

Use of race in admissions at law school deemed unconstitutional

University of Michigan law school can no longer weigh race as admissions factor, federal judge rules

Associated Press

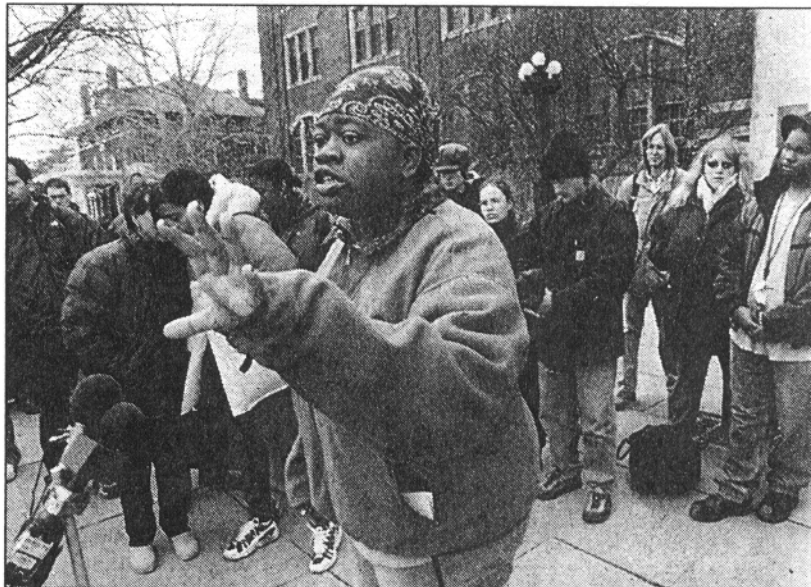
DETROIT — Dealing another setback to affirmative action, a federal judge ruled Tuesday that the use of race in admissions at the University of Michigan law school is unconstitutional.

U.S. District Judge Bernard Friedman, in a case closely watched by educators across the country, acknowledged there is a "long and tragic history of race discrimination in this country."

But he said the law school's goal of achieving a racially diverse student body is not a compelling state interest — and even if it were, the school has not narrowly tailored its use of race to achieve the goal.

"Whatever solution the law school elects to pursue it must be race-neutral," the judge said. "The focus must be upon the merit of individual applicants, not upon characteristics of racial groups."

The ruling conflicts with another federal judge's decision upholding a similar admissions policy used for University of Michigan undergraduates. The two cases could ultimately be decided by the U.S. Supreme Court.



Agnes Aleobua, a sophomore at the University of Michigan, speaks out against a ruling on race-based admissions policies on campus in Ann Arbor, Mich., on Tuesday. AP PHOTO

The university said it will appeal Friedman's ruling immediately.

"His ruling overturns over 20 years of settled law and the practices of virtually every selective college and university in the country," said Liz Berry, associate vice president and deputy general counsel. "But we are confident that we will prevail because of the overwhelming evidence that diversity is critical to education."

The ruling was praised by the Center for Individual Rights, the conservative legal group that brought

both Michigan lawsuits.

Given the millions of dollars spent by the university to defend its position, the ruling is "a huge shot across the bow for the entire higher education community," said Terence Pell, the organization's chief executive.

Affirmative action has been abandoned by public universities in Florida, Texas and California, and the use of race and gender in awarding public contracts has also come under strong legal attack around the country.

A new battleground for affirmative action

An admissions chart may be the 'smoking gun' that helps end affirmative action at the University of Michigan. It's at the center of two white students' lawsuit charging bias.

By Carol Morello
USA TODAY

ANN ARBOR, Mich. — Jennifer Gratz and Patrick Hamacher figured they were shoe-ins when they applied to the University of Michigan. A student government leader, cheerleader and homecoming queen at her suburban Detroit high school, Gratz earned a 3.9 grade point average on a 4.0 scale.

Hamacher played baseball, football and basketball at his Catholic high school in Flint. He took enough advanced placement courses to accumulate 11 college credits, and volunteered at a hospital.

But the homecoming queen and the star athlete didn't make the cut, so they enrolled in other schools. And there the story might have ended, but for an extraordinary public appeal by state legislators seeking to abolish affirmative action at Michigan's most prestigious university.

