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Grutter v. Bollinger: Setting a Path for Diversity at the University of South Carolina School of Law

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GRUTTER V. BOLLINGER:

**SETTING A PATH FOR DIVERSITY AT THE
UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW**

I. INTRODUCTION

Affirmative action is one of the most controversial topics that the United States Supreme Court has addressed in recent years. While the trend has been to move away from affirmative action policies, the Supreme Court upheld race-based preferences aimed at promoting diversity in student bodies of higher educational institutions.¹ In the 1970s, the Court determined in *Regents of the University of California v. Bakke*² that states are permitted to use race as a factor in university admissions policies.³ However, this determination remained tentative until recently. The Court in *Bakke* did not reach a majority opinion regarding which compelling state interests justify the use of race in admissions decisions. Thus, for the past few decades, the state of affirmative action in admissions decisions hung in limbo while interested parties sought to define that “compelling interest.”⁴

The Supreme Court recently decided two cases on this issue and conclusively held that the attainment of educational diversity can be a compelling state interest that justifies the use of narrowly tailored race-based preferences in university admissions decisions.⁵ Racial minority status may be taken into account through holistic, individualized review rather than quotas or automatic advantages,⁶ and it must be viewed as only one factor out of many that may contribute to diversity.⁷

The Supreme Court’s decision in *Grutter v. Bollinger*⁸ was a surprising victory for proponents of affirmative action, especially in light of the Court’s retreat from affirmative action in other areas.⁹ Before *Grutter*, many institutions avoided this controversial topic and chose not to have formal policies that took race into account, due to a concern over the issue’s unsettled constitutionality.

The University of South Carolina School of Law (USC School of Law) has not adopted a formal affirmative action policy. In light of the Supreme Court’s decisions in *Grutter* and *Gratz*, this Note explores the USC School of Law’s

1. *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003).

2. 438 U.S. 265 (1978).

3. *Id.* at 320.

4. See Carla D. Pratt, *In the Wake of Hopwood: An Update on Affirmative Action in the Education Arena*, 42 HOW. L.J. 451, 459 (1999).

5. *Grutter*, 123 S. Ct. at 2347; *Gratz v. Bollinger*, 123 S. Ct. 2411, 2426–27 (2003).

6. *Gratz*, 123 S. Ct. at 2428.

7. *Grutter*, 123 S. Ct. at 2344.

8. 123 S. Ct. 2325 (2003).

9. After establishing that affirmative action programs must pass strict scrutiny in *Adarand Constructors, Inc., v. Peña*, 515 U.S. 200 (1995), affirmative action had subsequently fallen out of favor until *Grutter* and *Gratz*.

admissions policy and suggests some particular language that the school should adopt as a starting point for formally recognizing racial diversity in its admissions decisions.

II. BACKGROUND

A. Regents of the University of California v. Bakke

Prior to *Grutter* and *Gratz*, the Supreme Court's leading case examining the use of race-based policies in university admissions was *Regents of the University of California v. Bakke*.¹⁰ In *Bakke*, the admissions policy at the Medical School of the University of California (Medical School) assured the admission of a set number of minority students each year.¹¹ The Medical School operated a "special admissions program" for minorities, separate from the regular admissions program, so that minorities and non-minorities did not compete against one another for admission.¹² A white male, Allan Bakke, who applied to the school in two consecutive years, brought an action against the Medical School seeking mandatory, injunctive, and declaratory relief compelling his admission to the school.¹³ Bakke's application was considered under the University's general admission program both years and was rejected.¹⁴ Bakke claimed that the school's special admissions program effectively excluded his admission on the basis of race, which violated his rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the California State Constitution, and Title VI of the Civil Rights Act of 1964.¹⁵

The state courts which considered *Bakke* determined that the admissions policy was unconstitutional race-based discrimination.¹⁶ The Supreme Court of California ordered the Medical School to admit Bakke to the school.¹⁷ The United States Supreme Court then granted certiorari to consider the issue.¹⁸

As evidenced by six separate opinions, *Bakke* posed a difficult question to the Supreme Court. Justice Powell's opinion announcing the Court's judgment invalidated the Medical School's admissions program, but reversed the state court's decision prohibiting affirmative action programs from considering race.¹⁹ In a concurring opinion, Justices Stevens, Stewart, Rehnquist, and Chief Justice Burger did not reach the issue of whether the admissions policy passed strict scrutiny and

10. 438 U.S. 265 (1978).

