 12 Hispanics who scored between a 159–160 on the LSAT and earned a GPA of 3.00 or higher applied for admission and only 2 were admitted.... Meanwhile, 12 African–Americans in the same range of qualifications applied for admission and all 12 were admitted.... Likewise, that same year, 16 Hispanics who scored between a 151–153 on the LSAT and earned a 3.00 or higher applied for admission and only 1 of those applicants was admitted.... Twenty-three similarly qualified African–Americans applied for admission and 14 were admitted....

These statistics have a significant bearing on petitioner's case. Respondents have *never* offered any race-specific arguments explaining why significantly more individuals from one underrepresented minority group are needed in order to achieve "critical mass" or further student body diversity. They certainly have not explained why Hispanics, who they have said are among "the groups most isolated by racial barriers in our country," should have their admission capped out in this manner.... [T]he Law School's disparate admissions practices with respect to these minority groups demonstrate that its alleged goal of "critical mass" is simply a sham.... Surely strict scrutiny cannot permit these sort of disparities without at least some explanation.

Only when the "critical mass" label is discarded does a likely explanation for these numbers emerge....

[T]he correlation between the percentage of the Law School's pool of applicants who are members of the three minority groups and the percentage of the admitted applicants who are members of these same groups is far too precise to be dismissed as merely the result of the school paying "some attention to [the] numbers." ... [F]rom 1995 through 2000 the percentage of admitted applicants who were members of these minority groups closely tracked the percentage of individuals in the school's applicant pool who were from the same groups.

. . .

For example, in 1995, when 9.7% of the applicant pool was African–American, 9.4% of the admitted class was African–American. By 2000, only 7.5% of the applicant pool was African–American, and 7.3% of the admitted class was African–American. This correlation is striking. Respondents themselves emphasize that the number of underrepresented minority students admitted to the Law School would be significantly smaller if the race of each

applicant were not considered.... But, as the examples above illustrate, the measure of the decrease would differ dramatically among the groups. The tight correlation between the percentage of applicants and admittees of a given race, therefore, must result from careful race based planning by the Law School. It suggests a formula for admission based on the aspirational assumption that all applicants are equally qualified academically, and therefore that the proportion of each group admitted should be the same as the proportion of that group in the applicant pool....

Not only do respondents fail to explain this phenomenon, they attempt to obscure it.... ("The Law School's minority enrollment percentages ... diverged from the percentages in the applicant pool by as much as 17.7% from 1995–2000"). But the divergence between the percentages of underrepresented minorities in the applicant pool and in the *enrolled* classes is not the only relevant comparison. In fact, it may not be the most relevant comparison. The Law School cannot precisely control which of its admitted applicants decide to attend the university. But it can and, as the numbers demonstrate, clearly does employ racial preferences in extending offers of admission. Indeed, the ostensibly flexible nature of the Law School's admissions program that the Court finds appealing appears to be, in practice, a carefully managed program designed to ensure proportionate representation of applicants from selected minority groups.

I do not believe that the Constitution gives the Law School such free rein in the use of race. The Law School has offered no explanation for its actual admissions practices and, unexplained, we are bound to conclude that the Law School has managed its admissions program, not to achieve a "critical mass," but to extend offers of admission to members of selected minority groups in proportion to their statistical representation in the applicant pool[—]precisely the type of racial balancing that the Court itself calls "patently unconstitutional."

Finally, I believe that the Law School's program fails strict scrutiny because it is devoid of any reasonably precise time limit on the Law School's use of race in admissions....

The Court suggests a possible 25–year limitation on the Law School's current program. Respondents ... remain more ambiguous, explaining that "the Law School of course recognizes that race-conscious programs must have reasonable durational limits, and the Sixth Circuit properly found such a limit in the Law School's resolve to cease considering race when genuine race-neutral alternatives become available." ... These discussions of a time limit are the vaguest of assurances. In truth, they permit the Law School's use of racial preferences on a seemingly permanent basis. Thus, an important component of strict scrutiny—that a program be limited in time—is casually subverted.

The Court, in an unprecedented display of deference under our strict scrutiny analysis, upholds the Law School's program despite its obvious flaws.... Here the means actually used are forbidden by the Equal Protection Clause....

