> **“Strict scrutiny must not be “ ‘strict in theory, but fatal in fact,’ ” *Adarand*; see also *Grutter*. But the opposite is also true. Strict scrutiny must not be strict in theory but feeble in fact.”—Justice KENNEDY**
>
> **“This most exacting standard [of strict scrutiny] ‘has proven automatically fatal’ in almost every case.”—Justice THOMAS**
>
> **“[O]nly an ostrich could regard the supposedly neutral alternatives as race unconscious.”—Justice GINSBURG**

Fisher v. University of Texas at Austin

570 U.S., ___ S.Ct. ___, ___ L.Ed.2d ___ (2013)

Justice **KENNEDY** delivered the opinion of the Court.

The University of Texas at Austin considers race as one of various factors in its undergraduate admissions process. Race is not itself assigned a numerical value for each applicant, but the University has committed itself to increasing racial minority enrollment on campus. It refers to this goal as a “critical mass.” Petitioner, who is Caucasian, sued the University after her application was rejected. She contends that the University’s use of race in the admissions process violated the Equal Protection Clause of the Fourteenth Amendment.

The parties asked the Court to review whether the judgment below was consistent with “this Court’s decisions interpreting the Equal Protection Clause…, including Grutter v. Bollinger (2003).” The Court concludes that the Court of Appeals did not hold the University to the demanding burden of strict scrutiny articulated in *Grutter* and Regents of Univ. of Cal. v. Bakke (1978) (opinion of Powell, J.) [and that] its decision affirming the District Court’s grant of summary judgment to the University was incorrect. That decision is vacated, and the case is remanded for further proceedings.

I

A

Located in Austin, Texas,…the University is one of the leading institutions of higher education in the Nation. Admission is prized and competitive….

In recent years the University has used three different programs to evaluate candidates for admission. The first is the program it used for some years before 1997, when the University considered two factors: a numerical score reflecting an applicant’s test scores and academic performance in high school (Academic Index or AI), and the applicant’s race. In 1996, … the United States Court of Appeals for the Fifth Circuit…ruled the University’s consideration of race violated the Equal Protection Clause…. Hopwood v. Texas (1996).

The second program was adopted to comply with the *Hopwood* decision. The University

stopped considering race in admissions and substituted instead a new holistic metric of a candidate's potential contribution to the University, to be used in conjunction with the Academic Index. This "Personal Achievement Index" (PAI) measures a student's leadership and work experience, awards, extracurricular activities, community service, and other special circumstances that give insight into a student's background. These included growing up in a single-parent home, speaking a language other than English at home, significant family responsibilities assumed by the applicant, and the general socioeconomic condition of the student's family. Seeking to address the decline in minority enrollment after *Hopwood*, the University also expanded its outreach programs.

The Texas State Legislature also responded to the *Hopwood* decision. It enacted a measure known as the Top Ten Percent Law [which] grants automatic admission to any public state college, including the University, to all students in the top 10% of their class at high schools in Texas that comply with certain standards.

The University's revised admissions process, coupled with the operation of the Top Ten Percent Law, resulted in a more racially diverse environment at the University. Before the admissions program at issue in this case, in the last year under the post-*Hopwood* AI/PAI system that did not consider race, the entering class was 4.5% African-American and 16.9% Hispanic. This is in contrast with the 1996 pre-*Hopwood* and Top Ten Percent regime, when race was explicitly considered, and the University's entering freshman class was 4.1% African-American and 14.5% Hispanic.

Following this Court's decisions in *Grutter*, and Gratz v. Bollinger (2003), the University adopted a third admissions program, the 2004 program in which the University reverted to explicit consideration of race. This is the program here at issue. In *Grutter*, the Court upheld the use of race as one of many "plus factors" in an admissions program that considered the overall individual contribution of each candidate. In *Gratz*, by contrast, the Court held unconstitutional Michigan's undergraduate admissions program, which automatically awarded points to applicants from certain racial minorities….

To implement the [program] the University included a student's race as a component of the PAI score, beginning with applicants in the fall of 2004. The University asks students to classify themselves from among five predefined racial categories on the application. Race is not assigned an explicit numerical value, but it is undisputed that race is a meaningful factor.