11. *Id.* at 269–70.

12. *Id.* at 272–73.

13. *Id.* at 276–77.

14. *Id.*

15. *Id.* at 277–78.

16. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 279–80 (1978).

17. *Id.* at 281.

18. *Id.*

19. *Id.* at 320.

instead determined that the program violated Title VI of the Civil Rights Act of 1964.²⁰ Justices Brennan, White, Marshall, and Blackmun dissented, proposing a two-part test that held universities may use race in their admissions decisions to remedy past discrimination of the university itself or society as a whole, as long as this use of race is reasonable in light of the plan and overall objectives and would not stigmatize discrete groups or individuals.²¹ Under this test, the dissenting justices would have upheld the Medical School's admissions program.²²

Justice Powell provided the critical fifth vote for striking down the Medical School's two-track admissions program. In a portion of his opinion not joined by the other justices, Justice Powell stated that the attainment of a diverse student body is a compelling governmental interest and the only interest in this case to survive strict scrutiny.²³ He pointed specifically to the undergraduate admissions plan at Harvard University as an example of a permissible policy that factors race into admissions decisions.²⁴ At Harvard, the admissions program considered race as a "plus factor," while not insulating any individual applicant from comparison with applicants of other races.²⁵ Under the Harvard system, an applicant's race is factored into consideration for admission, yet his or her minority status is not decisive when compared with other applicants who may contribute to the diversity of the student body in ways other than through their race or ethnic background.²⁶ Justice Powell hailed the Harvard admissions program as an "illuminating example" of a program that promotes educational diversity without using a quota system.²⁷

Although it was not the holding of the Court, Powell's plurality opinion became the test for constitutional analysis of admissions policies using race as a factor in the decision-making process.²⁸ As a result, many schools around the country patterned their admission policies on Justice Powell's opinion and the Harvard plan described in it.

Even though Justice Powell's decision was widely accepted as the standard for affirmative action in educational settings, the topic still gave rise to much litigation. The constitutionality of affirmative action in university admissions programs was unclear, and courts were divided as to whether Justice Powell's opinion in *Bakke* was controlling. In the post-*Bakke* era, the Supreme Court decided *Adarand*

20. *Id.* at 421.

21. *Id.* at 325.

22. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 379 (1978).

23. *Id.* at 311-12.

24. *Id.* at 316.

25. *Id.* at 317.

26. *Id.*

27. *Id.* at 316.

28. See *Smith v. Univ. of Wash. Law Sch.*, 233 F.3d 1188, 1199 (9th Cir. 2000) (applying the test established in *Marks v. United States*, 430 U.S. 188, 193 (1977) (citation omitted), "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds'"). *Smith* joined other authorities in concluding that, following the *Marks* ruling, Justice Powell's analysis constituted the holding of the Court in *Bakke*. *Smith*, 233 F.3d at 1200.

Constructors, Inc., v. Pena,²⁹ which held that all racial classifications, even those classifications that aim to benefit minorities, must pass strict scrutiny.³⁰ Although *Adarand* was not meant to end affirmative action,³¹ many believed it would serve as a death knell because the imposition of strict scrutiny is usually fatal.³²

The lower courts were split on how to apply *Bakke* in the educational context in light of *Adarand*, and whether *Bakke* would even be upheld if the Court were to consider the issue again. In *Hopwood v. Texas*,³³ the United States Court of Appeals for the Fifth Circuit rejected Justice Powell's diversity rationale in *Bakke* and held that remedying a university's own prior discrimination was the only compelling interest for race-based preferences in university admissions.³⁴ In *Johnson v. Board of Regents of the University of Georgia*,³⁵ the Eleventh Circuit refrained from determining whether diversity is a compelling interest to support the constitutionality of racial preferences in university admissions.³⁶ The Court opined, in dicta, that Justice Powell's opinion did not establish diversity as a compelling interest.³⁷ However, in *Smith v. University of Washington, Law School*,³⁸ the United States Court of Appeals for the Ninth Circuit adopted Justice Powell's view that the attainment of a diverse student body is a compelling state interest.³⁹

After several decades of instability and confusion in this area, the Supreme Court recently revisited the issue of race as a factor in university admissions decisions. In both *Grutter* and *Gratz*, the Court determined that narrowly tailored university admissions policies which consider the race of the applicant may indeed pass strict scrutiny and that the attainment of educational diversity is a compelling state interest.