Justice Kennedy, dissenting.

The separate opinion by Justice Powell in *Regents of Univ. of Cal. v. Bakke* ... states the correct rule for resolving this case. The Court, however, does not apply strict scrutiny....

... Our precedents provide a basis for the Court's acceptance of a university's considered judgment that racial diversity among students can further its educational task, when supported by empirical evidence....

> . . . [B]ut deference is not to be given with respect to the methods by which it is pursued. . . .
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> . . .
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> About 80 to 85 percent of the places in the entering class are given to applicants in the upper range of Law School Admissions Test scores and grades[, who] likely will be admitted without consideration of race or ethnicity. With respect to the remaining 15 to 20 percent of the seats, race is likely outcome determinative for many members of minority groups. That is where the competition becomes tight and where any given applicant's chance of admission is far smaller if he or she lacks minority status. At this point the numerical concept of critical mass has the real potential to compromise individual review.
>
> The Law School has not demonstrated how individual consideration is, or can be, preserved at this stage of the application process given the instruction to attain what it calls critical mass. In fact the evidence shows otherwise. There was little deviation among admitted minority students during the years from 1995 to 1998. The percentage of enrolled minorities fluctuated only by 0.3%, from 13.5% to 13.8%. The number of minority students to whom offers were extended varied by just a slightly greater magnitude of 2.2%, from the high of 15.6% in 1995 to the low of 13.4% in 1998.
>
> The District Court relied on this uncontested fact to draw an inference that the Law School's pursuit of critical mass mutated into the equivalent of a quota. . . . Admittedly, there were greater fluctuations among enrolled minorities in the preceding years, 1987–1994, by as much as 5 or 6%. The percentage of minority offers, however, at no point fell below 12%, historically defined by the Law School as the bottom of its critical mass range. The greater variance during the earlier years, in any event, does not dispel suspicion that the school engaged in racial balancing. The data would be consistent with an inference that the Law School modified its target only twice, in 1991 (from 13% to 19%), and then again in 1995 (back from 20% to 13%). The intervening year, 1993, when the percentage dropped to 14.5%, could be an aberration, caused by the school's miscalculation as to how many applicants with offers would accept or by its redefinition, made in April 1992, of which minority groups were entitled to race-based preference. . . .
>
> The narrow fluctuation band raises an inference that the Law School subverted individual determination, and strict scrutiny requires the Law School to overcome the inference. . . .
>
> . . . At the very least, the constancy of admitted minority students and the close correlation between the racial breakdown of admitted minorities and the composition of the applicant pool . . . require the Law School either to produce a convincing explanation or to show it has taken adequate steps to ensure individual assessment. The Law School does neither.
>
> The obvious tension between the pursuit of critical mass and the requirement of individual review increased by the end of the admissions season. Most of the decisions where race may decide the outcome are made during this period. . . .
>
> The consultation of daily reports during the last stages in the admissions process suggests there was no further attempt at individual review save for race itself. The admissions officers could use the reports to recalibrate the plus factor given to race depending on how close they were to achieving the Law School's goal of critical mass. The bonus factor of race would then become

divorced from individual review; it would be premised instead on the numerical objective set by the Law School.

The Law School made no effort to guard against this danger. It provided no guidelines to its admissions personnel on how to reconcile individual assessment with the directive to admit a critical mass of minority students....

To be constitutional, a university's compelling interest in a diverse student body must be achieved by a system where individual assessment is safeguarded through the entire process....

... By deferring to the law schools' choice of minority admissions programs, the courts will lose the talents and resources of the faculties and administrators in devising new and fairer ways to ensure individual consideration....

... Deference is antithetical to strict scrutiny, not consistent with it.

...

If universities are given the latitude to administer programs that are tantamount to quotas, they will have few incentives to make the existing minority admissions schemes transparent and protective of individual review. The unhappy consequence will be to perpetuate the hostilities that proper consideration of race is designed to avoid....

It is regrettable the Court's important holding allowing racial minorities to have their special circumstances considered in order to improve their educational opportunities is accompanied by a suspension of the strict scrutiny which was the predicate of allowing race to be considered in the first place.... [T]hough I reiterate my approval of giving appropriate consideration to race in this one context, I must dissent in the present case.

