

Judge's ruling on affirmative action sends shockwaves across the nation

WASHINGTON — In one of the most sweeping rulings yet against affirmative action at state colleges, a federal judge in Georgia has set up a potent new test of a 22-year-old Supreme Court ruling that seemed to permit the use of race in selecting incoming freshmen.

U.S. District Judge B. Avant Edenfield of Savannah declared that the court's famous Bakke decision in 1978 should never have been interpreted as approval of racial preference to achieve "diversity" among students.

"A majority of the court has never formally announced whether diversity, particularly student diversity in higher education, does or does not" qualify as a sufficient reason to justify picking some student entrants on the basis of race, the judge said.

In the Bakke decision, the Supreme Court struck down a California medical school's admissions quota for minority students, but the controlling opinion by Justice Lewis F. Powell Jr. declared that "a diverse student body" was a valid educational goal and could be promoted by using race as a "plus" factor supporting minority admissions.

Edenfield, besides rejecting that conclusion, went on to say — as no other federal court has — that the whole idea of "diversity" as a valuable educational policy goal has no support in law or in reasoning, and never has had.

The concept of diversity, the judge added, is so subject to manipulation "that it can instantly be conscripted to march in any ideologue's army." No college admissions plan, he said, could be crafted in a constitutional way to promote racial diversity.

The judge's conclusions directly contradict the way countless state institutions have interpreted the high court's Bakke decision over the two decades since it was announced. Among those that did so was the University of Georgia.

But, in his ruling, Edenfield nullified the university's use of race as one among other "plus" factors in the choice of the final 10 percent to 15 percent of each year's entering freshman class.

The University of Georgia, vowing to continue to seek ways to encourage minority student admissions, said it was studying the ruling and has not yet decided on

an appeal. Civil rights lawyers said it was likely to be appealed to the 11th U.S. Circuit Court of Appeals, based in Atlanta.

Terence J. Pell, chief executive officer of the Center for Individual Rights, a conservative legal advocacy group that is involved in several of those cases, called Edenfield's ruling a "devastating" defeat for affirmative action.

Although binding only on the University of Georgia, Pell said the decision could directly affect the fate of race-based admissions programs at the University of Michigan and at its law school, and at the University of Washington Law School — programs under review in lower courts in cases filed by Pell's group.

Theodore Shaw, associate director of the National Association for the Advancement of Colored People Legal Defense Fund, a liberal civil rights advocacy group that represents black students in most of the pending cases, said Edenfield "wants to close the door on affirmative action in higher education."

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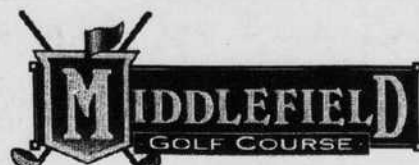
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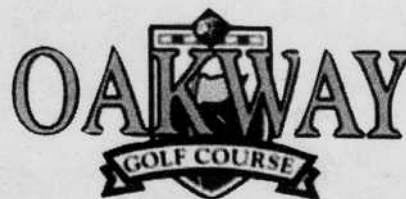
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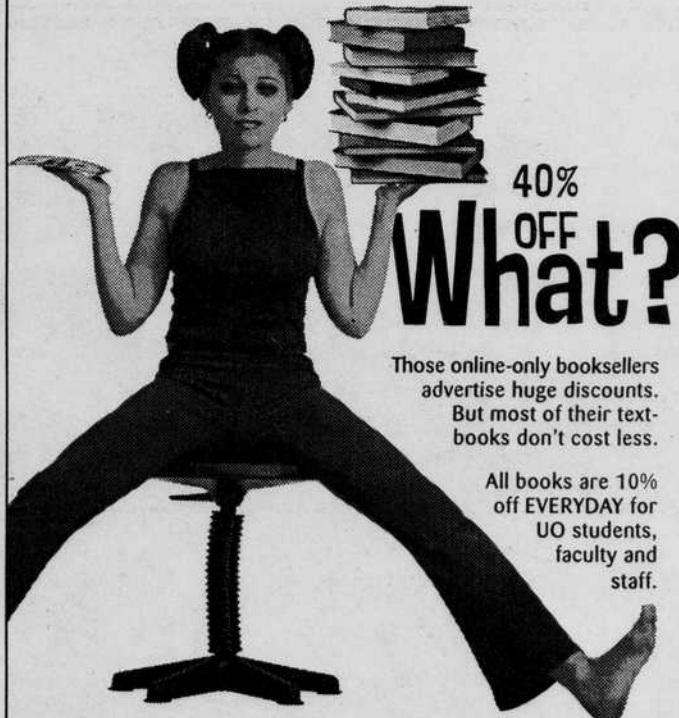
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