B. *Grutter v. Bollinger* and *Gratz v. Bollinger*

The recent decisions of *Grutter v. Bollinger*⁴⁰ and *Gratz v. Bollinger*⁴¹ concerned the admissions policies of the University of Michigan Law School and undergraduate college, respectively.⁴² These opinions followed Justice Powell's

29. 515 U.S. 200 (1995).

30. *Id.* at 227.

31. *See id.* at 237 (stating that strict scrutiny is not "strict in theory, but fatal in fact").

32. *See, e.g.,* Margaret A. Sewell, Note, *Adarand Constructors, Inc. v. Pena: The Armageddon of Affirmative Action*, 46 DEPAUL L. REV. 611, 612 (1997) (predicting *Adarand* would lead to the demise of affirmative action plans).

33. 236 F.3d 256 (5th Cir. 2000).

34. *Id.* at 275.

35. 263 F.3d 1234 (11th Cir. 2001).

36. *Id.* at 1244-45.

37. *Id.*

38. 233 F.3d 1188 (9th Cir. 2000).

39. *Id.* at 1201.

40. 123 S. Ct. 2411 (2003).

41. 123 S. Ct. 2325 (2003).

42. *Grutter*, 123 S. Ct. 2325; *Gratz*, 123 S. Ct. 2411.

reasoning in *Bakke* and held that educational diversity is a compelling interest.⁴³ However, the use of race as a factor in attaining such diversity is subject to some limitations.⁴⁴ In *Grutter*, Justice O'Connor expressly embraced Powell's opinion in *Bakke*, stating, "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."⁴⁵ Because *Grutter* more thoroughly sets out the test of how a university should factor race into its admissions policy, this Note focuses more closely on it. However, a brief discussion of *Gratz* is necessary for a thorough understanding of the law of race-based preferences in university admissions.

In *Gratz*, two white in-state applicants were denied admission to the University of Michigan College of Literature, Science, and the Arts (LSA) in 1995 and 1997, respectively.⁴⁶ They filed a class action lawsuit against the school alleging that the school's race-based preferences in the admissions process violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1981.⁴⁷ The policy at issue in *Gratz* combined a "selection index"—numerical scores calculated for each applicant—along with a system of individualized review.⁴⁸ Applicants needed a "selection index" score of at least 100 out of the possible 150 to qualify for the "admit" category.⁴⁹ Points were awarded for high school grade point average, as well as other criteria concerning the applicant's high school education and activities.⁵⁰ There was a miscellaneous category under which applicants were given 20 points if the applicant was part of a minority racial or ethnic group.⁵¹ Additionally, counselors had discretion to "flag" applications for further individual consideration if the applicant demonstrated that, in addition to being a strong candidate, he or she possessed certain qualities or characteristics, including minority status, that would enhance the makeup of the student body.⁵² Decisions were then made regarding whether each flagged applicant should be admitted, postponed, or denied.⁵³

The district court adopted Justice Powell's diversity rationale in *Bakke*, and found that the University of Michigan LSA admissions guidelines were narrowly tailored towards attaining a diverse student body.⁵⁴ Although it entailed a points

43. *Grutter*, 123 S. Ct. at 2336–37.

44. *Id.* at 2337.

45. *Grutter*, 123 S. Ct. at 2337.

46. *Gratz*, 123 S. Ct. at 2417.

47. *Id.* at 2418.

48. *Id.* at 2419–20.

49. *Id.* at 2419.

50. *Id.* Points were also awarded for "standardized test scores, academic quality of an applicant's high school, strength or weakness of high school curriculum, in-state residency, alumni relationship, personal essay, and personal achievement or leadership." *Id.*

51. *Gratz v. Bollinger*, 123 S. Ct. 2411, 2419 (2003).

52. *Id.* at 2420.

53. *Id.*

54. *Gratz v. Bollinger*, 122 F. Supp. 2d 811, 824–27 (E.D. Mich. 2000).

system for various categories, the district court determined that the system was not equivalent to a quota because of the individualized review.⁵⁵ On appeal, the Sixth Circuit had not yet rendered an opinion when the United States Supreme Court granted certiorari.