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

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

I also join Parts I through VII of Justice Thomas's opinion. I find particularly unanswerable his central point: that the allegedly "compelling state interest" at issue here is not the incremental "educational benefit" that emanates from the fabled "critical mass" of minority students, but rather Michigan's interest in maintaining a "prestige" law school whose normal admissions standards disproportionately exclude blacks and other minorities. If that is a compelling state interest, everything is.

...

... The Constitution proscribes government discrimination on the basis of race, and state-provided education is no exception.

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

... I believe blacks can achieve in every avenue of American life without the meddling of university administrators....

... The Law School, of its own choosing, and for its own purposes, maintains an exclusionary admissions system that it knows produces racially

disproportionate results. Racial discrimination is not a permissible solution to the self-inflicted wounds of this elitist admissions policy.

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I

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. . . A majority of the Court has validated only two circumstances where "pressing public necessity" or a "compelling state interest" can possibly justify racial discrimination by state actors. First, the lesson of *Korematsu* is that national security constitutes a "pressing public necessity," . . . . Second, the Court has recognized as a compelling state interest a government's effort to remedy past discrimination for which it is responsible. *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 504 (1989).

. . .

. . . In *Palmore v. Sidoti*, 466 U.S. 429 (1984), the Court held that even the best interests of a child did not constitute a compelling state interest that would allow a state court to award custody to the father because the mother was in a mixed-race marriage. . . .

. . .

Where the Court has accepted only national security, and rejected even the best interests of a child, as a justification for racial discrimination, I conclude that only those measures the State must take to provide a bulwark against anarchy, or to prevent violence, will constitute a "pressing public necessity."

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II

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. . . It is the *educational benefits* that are the end, or allegedly compelling state interest, not "diversity."

. . . [T]he Law School seeks to improve marginally the education it offers without sacrificing too much of its exclusivity and elite status.

. . .

III

. . .

[T]here is no pressing public necessity in maintaining a public law school at all and, it follows, certainly not an elite law school. Likewise, marginal improvements in legal education do not qualify as a compelling state interest.

. . .

. . . [E]ven assuming that a State may, under appropriate circumstances, demonstrate a cognizable interest in having an elite law school, Michigan has failed to do so here.

. . .

The only cognizable state interests vindicated by operating a public law school are ... the education of that State's citizens and the training of that State's lawyers....

The Law School today, however, does precious little training of those attorneys who will serve the citizens of Michigan. In 2002, [its] graduates ... made up less than 6% of applicants to the Michigan bar....

... By contrast, Michigan's other public law school, Wayne State University Law School, sends 88% of its graduates on to serve the people of Michigan.... It does not take a social scientist to conclude that it is precisely the Law School's status as an elite institution that causes it to be a way-station for the rest of the country's lawyers, rather than a training ground for those who will remain in Michigan. The Law School's decision to be an elite institution does little to advance the welfare of the people of Michigan or any cognizable interest of the State of Michigan.

[Also,] that few States choose to maintain elite law schools raises a strong inference that there is nothing compelling about elite status....

. . .

IV

The interest in remaining elite and exclusive that the majority thinks so obviously critical requires the use of admissions "standards" that, in turn, create the Law School's "need" to discriminate on the basis of race....

With the adoption of different admissions methods, such as accepting all students who meet minimum qualifications, see Brief for United States as *Amicus Curiae* 13–14, the Law School could achieve its vision of the racially aesthetic student body without the use of racial discrimination.... [O]ther top law schools have [done so].

. . .

The Court's deference ... will ... have serious collateral consequences. The Court relies heavily on social science evidence to justify its deference.... The Court never acknowledges, however, the growing evidence that racial (and other sorts) of heterogeneity actually impairs learning among black students. See, *e.g.*, Flowers & Pascarella, Cognitive Effects of College Racial Composition on African American Students After 3 Years of College, 40 J. of College Student Development 669, 674 (1999) (concluding that black students experience superior cognitive development at Historically Black Colleges (HBCs) and that, even among blacks, "a substantial diversity moderates the cognitive effects of attending an HBC"); Allen, The Color of Success: African-American College Student Outcomes at Predominantly White and Historically Black Public Colleges and Universities, 62 Harv. Educ. Rev. 26, 35 (1992) (finding that black students attending HBCs report higher academic achievement than those attending predominantly white colleges).