Once applications have been scored, they are plotted on a grid with the Academic Index on the x-axis and the Personal Achievement Index on the y-axis. On that grid students are assigned to so-called cells based on their individual scores. All students in the cells falling above a certain line are admitted. All students below the line are not….

Petitioner applied for admission to the University's 2008 entering class and was rejected. She sued [alleging] that the University's consideration of race in admissions violated the Equal Protection Clause. The parties cross-moved for summary judgment. The District Court granted summary judgment to the University. The United States Court of Appeals for the Fifth Circuit affirmed. It held that *Grutter* required courts to give substantial deference to the University, both in

the definition of the compelling interest in diversity's benefits and in deciding whether its specific plan was narrowly tailored to achieve its stated goal. Applying that standard, the court upheld the University's admissions plan….

B

[T]here are three decisions that directly address the question of considering racial minority status as a positive or favorable factor in a university's admissions process, with the goal of achieving the educational benefits of a more diverse student body: *Bakke*; *Gratz*; and *Grutter*. We take those cases as given for purposes of deciding this case.

We begin with the principal opinion authored by Justice Powell in *Bakke*. In *Bakke*, the Court considered a system used by the medical school of the University of California at Davis. From an entering class of 100 students the school had set aside 16 seats for minority applicants. In holding this program impermissible under the Equal Protection Clause Justice Powell's opinion stated certain basic premises. First, [t]he principle of equal protection admits no "artificial line of a 'two-class theory' " that "permits the recognition of special wards entitled to a degree of protection greater than that accorded others." It is therefore irrelevant that a system of racial preferences in admissions may seem benign. Any racial classification must meet strict scrutiny, for when government 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."

Next, Justice Powell identified one compelling interest that could justify the consideration of race: the interest in the educational benefits that flow from a diverse student body. Redressing past discrimination could not serve as a compelling interest, because a university's "broad mission [of] education" is incompatible with making the "judicial, legislative, or administrative findings of constitutional or statutory violations" necessary to justify remedial racial classification.

The attainment of a diverse student body, by contrast, serves values beyond race alone, including enhanced class-room dialogue and the lessening of racial isolation and stereotypes. The academic mission of a university is "a special concern of the First Amendment." Part of "'the business of a university [is] to provide that atmosphere which is most conducive to speculation, experiment, and creation,'" and this in turn leads to the question of " 'who may be admitted to study.' " Sweezy v. New Hampshire (1957) (Frankfurter, J., concurring in judgment).

Justice Powell's central point, however, was that this interest in securing diversity's benefits, although a permissible objective, is complex. "It 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, with the remaining percentage an undifferentiated aggregation of students. The 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." *Bakke*.

In *Gratz*, and *Grutter,* the Court endorsed the precepts stated by Justice Powell. In *Grutter*, the Court reaffirmed his conclusion that obtaining the educational benefits of "student body

diversity is a compelling state interest that can justify the use of race in university admissions." [H]owever, this follows only if a clear precondition is met: [R]ace may not be considered unless the admissions process can withstand strict scrutiny….

[A]dditional guidance may be found in the Court's broader equal protection jurisprudence which applies in this context. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people," Rice v. Cayetano (2000), and therefore "are contrary to our traditions and hence constitutionally suspect," Bolling v. Sharpe (1954). " '[B]ecause racial characteristics so seldom provide a relevant basis for disparate treatment,' " Richmond v. J. A. Croson Co. (1989), "the Equal Protection Clause demands that racial classifications . . . be subjected to the 'most rigid scrutiny.' " Loving v. Virginia (1967)….

II

[T]hus, under *Grutter*, strict scrutiny must be applied to any admissions program using racial categories or classifications.

