

High court clearly split about affirmative action

Allen Pusey

The Dallas Morning News (KRT)

WASHINGTON — A clearly divided U.S. Supreme Court heard arguments Tuesday for an end to race-sensitive college admissions, part of a searing debate — at times between justices — on diversity, school standards and even the nation's military.

In the first major challenge to affirmative action on campuses in 25 years, the justices revealed a deep and even division, suggesting that the future of affirmative action may well turn on the vote of Justice Sandra Day O'Connor.

In back-to-back proceedings, a lawyer for three white students argued that they were turned down for admission to the University of Michigan because of policies that favor minority students over equally qualified white applicants.

Two of the students, Jennifer Gratz, 26, and Patrick Hamacher, 24, had applied as undergraduates. Barbara Grutter, 49, had applied to Michigan's law school.

All three watched their case unfold near the front of a crowded court gallery that included the Rev. Jesse Jackson, Rep. John Conyers, D-Mich., and Sen. Edward Kennedy, D-Mass.

Outside, an estimated 5,000 demonstrators — many of whom had queued up late Monday — held an orderly and festive rally in support of affirmative action as the proceedings continued in the court.

The cases mark the first serious

test for affirmative action since the 1978 decision in Regents of the University of California v. Bakke. That 5-4 decision struck down racial quotas but allowed narrowly focused race-based admissions programs designed to accomplish a "compelling" state interest.

The university has acknowledged that it considers the race of applicants in an effort to achieve a "critical mass" of racial diversity on its campus. Racial diversity is not a compelling state interest and amounts to a racial quota, said Kirk Kolbo, who represented the students.

"Race, because of the Constitution, should never be a factor," Kolbo said.

Kolbo was challenged almost immediately by Justice O'Connor, who pointed out that race-based admissions had been approved by the court to remedy past discrimination. She asked whether "diversity" could be seen as a measure of progress.

"In this case, diversity is not so much a measure of anything but an end in itself," Kolbo said. "That is unconstitutional."

Kolbo was joined on behalf of the White House by Solicitor General Theodore Olson, who asked the court to reconsider Bakke. He said the Michigan system helped perpetuate stereotypes by creating "a separate path and a separate door for preferred minorities."

"There are lots of race-neutral programs out there that don't discriminate," Olson said.

Maureen Mahoney defended the Michigan law school admissions process as being highly individualized. She said race was only one of many factors — such as job experience, socioeconomic status and leadership potential — used to evaluate applicants to the school. She said the law school, rated as one of the nation's best, admits only qualified students and has no interest in admitting a minority who might not succeed.

Justice Scalia suggested that the school simply lower its standards.

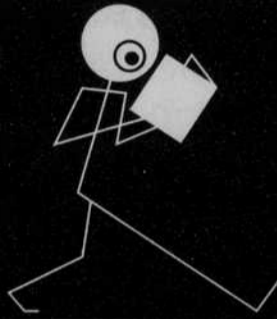
The university "has decided to create an elite law school accepting only the best students, knowing full well that the result will be to exclude minorities," he said. "If ... (diversity) is important enough to override a constitutional prohibition on discrimination, then it should be important enough to decide not to have a super-duper law school."

Justice O'Connor and Justice John Paul Stevens said they were concerned, in particular, with a "friend of the court" brief in support of Michigan filed by 29 high-ranking military officers. In the brief, the officers describe the importance of affirmative action to efforts to recruit, train and keep minority officers in uniform. Justice O'Connor asked whether Kolbo's complaints about affirmative action would extend to the nation's military academies.

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