Gratz and Hamacher answered the call and became the plaintiffs in a lawsuit that could change the way public colleges around the country select their undergraduate classes.

Their suit, filed last month in U.S. District Court in Detroit, contends that Gratz and Hamacher were discriminated against in favor of black, Hispanic and Native American applicants who were admitted despite lower grades and test scores.

At the heart of the lawsuit is what opponents of affirmative action call the "smoking gun" — a chart used by the university's admissions office to decide who gets in and who doesn't. The chart demonstrates that whites and minorities with identical grades and test scores meet different fates. White applicants are rejected or deferred while minorities are automatically admitted.

The university does not dispute the authenticity of the chart, but says race is only one of several factors used to select a diverse student body. And it has hired a high-powered law firm to defend its policies.

It will be years before the case is decided and, most likely, appealed. But it already is drawing attention aff-
settlement in a New Jersey case involving a white schoolteacher who was laid off while a black teacher was kept on to maintain diversity.

Both proponents and opponents of affirmative action say the Michigan case will be a major battleground in the ongoing debate over racial and ethnic preferences.



Hamacher. Chosen from between 1,000-2,000 would-be plaintiffs.

at the University of Nevada. But because the Michigan case involves undergraduate admissions, the ramifications could be far-reaching.

A long tradition

For two decades, colleges and universities have operated with the understanding that they could consider race in admissions. In the 1978 Bakke case, the U.S. Supreme Court ruled that universities could not set aside places for minorities but could use race and ethnicity as a "plus" factor in determining admissions. But in the Hopwood case last year, the 5th Circuit Court of Appeals ruled that diversity does not justify preferential admissions based on race. The ruling effectively ended racial preferences in admissions to the University of Texas.

"Higher education treated the Hopwood case as a fluke, and has been in denial ever since," said Terence Pell, a lawyer with the conservative Center for Individual Rights and who argued the Hopwood case. He also is lead counsel in the Michigan lawsuit. "Michigan shows there are plenty of other schools that are just as egregious as Texas," says Pell. "If the court agrees with us, this is going to send shock waves through the higher education community."

University officials warn that a defeat could so drastically reduce minority admissions that it could relegate the nation's public universities.

"If you were to do away with systems like ours, you'd be overturning Brown vs. the Board of Education," said Walter Harrison, vice president for university relations, citing the



Fight on principle: Student Jennifer Gratz and Terence Pell, lead lawyer in the lawsuit against the University of Michigan.

confidential admissions charts through Freedom of Information requests.

"What they revealed was the university is deliberately engaging in outright discrimination," said Cohen, a former board member of the American Civil Liberties Union and the author of a 1985 book called *Negativity Racial Preferences: the Case Against Affirmative Action*.

"I want the university to be a just place, to live up to its ideals, not to betray them to accomplish a short-range objective," he said. "Constitutional principles are designed to prevent taking shortcuts."

Cohen's documents got the attention of Republican legislators who had unsuccessfully pushed bills to undercut affirmative action. With Cohen's grid in hand, four Republican representatives publicly solicited rejected white students and passed their names on to the Center for Individual Rights in Washington, D.C.

Between 100 and 200 students called the lawmakers offering to be plaintiffs against the university. Gratz and Hamacher were selected.

Hamacher, 18, attended Powers Catholic High School in Flint, where he played three sports, sang in the choir, and was a hospice volunteer who tended to dying people while their relatives took a break. He earned a 3.4 average and scored 28 on the ACT, putting him in the 94th

percentile.

But when he applied to the University of Michigan last year, he was first deferred, then put on a waiting list and eventually rejected. He said he never understood why until he read news accounts of the university's admissions policies.

Rejected because of color

"What was done to me was wrong," he said in his dorm room at Michigan State University, where he is enrolled as a first-term freshman in pre-med studies, hoping to one day become a pediatric oncologist. He was rejected because of the color of my skin."

Hamacher still hopes to transfer to the University of Michigan should he win his case.

Gratz, who is a junior, is pursuing the case strictly out of principle. She attends the University of Michigan's satellite campus in Dearborn, a school with its own, less stringent admissions standards. She routinely makes the dean's list.