According to *Grutter*, a university's "educational judgment that such diversity is essential to its educational mission is one to which we defer." [T]he decision to pursue "the educational benefits that flow from student body diversity," that the University deems integral to its mission is, in substantial measure, an academic judgment to which some, but not complete, judicial deference is proper under *Grutter*. A court, of course, should ensure that there is a reasoned, principled explanation for the academic decision. On this point, the District Court and Court of Appeals were correct in finding that *Grutter* calls for deference to the University's conclusion, "'based on its experience and expertise,'" that a diverse student body would serve its educational goals. There is disagreement about whether *Grutter* was consistent with the principles of equal protection in approving this compelling interest in diversity. See *post* (Scalia, J., concurring); *post* (Thomas, concurring); *post* (Ginsburg, J., dissenting). But the parties here do not ask the Court to revisit that aspect of *Grutter*'s holding.

A university is not permitted to define diversity as "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." *Grutter*. "Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity.' " Parents Involved in Community Schools v. Seattle School Dist. (2007).

Once the University has established that its goal of diversity is consistent with strict scrutiny, however, there must still be a further judicial determination that the admissions process meets strict scrutiny in its implementation. The University must prove that the means chosen by the University to attain diversity are narrowly tailored to that goal. On this point, the University receives no deference…. True, a court can take account of a university's experience and expertise in adopting or rejecting certain admissions processes. But, as the Court said in *Grutter*, it remains at all times the University's obligation to demonstrate, and the Judiciary's obligation to determine, that admissions processes "ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application."

Narrow tailoring also requires that the reviewing court verify that it is "necessary" for a university to use race to achieve the educational benefits of diversity. *Bakke*. This involves a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications. Although "[n]arrow tailoring does not require exhaustion of every *conceivable* race-neutral alternative," strict scrutiny does require a court to examine with care, and not defer to, a university's "serious, good faith consideration of workable race-neutral alternatives." *Grutter* (emphasis added). Consideration by the university is of course necessary, but it is not sufficient to satisfy strict scrutiny: The reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity…. A plaintiff, of course, bears the burden of placing the validity of a university's adoption of an affirmative action plan in issue. But strict scrutiny imposes on the university the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice.

Rather than perform this searching examination, however, the Court of Appeals held petitioner could challenge only "whether [the University's] decision to reintroduce race as a factor in admissions was made in good faith." And in considering such a challenge, the court would "presume the University acted in good faith" and place on petitioner the burden of rebutting that presumption. The Court of Appeals held that to "second-guess the merits" of this aspect of the University's decision was a task it was "ill-equipped to perform" and that it would attempt only to "ensure that [the University's] decision to adopt a race-conscious admissions policy followed from [a process of] good faith consideration." The Court of Appeals thus concluded that "the narrow-tailoring inquiry—like the compelling-interest inquiry—is undertaken with a degree of deference to the Universit[y]." Because "the efforts of the University have been studied, serious, and of high purpose," the Court of Appeals held that the use of race in the admissions program fell within "a constitutionally protected zone of discretion."

These expressions of the controlling standard are at odds with *Grutter*'s command that "all racial classifications imposed by government 'must be analyzed by a reviewing court under strict scrutiny.' " (quoting Adarand Constructors, Inc. v. Peña (1995)). In *Grutter*, the Court approved the plan at issue upon concluding that it was not a quota, was sufficiently flexible, was limited in time, and followed "serious, good faith consideration of workable race-neutral alternatives." As noted above, the parties do not challenge, and the Court therefore does not consider, the correctness of that determination.

Grutter did not hold that good faith would forgive an impermissible consideration of race. It must be remembered that "the mere recitation of a 'benign' or legitimate purpose for a racial classification is entitled to little or no weight." *Croson*. Strict scrutiny does not permit a court to accept a school's assertion that its admissions process uses race in a permissible way without a court giving close analysis to the evidence of how the process works in practice….

The District Court and Court of Appeals confined the strict scrutiny inquiry in too narrow a way by deferring to the University's good faith in its use of racial classifications and affirming the grant of summary judgment on that basis. The Court vacates that judgment, but fairness to the litigants and the courts that heard the case requires that it be remanded so that the admissions

process can be considered and judged under a correct analysis. See *Adarand*. Unlike *Grutter*, which was decided after trial, this case arises from cross-motions for summary judgment. [I]n determining whether summary judgment in favor of the University would be appropriate, the Court of Appeals must assess whether the University has offered sufficient evidence that would prove that its admissions program is narrowly tailored to obtain the educational benefits of diversity. Whether this record—and not "simple . . . assurances of good intention," *Croson*—is sufficient is a question for the Court of Appeals in the first instance.