. . .

The majority grants deference to the Law School's "assessment that diversity will, in fact, yield educational benefits." It follows, therefore, that an HBC's assessment that racial homogeneity will yield educational benefits would similarly be given deference. An HBC's rejection of white applicants in order to maintain racial homogeneity seems permissible, therefore, under the majority's view of the Equal Protection Clause....

Moreover one would think, in light of . . . *United States v. Virginia*, 518 U.S. 515 (1996), that before being given license to use racial discrimination, the Law School would be required to radically reshape its admissions process, even to the point of sacrificing some elements of its character. In *Virginia*, a majority of the Court, without a word about academic freedom, accepted the all-male Virginia Military Institute's (VMI) representation that some changes in its "adversative" method of education would be required with the admission of women, . . . but did not defer to VMI's judgment that these changes would be too great. Instead, the Court concluded that they were "manageable." . . . That case involved sex discrimination, which is subjected to intermediate, not strict, scrutiny. . . . So in *Virginia*, where the standard of review dictated that greater flexibility be granted to VMI's educational policies than the Law School deserves here, this Court gave no deference. Apparently where the status quo being defended is that of the elite establishment—here the Law School—rather than a less fashionable Southern military institution, the Court will defer without serious inquiry and without regard to the applicable legal standard.

. . .

Virginia is also notable for the fact that the Court relied on the "experience" of formerly single-sex institutions, such as the service academies, to conclude that admission of women to VMI would be "manageable." . . . Today, however, the majority ignores the "experience" of those institutions that have been forced to abandon explicit racial discrimination in admissions.

The sky has not fallen at Boalt Hall at the University of California, Berkeley, for example. Prior to Proposition 209's adoption of Cal. Const., Art. 1, § 31(a), which bars the State from "grant[ing] preferential treatment . . . on the basis of race . . . in the operation of . . . public education," Boalt Hall enrolled 20 blacks and 28 Hispanics in its first-year class for 1996. In 2002, without deploying express racial discrimination in admissions, Boalt's entering class enrolled 14 blacks and 36 Hispanics. . . . Total underrepresented minority student enrollment at Boalt Hall now exceeds 1996 levels. Apparently [Michigan] Law School cannot be counted on to be as resourceful. The Court is willfully blind to the very real experience in California and elsewhere, which raises the inference that institutions with "reputation[s] for excellence" rivaling the Law School's have satisfied their sense of mission without resorting to prohibited racial discrimination.

V

. . .

[T]here is nothing ancient, honorable, or constitutionally protected about "selective" admissions . . .

. . . Since its inception, selective admissions has been the vehicle for racial, ethnic, and religious tinkering and experimentation by university administrators. . . . Columbia, Harvard, and others infamously determined that they had "too many" Jews, just as today the Law School argues it would have "too many" whites if it could not discriminate in its admissions process. . . .

Columbia employed intelligence tests precisely because Jewish applicants, who were predominantly immigrants, scored worse on such tests. . . . [T]he tests were adopted with full knowledge of their disparate impact. Cf. *DeFunis v. Odegaard*, . . . (Douglas, J., dissenting).

Similarly no modern law school can claim ignorance of the poor performance of blacks, relatively speaking, on the Law School Admissions Test (LSAT).

Nevertheless, law schools continue to use the test and then attempt to "correct" for black underperformance by using racial discrimination in admissions so as to obtain their aesthetic student body. The Law School's continued adherence to measures it knows produce racially skewed results is not entitled to deference by this Court. . . .

. . . The Law School may freely continue to employ the LSAT and other allegedly merit-based standards in whatever fashion it likes. What the Equal Protection Clause forbids, but the Court today allows, is the use of these standards hand-in-hand with racial discrimination. . . .

. . .

VI

. . . I believe what lies beneath the Court's decision today are the benighted notions that one can tell when racial discrimination benefits (rather than hurts) minority groups, . . . and that racial discrimination is necessary to remedy general societal ills. [T]he majority still cannot commit to the principle that racial classifications are *per se* harmful and that almost no amount of benefit in the eye of the beholder can justify such classifications.