The United States Supreme Court disagreed with the district court's finding that the University of Michigan LSA's admissions policy was narrowly tailored.⁵⁶ The Court stated that giving preferential treatment to members of a racial or ethnic group on that basis alone constituted "discrimination for its own sake" and was unconstitutional.⁵⁷ The Court stressed that race may only be used to augment the different qualities of an applicant; it is not to be the deciding factor.⁵⁸ The Court also emphasized the disparity of the admissions policy's treatment of different factors that could contribute to diversity, noting that while a minority applicant would be awarded twenty points, a non-minority student with "extraordinary artistic talent" could only be awarded five points for their potential contribution to diversity.⁵⁹ The school's system of "individualized review" was applied in a manner that was anything but individualized.⁶⁰ Instead of employing holistic review for each applicant, there was only a possibility of being flagged for individualized consideration. Because applicants still had to receive a certain score before their application was eligible to be flagged for consideration, the points system was still determinative of an applicant's admission.⁶¹

In contrast to *Gratz*, the policy at issue in *Grutter* was narrowly tailored. *Grutter* concerned a white applicant to the University of Michigan Law School who was denied admission.⁶² The petitioner, Grutter, had a 3.8 grade point average and a 161 on her LSAT.⁶³ Grutter was originally put on the waiting list, but was ultimately rejected.⁶⁴ She filed suit against the University of Michigan, claiming that its admissions policy discriminated on the basis of race and thus violated the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1981.⁶⁵ The district court found the university's use of race unconstitutional, holding that the goal of educational diversity is not a compelling governmental

55. *Id.* at 829.

56. *Gratz*, 123 S. Ct. at 2427.

57. *Id.* at 2428 (quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978)).

58. *Id.*

59. *Id.* at 2429.

60. *Id.* at 2428.

61. *Id.* at 2416.

62. *Grutter v. Bollinger*, 123 S. Ct. 2325, 2332 (2003).

63. *Id.*

64. *Id.*

65. *Id.* Title VI of the Civil Rights Act of 1964 provides "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Further, 42 U.S.C. § 1981 provides that "[a]ll persons within the jurisdiction of the United States shall have . . . the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." 42 U.S.C. § 1981(a).

interest and concluding that *Bakke* did not establish it as such.⁶⁶ The district court held that, in light of *Adarand*, the only justification for using race-based preferences is to “remedy carefully documented effects of past discrimination.”⁶⁷

On appeal, the Sixth Circuit reversed the district court’s judgment and adopted Justice Powell’s opinion in *Bakke* as binding precedent—educational diversity is a compelling state interest.⁶⁸ The court of appeals also determined that the use of race in the law school’s admissions policy was narrowly tailored because it was only a “potential plus factor” and because the admissions policy at the University of Michigan Law School was based on the Harvard plan that Powell approved of in his *Bakke* opinion.⁶⁹

The Supreme Court granted certiorari to determine “[w]hether diversity is a compelling interest that can justify the narrowly tailored use of race in selecting applicants for admission to public universities.”⁷⁰ The Court answered affirmatively.⁷¹

The Supreme Court gave significant deference to the University of Michigan Law School’s interest in determining for itself what is important to its success as an educational institution.⁷² The admissions policy sought to admit what it termed a “critical mass” of “underrepresented minority students” to the entering class.⁷³ The goal of attaining a “critical mass” of minorities passes strict scrutiny, because rather than setting aside a specific amount of seats or percentage of the class, the admissions committee sought to admit a meaningful number of underrepresented minorities.⁷⁴

Race is not the principal criterion in determining whether an applicant should be admitted.⁷⁵ Instead, the University of Michigan Law School employs a holistic approach, reviewing each individual’s file to determine how they would enhance diversity at the school.⁷⁶ It is precisely this flexibility that is key to the constitutionality of an admissions policy.⁷⁷

To be constitutional, the use of race in the admissions system must be narrowly tailored to achieve the stated purpose.⁷⁸ The *Grutter* Court used strict scrutiny to determine if the use of race as a factor in the admissions process was closely tied to achieving diversity, making sure there was no illegitimate racial motive

66. *Grutter v. Bollinger*, 137 F. Supp. 2d 821, 844 (E.D. Mich. 2001).