* * *

Strict scrutiny must not be " 'strict in theory, but fatal in fact,' " *Adarand*; see also *Grutter*. But the opposite is also true. Strict scrutiny must not be strict in theory but feeble in fact. In order for judicial review to be meaningful, a university must make a showing that its plan is narrowly tailored to achieve the only interest that this Court has approved in this context: the benefits of a student body diversity that "encompasses a . . . broa[d] array of qualifications and characteristics of which racial or ethnic origin is but a single though important element." *Bakke* (opinion of Powell, J.). The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

Justice **KAGAN** took no part in the consideration or decision of this case.

Justice **SCALIA**, concurring.

I adhere to the view I expressed in *Grutter*: "The Constitution proscribes government discrimination on the basis of race, and state-provided education is no exception" (opinion concurring in part and dissenting in part). The petitioner in this case did not ask us to overrule *Grutter*'s holding that a "compelling interest" in the educational benefits of diversity can justify racial preferences in university admissions. I therefore join the Court's opinion in full.

Justice **THOMAS**, concurring.

I join the Court's opinion because I agree that the Court of Appeals did not apply strict scrutiny to the University of Texas at Austin's use of racial discrimination in admissions decisions. I write separately to explain that I would overrule *Grutter*, and hold that a State's use of race in higher education admissions decisions is categorically prohibited by the Equal Protection Clause.

I

[U]nder strict scrutiny, all racial classifications are categorically prohibited unless they are " 'necessary to further a compelling governmental interest' " and "narrowly tailored to that end." *Grutter*. This most exacting standard "has proven automatically fatal" in almost every case. Missouri v. Jenkins (1995) (Thomas, J., concurring). And rightly so….

Grutter was a radical departure from our strict-scrutiny precedents…. In *Grutter*, the University of Michigan Law School (Law School) claimed that it had a compelling reason to discriminate based on race. The reason it advanced did not concern protecting national security or

remedying its own past discrimination. Instead, the Law School argued that it needed to discriminate in admissions decisions in order to obtain the "educational benefits that flow from a diverse student body." Contrary to the very meaning of strict scrutiny, the Court *deferred* to the Law School's determination that this interest was sufficiently compelling to justify racial discrimination.

I dissented from that part of the Court's decision. I explained that "only those measures the State must take to provide a bulwark against anarchy, or to prevent violence, will constitute a 'pressing public necessity' " sufficient to satisfy strict scrutiny. Cf. Lee v. Washington (1968) (Black, J., concurring) (protecting prisoners from violence might justify narrowly tailored discrimination)…. I adhere to that view today….

II

[U]nfortunately for the University, the educational benefits flowing from student body diversity—assuming they exist—hardly qualify as a compelling state interest. Indeed, the argument that educational benefits justify racial discrimination was advanced in support of racial segregation in the 1950's, but emphatically rejected by this Court…, see Brown v. Board of Education (1954)….

[T]he University asserts, for instance, that the diversity obtained through its discriminatory admissions program prepares its students to become leaders in a diverse society. The segregationists likewise defended segregation on the ground that it provided more leadership opportunities for blacks. This argument was unavailing. It is irrelevant under the Fourteenth Amendment whether segregated or mixed schools produce better leaders. Indeed, no court today would accept the suggestion that segregation is permissible because historically black colleges produced Booker T. Washington, Thurgood Marshall, Martin Luther King, Jr., and other prominent leaders….

The University also asserts that student body diversity improves interracial relations. In this argument, too, the University repeats arguments once marshaled in support of segregation. We flatly rejected this line of arguments in McLaurin v. Oklahoma State Regents for Higher Ed. (1950), where we held that segregation would be unconstitutional even if white students never tolerated blacks. It is, thus, entirely irrelevant whether the University's racial discrimination increases or decreases tolerance.

Finally, while the University admits that racial discrimination in admissions is not ideal, it asserts that it is a temporary necessity because of the enduring race consciousness of our society. Yet again, the University echoes the hollow justifications advanced by the segregationists. But these arguments too were unavailing. The Fourteenth Amendment views racial bigotry as an evil to be stamped out, not as an excuse for perpetual racial tinkering by the State….