Putting aside what I take to be the Court's implicit rejection of *Adarand*'s holding that beneficial and burdensome racial classifications are equally invalid, I must contest the notion that the Law School's discrimination benefits those admitted as a result of it. . . . [N]owhere in any of the filings in this Court is any evidence that the purported "beneficiaries" of this racial discrimination prove themselves by performing at (or even near) the same level as those students who receive no preferences. . . .

. . . The Law School is not looking for those students who, despite a lower LSAT score or undergraduate grade point average, will succeed in the study of law. The Law School seeks only a facade—it is sufficient that the class looks right, even if it does not perform right.

. . .

Beyond the harm the Law School's racial discrimination visits upon its test subjects, no social science has disproved the notion that this discrimination "engender[s] attitudes of superiority or, alternatively, provoke[s] resentment among those who believe that they have been wronged by the government's use of race." *Adarand*, . . . (Thomas, J., concurring in part and concurring in judgment). "These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are 'entitled' to preferences." . . .

. . . The majority of blacks are admitted to the Law School because of discrimination, and because of this policy all are tarred as undeserving. This problem of stigma does not depend on determinacy as to whether those stigmatized are actually the "beneficiaries" of racial discrimination. When blacks take positions in the highest places of government, industry, or academia, it is an open question today whether their skin color played a part in their advancement. The question itself is the stigma—because either racial discrimination did play a role, in which case the person may be deemed "otherwise unqualified," or it did not, in which case asking the question itself unfairly marks those blacks who would succeed without discrimination. Is this what the Court means by "visibly open"?

. . .

VII

[Although] I believe the Court's opinion to be, in most respects, erroneous[,] I . . . find two points on which I agree.

A

First, I note that the issue of unconstitutional racial discrimination among the groups the Law School prefers is not presented in this case, because petitioner has never argued that the Law School engages in such a practice, and the Law School maintains that it does not.... I join the Court's opinion insofar as it confirms that this type of racial discrimination remains unlawful.... [T]he Law School may not discriminate in admissions between similarly situated blacks and Hispanics, or between whites and Asians. This is so because preferring black to Hispanic applicants, for instance, does nothing to further the interest recognized by the majority today. Indeed, the majority describes such racial balancing as "patently unconstitutional." Like the Court, I express no opinion as to whether the Law School's current admissions program runs afoul of this prohibition.

B

. . .

I . . . understand the imposition of a 25–year time limit only as a holding that the deference the Court pays to the Law School's educational judgments and refusal to change its admissions policies will itself expire.... The Court defines this time limit in terms of narrow tailoring, but I believe this arises from its refusal to define rigorously the broad state interest vindicated today. . . . With these observations, I join the last sentence of Part III of the opinion of the Court.

. . .

GRATZ v. BOLLINGER, 539 U.S. 244 (2003). In this companion case to *Grutter*, two white residents of Michigan who had been denied admission to the University of Michigan's undergraduate College of Literature, Science, and the Arts (LSA) brought a class action challenging the University's use of race in its admissions system. That system considered 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. It employed a selection index that assigned points for the various factors considered; provided that 100 points would virtually assure admission; and assigned 20 points for being an underrepresented minority applicant. It was "undisputed that the University admits 'virtually every qualified ... applicant' from" the groups the University considered to be "underrepresented minorities," namely, "African–Americans, Hispanics, and Native Americans." Chief Justice Rehnquist, speaking for a Court majority that included the four dissenters in *Grutter* plus Justice O'Connor, concluded "that because the University's use of race in its current freshman admissions policy is not narrowly tailored to achieve [its] asserted compelling interest in diversity, the admissions policy violates the Equal Protection Clause of the Fourteenth Amendment" as well as "Title VI and 42 U.S.C. § 1981." Responding to the argument "that 'diversity as a basis for employing racial preferences is simply too open-ended, ill-defined, and indefinite to constitute a compelling interest capable of supporting narrowly-tailored means[,]' " the Chief Justice wrote that "for the reasons set forth today in *Grutter v. Bollinger*, the Court has rejected these arguments...." But, applying strict scrutiny, the majority found "that