



**National Association for
College Admission Counseling**

Guiding the way to higher education

Diversity in Higher Education

NACAC has collected these resources for counseling and admission professionals in pursuit and maintenance of diversity on campus. This document summarizes actions in federal courts on diversity in higher education, as well as executive ordered, legislative and constitutional restrictions executed in individual states.

In Federal Courts

Although the University of Michigan cases are the first to be heard by the Supreme Court since *Bakke*, there have been several major cases in federal courts regarding the use of race as a factor in college admission.

University of Michigan

The plaintiffs Gratz and Grutter sued the University of Michigan in 1997 in response to the university's undergraduate and graduate admission policies, respectively. The Sixth Circuit Court of Appeals ruled in favor of the University of Michigan in May 2002, and upon appeal by the plaintiffs, the Supreme Court agreed to hear the case in December 2002. Oral arguments were heard April 1, 2003. On June 23, 2003 the Supreme Court ruled in favor of using race as one factor among many, and upheld the contention in *Bakke* that diversity is a compelling state interest. However, the Court ruled the university's undergraduate admission policy using a point system as unconstitutional.

- The University of Michigan's [information page](#) about the cases
- The Sixth Circuit Court of Appeals [decision](#)
- Supreme Court's decisions in the undergraduate *Gratz* case and the law school *Grutter* case.

University of Georgia

Three plaintiffs sued the University of Georgia in 1999 for the university's undergraduate admission policy. A federal district court ruled in 2000 in favor of the plaintiffs, ruling that the university's point index admission policy was unconstitutional. Upon appeal by the university, The Eleventh Circuit Court of Appeals upheld the district court's decision in 2001. Read the Eleventh Circuit Court of Appeals decision in *Johnson v. University of Georgia Board of Regents*.

University of Washington

Three students filed suit against the university in 1997 for its law school admission policy. The Ninth Circuit Court of Appeals in 2000 upheld a lower court's decision that race can be used as a factor in college admission decisions. The circuit court's opinion upholds the principle of *Bakke* that diversity in higher education is a compelling state interest. The Supreme Court refused to

hear an appeal by the plaintiffs in 2001. Read the Ninth Circuit Court of Appeals decision in *Smith v. University of Washington*.

University of Texas

Cheryl Hopwood and three other students sued the state in 1992 for the University of Texas Law School's admission policy. A federal district court ruled in 1994 that the university's dual-track admission process was unconstitutional but that diversity remained a compelling interest. The Fifth Circuit Court of Appeals overturned the district court's ruling in 1996, stating diversity is not a compelling interest. A number of subsequent appeals and rulings ended with a 2000 decision by the Fifth Circuit Court upholding the decisions in favor of the plaintiffs but reaffirming the opinion in *Bakke*.

- The University of Texas's information page about the case.
- The Fifth Circuit Court of Appeals decision (2000) in *Hopwood v. State of Texas*.

In the States

The following states have court ordered, executive ordered, legislative or constitutional restrictions on the use of race in college admission.

California

Proposition 209, a ballot initiative approved by 54% of California voters in 1996, outlaws the use of race as a factor in college admission decisions at all institutions of higher education in the state. Click [here](#) to read the full text of the proposition. In response to this prohibition, the University of California system instituted a plan to automatically admit the top 4% of California high school graduates to one of the eight UC campuses.

Florida

Governor Jeb Bush launched his One Florida initiative in 1999, which included the Equity in Education plan and the Talented 20 plan. The Equity in Education plan eliminates race and ethnicity as factors in college admission decisions, and the Talented 20 plan automatically admits the top 20% of Florida high school graduates to any school within the state system. All colleges and universities in Florida are also subject to the decisions of the Eleventh Circuit Court of Appeals.

Georgia

Two decisions by the Eleventh Circuit Court of Appeals in 2001 (*Wooden, et al, v. University of Georgia* and *Johnson v. Board of Regents*, see above) affirmed that the university's dual-track and point index admission systems, both favoring non-white applicants, were unconstitutional. Eleventh Circuit Court decisions take precedence in **Alabama, Georgia and Florida**.

Maryland

A student filed suit against the University of Maryland College Park in 1991, disputing a scholarship program for black students. A federal district court ruled that the program was justified as part of a court-ordered desegregation plan. The Fourth Circuit Court of Appeals upheld this decision in 1993, after the university demonstrated present evidence of discrimination to justify the use of the race-based scholarship. However, the court unanimously overturned its decision the following year. Upon appeal by the university, the Supreme Court denied to hear the case. Colleges and universities in Maryland, **Delaware, Virginia, West Virginia, North Carolina and South Carolina** must comply with the 1994 Fourth Circuit Court of Appeals decision in *Podberesky v. Kirwan*.

Texas

While the decisions in the Hopwood cases do not explicitly ban the use of race in college admission decisions, several have characterized such admission systems as “suspect,” and in possible violation of the constitution. The legislature in 1998 passed a bill providing automatic admission to the University of Texas system for Texas students graduating in the top ten percent of their high school class.

Washington

Although the Ninth Circuit Court of Appeals ruling in *Smith v. University of Washington* (see above) allows the use of race in college admission decisions and endorses diversity as a compelling interest, state institutions in Washington are banned from using race-sensitive admission because of I-200. Voters approved I-200 in 1998, a ballot initiative which explicitly prohibits discrimination or preferential treatment on the basis of race in employment and education. California is also in the ninth circuit but must comply with its constitution as amended by Proposition 209. However, the circuit court’s decision in Smith does apply to **Oregon, Idaho, Montana, Nevada, and Arizona**.