The University's arguments today are no more persuasive than they were 60 years ago. Nevertheless, despite rejecting identical arguments in *Brown*, the Court in *Grutter* deferred to the University's determination that the diversity obtained by racial discrimination would yield educational benefits. There is no principled distinction between the University's assertion that

diversity yields educational benefits and the segregationists' assertion that segregation yielded those same benefits. See *Grutter* (opinion of Thomas, J.)….

My view of the Constitution is the one advanced by the plaintiffs in *Brown*: "[N]o State has any authority under the equal-protection clause of the Fourteenth Amendment to use race as a factor in affording educational opportunities among its citizens." The Constitution does not pander to faddish theories about whether race mixing is in the public interest. The Equal Protection Clause strips States of all authority to use race as a factor in providing education. All applicants must be treated equally under the law, and no benefit in the eye of the beholder can justify racial discrimination….

III

While I find the theory advanced by the University to justify racial discrimination facially inadequate, I also believe that its use of race has little to do with the alleged educational benefits of diversity. I suspect that the University's program is instead based on the benighted notion that it is possible to tell when discrimination helps, rather than hurts, racial minorities…. The worst forms of racial discrimination in this Nation have always been accompanied by straight-faced representations that discrimination helped minorities.

Slaveholders argued that slavery was a "positive good" that civilized blacks and elevated them in every dimension of life. See, *e.g.,* Calhoun, Speech in the U. S. Senate, 1837, in P. Finkelman, *Defending Slavery* 54, 58–59 (2003)…

A century later, segregationists similarly asserted that segregation was not only benign, but good for black students….

Following in these inauspicious footsteps, the University would have us believe that its discrimination is likewise benign. I think the lesson of history is clear enough: Racial discrimination is never benign…. It is for this reason that the Court has repeatedly held that strict scrutiny applies to *all* racial classifications, regardless of whether the government has benevolent motives. The University's professed good intentions cannot excuse its outright racial discrimination any more than such intentions justified the now denounced arguments of slaveholders and segregationists.

While it does not, for constitutional purposes, matter whether the University's racial discrimination is benign, I note that racial engineering does in fact have insidious consequences. There can be no doubt that the University's discrimination injures white and Asian applicants who are denied admission because of their race. But I believe the injury to those admitted under the University's discriminatory admissions program is even more harmful.

Blacks and Hispanics admitted to the University as a result of racial discrimination are, on average, far less prepared than their white and Asian classmates. In the University's entering class of 2009, for example, among the students admitted outside the Top Ten Percent plan, blacks scored at the 52d percentile of 2009 SAT takers nationwide, while Asians scored at the 93d percentile. Blacks had a mean GPA of 2.57 and a mean SAT score of 1524; Hispanics had a mean

GPA of 2.83 and a mean SAT score of 1794; whites had a mean GPA of 3.04 and a mean SAT score of 1914; and Asians had a mean GPA of 3.07 and a mean SAT score of 1991.

Tellingly, neither the University nor any of the 73 *amici* briefs in support of racial discrimination has presented a shred of evidence that black and Hispanic students are able to close this substantial gap during their time at the University. Cf. Thernstrom & Thernstrom, Reflections on the Shape of the River, 46 UCLA L. Rev. 1583, 1605–1608 (1999) (discussing the failure of defenders of racial discrimination in admissions to consider the fact that its "beneficiaries" are underperforming in the classroom). "It is a fact that in virtually all selective schools . . . where racial preferences in admission is practiced, the majority of [black] students end up in the lower quarter of their class." S. Cole & E. Barber, Increasing Faculty Diversity: The Occupational Choices of High-Achieving Minority Students 124 (2003). There is no reason to believe this is not the case at the University. The University and its dozens of *amici* are deafeningly silent on this point.