Now 20, Gratz first applied to the Ann Arbor campus in 1985 with a grade point average of 3.9 from Southgate Anderson High School and an ACT score of 25. Her application was filled with impressive accomplishments, including membership in the National Honor Society and student council vice president. But like Hamacher, she was put on the waiting list and then rejected, dashed her lifelong dream of attending the more prestigious school in Ann Arbor.

From the beginning, she felt aggrieved, saying that she knew minority students with less impressive credentials were accepted.

"I felt I was racially discriminated against," she said in a telephone interview. "I believe I deserved an equal chance. I thought I should sue, but we didn't have the resources."

Gratz, who plans to become a school teacher, said she would sue credits if she transferred now. She expects to graduate from Dearborn. "I'm not suing for admission," she said. "I'm suing so the policy will be changed."

University of Michigan President Lee Bollinger has said the school is considering modifying its admissions practices. One idea that has been floated is to set a minimum standard, such as a 3.0 GPA, and pick applicants from a pool as if admission were a lottery jackpot.

That, however, would lower the school's standards and reputation, so officials say any changes are unlikely to be much different from the current system.

"The numbers make it sound like all we're interested in are digits," said Harrison of the grid. "Our belief is this is the only way we can achieve diversity and remain highly selective. This (diversity) strikes at the very heart of what it means to be a great public university."

How Michigan admittance standards differed

Plaintiffs in the lawsuit against the University of Michigan say that the university discriminates by using two sets of criteria for admitting undergraduates — one for white applicants and one for minorities. Below is the information that the admissions office circulated to its staff members during the 1995-96 school year to indicate what action

generally should be taken on an applicant, depending on high school grades and test scores on either the Scholastic Assessment Test (SAT) or the American College Test (ACT). Each student was accepted, rejected or deferred until vacancies opened up or until additional information, such as fall semester grades, became available.

Standards the same

High school grade point average	Score					
	ACT: 0-17 SAT: 400-840	18-19 850-920	20-21 930-1,000	22-23 1,010-1,080	24-26 1,090-1,190	27-28 1,200-1,270
4.0	Whites rejected Minorities rejected	Whites rejected Minorities accepted	Whites rejected Minorities accepted	Whites deferred Minorities accepted	Whites accepted Minorities accepted	Whites accepted Minorities accepted
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3.4-3.5	Whites rejected Minorities rejected	Whites rejected Minorities accepted	Whites rejected Minorities accepted	Whites deferred Minorities accepted	Whites deferred Minorities accepted	Whites deferred Minorities accepted
3.2-3.3	Whites rejected Minorities rejected	Whites rejected Minorities accepted	Whites rejected Minorities accepted	Whites rejected Minorities accepted	Whites deferred Minorities accepted	Whites deferred Minorities accepted
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2.8-2.9	Whites rejected Minorities rejected	Whites rejected Minorities deferred	Whites rejected Minorities deferred	Whites rejected Minorities deferred	Whites rejected Minorities deferred	Whites rejected Minorities deferred
2.6-2.7	Whites rejected Minorities rejected	Whites rejected Minorities deferred	Whites rejected Minorities deferred	Whites rejected Minorities deferred	Whites rejected Minorities deferred	Whites rejected Minorities deferred
2.4-2.5	Whites rejected Minorities rejected	Whites rejected Minorities rejected	Whites rejected Minorities deferred	Whites rejected Minorities deferred	Whites rejected Minorities deferred	Whites rejected Minorities deferred
Below 2.4	Whites rejected Minorities rejected	Whites rejected Minorities rejected	Whites rejected Minorities rejected	Whites rejected Minorities rejected	Whites rejected Minorities rejected	Whites rejected Minorities rejected

Source: University of Michigan

	29-30 1,280-1,350	31-33 1,360-1,490	34 or more 1,500-1,600
		Whites accepted Minorities accepted	Whites accepted Minorities accepted
Whites accepted Minorities accepted	Whites accepted Minorities accepted	Whites accepted Minorities accepted	Whites accepted Minorities accepted
Whites accepted	Whites accepted Minorities accepted	Whites accepted Minorities accepted	Whites accepted Minorities accepted
	Whites accepted Minorities accepted	Whites accepted Minorities accepted	Whites accepted Minorities accepted
	Whites deferred Minorities accepted	Whites deferred Minorities accepted	Whites deferred Minorities accepted
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