67. *Id.* at 848–49.

68. *Grutter*, 123 S. Ct. at 2335.

69. *Id.*

70. *Id.*

71. *Id.* at 2339.

72. *Id.*

73. *Id.* at 2332.

74. *Grutter v. Bollinger*, 123 S. Ct. 2325, 2342 (2003).

75. *Id.* at 2334.

76. *Id.* at 2343.

77. *Id.* at 2342.

78. *Id.* at 2341.

underlying the use of race in this case.⁷⁹ To be narrowly tailored, an admissions system must not employ a quota or a separate admissions track for minority and non-minority applicants. Instead, it must incorporate race as a “plus factor,” one among many that could contribute to diversity, rather than act as a determinative factor.⁸⁰ Although numbers were a focus, the Supreme Court found the program did not function as a quota⁸¹ because the goal was an adequate representation of minority students, rather than a specific numerical target.⁸²

Mere lack of a quota is not *prima facie* evidence that the admissions policy is constitutional.⁸³ The program must analyze each applicant individually and must remain flexible.⁸⁴ The individual’s race cannot be the “defining feature” of an application.⁸⁵ The admissions policy in *Grutter* met the test of individual review by allowing each applicant the opportunity to explain in a personal statement, letters of recommendation, and an essay how they would contribute to the diversity of the school.⁸⁶

III. ADMISSIONS DECISIONS AT THE USC SCHOOL OF LAW

The importance of increasing the presence of underrepresented minorities in legal educational institutions is evidenced in the ABA’s Standards for Approval of Law Schools and Interpretations (Standards).⁸⁷ In accordance with *Grutter*, the Standards state admission may not be denied to an individual on the basis of race, but later notes:

[A] law school shall demonstrate . . . a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups, notably racial and ethnic minorities, which have been victims of discrimination in various forms. This commitment typically includes a *special concern for determining the potential of these applicants through the admission process . . .*⁸⁸

Clearly, diverse law school student bodies are a priority for the ABA.

79. *Id.* For examples of illegitimate racial motives, see *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989).

80. *Grutter v. Bollinger*, 123 S. Ct. 2325, 2330 (2003).

81. *Id.* at 2343.

82. *Id.* at 2342–43.

83. *Id.* at 2343.

84. *Id.*

85. *Id.*

86. *Grutter v. Bollinger*, 123 S. Ct. 2325, 2344 (2003).

87. A.B.A. STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, at <http://www.abanet.org/legaled/standards/chapter2.html> (last visited Mar. 8, 2004).

88. *Id.*, ch. 2, Std. 211, at <http://www.abanet.org/legaled/standards/chapter2.html> (last visited Mar. 8, 2004) (emphasis added).

Additionally, national statistics make it apparent that action must be taken to improve the representation of minority groups in law schools. While it is difficult to ascertain the percentage of lawyers in the United States that are minorities, surveys estimate that minority representation in the nation's legal community is around ten percent.⁸⁹ Minority representation in the South Carolina legal community is below the national estimate, although the data is incomplete.⁹⁰

The University of South Carolina School of Law's admissions policy does not formally take the race of the applicant into consideration.⁹¹ Until the Michigan decisions, the constitutionality of race as a factor in admissions was unclear, and the USC School of Law's admissions policy avoided broaching the issue. However, now that the Supreme Court has determined that the attainment of diversity in educational environments is a compelling state interest, it seems appropriate for the USC School of Law to reevaluate its position.

The number of minority students that attend the USC School of Law is critically low. It is significantly lower proportionally than the representation of minority law students nationwide.⁹² The USC School of Law Class of 2005 is seven percent minority, totaling sixteen minority students in the fall 2002 entering class.⁹³ This statistic gives rise to a need for affirmative action. Although the statistical analysis set forth in *Grutter* cannot be applied wholesale to the USC School of Law,⁹⁴ it does provide a glimpse into the need for changes in admissions policy. In *Grutter*, the University of Michigan Law School's expert, Dr. Stephen Raudenbush, testified that use of "a race-blind admissions system would have a 'very dramatic,' negative effect on underrepresented minority admissions," leading to minority representation around four percent instead of the actual fourteen percent.⁹⁵

The USC School of Law admissions policy currently states that an admissions committee comprised of faculty representatives and the dean of admissions reviews

89. See generally *Goal IX Report: The Status of Racial and Ethnic Diversity in the American Bar Association, 2002-03* A.B.A. COMM'N ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION 12-13 (finding that of the 137,480 members of the ABA that identified themselves by race or ethnicity, 9.24% were African American, Asian Pacific American, Hispanic, Native American, or other).