Furthermore, the University's discrimination does nothing to increase the number of blacks and Hispanics who have access to a college education generally. Instead, the University's discrimination has a pervasive shifting effect. See T. Sowell, *Affirmative Action Around the World* 145–146 (2004). The University admits minorities who otherwise would have attended less selective colleges where they would have been more evenly matched. But, as a result of the mismatching, many blacks and Hispanics who likely would have excelled at less elite schools are placed in a position where underperformance is all but inevitable because they are less academically prepared than the white and Asian students with whom they must compete. Setting aside the damage wreaked upon the self-confidence of these overmatched students, there is no evidence that they learn more at the University than they would have learned at other schools for which they were better prepared. Indeed, they may learn less….

Moreover, the University's discrimination "stamp[s] [blacks and Hispanics] with a badge of inferiority." *Adarand* (opinion of Thomas, J.)…. In this case, for example, most blacks and Hispanics attending the University were admitted without discrimination under the Top Ten Percent plan, but no one can distinguish those students from the ones whose race played a role in their admission. "When blacks [and Hispanics] take positions in the highest places of government, industry, or academia, it is an open question . . . whether their skin color played a part in their advancement." See *Grutter* (opinion of Thomas, J.). "The question itself is the stigma…." Although cloaked in good intentions, the University's racial tinkering harms the very people it claims to be helping….

Justice **GINSBURG**, dissenting.

The University of Texas at Austin is candid about what it is endeavoring to do: It seeks to achieve student-body diversity through an admissions policy patterned after the Harvard plan referenced as exemplary in Justice Powell's opinion in *Bakke*. The University has steered clear of a quota system like the one struck down in *Bakke*… And, like so many educational institutions across the Nation, the University has taken care to follow the model approved by the Court in *Grutter*.

Petitioner urges that Texas' Top Ten Percent Law and race-blind holistic review of each application achieve significant diversity, so the University must be content with those alternatives. I have said before and reiterate here that only an ostrich could regard the supposedly neutral alternatives as race unconscious. See *Gratz* (dissenting opinion). As Justice Souter observed, the vaunted alternatives suffer from "the disadvantage of deliberate obfuscation." *Id.* (dissenting opinion).

Texas' percentage plan was adopted with racially segregated neighborhoods and schools front and center stage. See House Research Organization, Bill Analysis, HB 588 (Apr. 15, 1997) ("Many regions of the state, school districts, and high schools in Texas are still predominantly composed of people from a single racial or ethnic group. Because of the persistence of this segregation, admitting the top 10 percent of all high schools would provide a diverse population and ensure that a large, well qualified pool of minority students was admitted to Texas universities."). It is race consciousness, not blindness to race, that drives such plans. As for holistic review, if universities cannot explicitly include race as a factor, many may "resort to camouflage" to "maintain their minority enrollment." *Gratz* (Ginsburg, J., dissenting).

I have several times explained why government actors, including state universities, need not be blind to the lingering effects of "an overtly discriminatory past," the legacy of "centuries of law-sanctioned inequality." *Id.* (dissenting opinion). See also *Adarand* (dissenting opinion). Among constitutionally permissible options, I remain convinced, "those that candidly disclose their consideration of race [are] preferable to those that conceal it." *Gratz* (dissenting opinion).

Accordingly, I would not return this case for a second look. As the thorough opinions below show, the University's admissions policy flexibly considers race only as a "factor of a factor of a factor of a factor" in the calculus; followed a yearlong review through which the University reached the reasonable, good-faith judgment that supposedly race-neutral initiatives were insufficient to achieve, in appropriate measure, the educational benefits of student-body diversity; and is subject to periodic review to ensure that the consideration of race remains necessary and proper to achieve the University's educational objectives. Justice Powell's opinion in *Bakke* and the Court's decision in *Grutter* require no further determinations.

The Court rightly declines to cast off the equal protection framework settled in *Grutter*. Yet it stops short of reaching the conclusion that framework warrants. Instead, the Court vacates the Court of Appeals' judgment and remands for the Court of Appeals to "assess whether the University has offered sufficient evidence [to] prove that its admissions program is narrowly tailored to obtain the educational benefits of diversity." As I see it, the Court of Appeals has already completed that inquiry, and its judgment, trained on this Court's *Bakke* and *Grutter* pathmarkers, merits our approbation….