90. See E-mail from Charmy Medlin, Membership Services Manager, South Carolina Bar, to Laurel Rosenberg, Law Student, University of South Carolina School of Law (Oct. 20, 2003, 14:59:25 EST) (on file with author). There are currently 10,946 members of the South Carolina Bar; 6,873 members have supplied ethnic information, and 472 (6.87%) of these members responded that they are minorities or belong to more than one race.

91. See UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW CATALOG 18 (2004) [hereinafter *LAW SCHOOL CATALOG*].

92. AMERICAN BAR ASSOCIATION J.D. DEGREES, 1984-2002, (finding that in 2002, minorities accounted for 20% of total law student enrollment nationwide), at <http://www.abanet.org/legaled/statistics/jd.html> (last visited Jan. 11, 2004) (on file with author).

93. UNIV. OF S.C. SCH. OF LAW, ANNUAL REPORT ON ADMISSIONS, CLASS OF 2005, at 11 (2002).

94. A proper statistical analysis of the minority representation at the USC School of Law would require detailed data of the university's undergraduate minority population, the state's minority population, and other factors beyond the scope of this Note.

95. *Grutter v. Bollinger*, 123 S. Ct. 2325, 2334 (2003).

all applications.⁹⁶ In addition to considering the applicant's academic background and activities, "consideration is given to applicants who have overcome obstacles to good performance in the educational system . . . including physical disability and family socioeconomic status."⁹⁷ This language does not formally recognize racial diversity as a goal or factor in the admissions process. However, considering the low representation of minorities at the USC School of Law in conjunction with the Supreme Court's recent determination that racial diversity in higher educational student bodies is such an important state interest that it passes the strictest of constitutional scrutiny, the USC School of Law should formally recognize this important interest.

Much of the USC School of Law's current admissions policy is already in line with *Grutter*. The admissions committee reviews each applicant's file, giving consideration to multiple factors, including the applicant's academic background.⁹⁸ Adding racial consideration would not require a complicated restructuring of the admissions decisions, but would simply necessitate decisionmakers to consider an additional factor.

Language should be added to the admissions policy set forth in the USC School of Law's Catalog stating that the attainment of a diverse student body is of great importance to the school. The school should seek to enroll students that will add to this diversity by considering differences in past work and school experiences, community involvement, *race or national origin*, or ability to overcome obstacles in the educational system. However, simply adding language to the admissions policy will not cure the low representation of minorities in the student body or the legal community as a whole. It is important that the school tailor its system of application review to include these considerations. Like the policy in *Grutter*, the admissions committee at the USC School of Law must look at each applicant individually, determining what characteristics may contribute to the diversity of the student body. Among different qualities that are considered, minority status should be considered an important attribute and be given significant attention.

By formally considering diversity in its admissions policy, the USC School of Law will attract a more diverse student body. A commitment to diversity and minority representation at the USC School of Law will result in more minority students and lawyers in South Carolina.

IV. CONCLUSION

Until recently, the state of affirmative action in university admissions policies was unclear. With the Supreme Court's recent decisions in *Grutter v. Bollinger* and

96. LAW SCHOOL CATALOG, *supra* note 91, at 18. While the Law School Catalog discusses various non-academic factors that will be considered in the admissions decision, the policy makes no mention of racial or ethnic background.

97. *Id.*

98. *Id.*

Gratz v. Bollinger, racial diversity has been declared a compelling state interest. South Carolina, through its public educational institutions such as the USC School of Law, has the opportunity to advance racial diversity in the school and the state. Considering the low minority representation at the USC School of Law and within South Carolina's legal community in general, the school should formally recognize the importance of racial diversity. By incorporating language into the admissions policy that recognizes racial diversity, the school will be able to attract a more diversified student body. Moreover, by showing a commitment to minority students, the school will draw and retain more minority students, thereby working towards the goal enunciated in *Grutter*—eliminating the need for affirmative action within twenty-five years.⁹⁹

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99. *Grutter*, 123 S. Ct. at 2347.

