SUPREME COURT OF THE UNITED STATES

No. 02–516

JENNIFER GRATZ AND PATRICK HAMACHER, PETITIONERS *v.* LEE BOLLINGER ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 23, 2003]

JUSTICE THOMAS, concurring.

I join the Court's opinion because I believe it correctly applies our precedents, including today's decision in *Grutter* v. *Bollinger*, *post*, p. ___. For similar reasons to those given in my separate opinion in that case, see *post,* p. ___ (opinion concurring in part and dissenting in part), however, I would hold that a State's use of racial discrimination in higher education admissions is categorically prohibited by the Equal Protection Clause.

I make only one further observation. The University of Michigan's College of Literature, Science, and the Arts (LSA) admissions policy that the Court today invalidates does not suffer from the additional constitutional defect of allowing racial "discriminat[ion] among [the] groups" included within its definition of underrepresented minorities, *Grutter*, *post*, at 24 (opinion of the Court); *post*, at 27 (THOMAS, J., concurring in part and dissenting in part), because it awards all underrepresented minorities the same racial preference. The LSA policy falls, however, because it does not sufficiently allow for the consideration of nonracial distinctions among underrepresented minority applicants. Under today's decisions, a university may not racially discriminate between the groups constituting the critical mass. See *ibid.; Grutter, post*, at 17 (opinion of the Court) (stating that such "racial balancing . . . is pat-

ently unconstitutional"). An admissions policy, however, must allow for consideration of these nonracial distinctions among applicants on both sides of the single permitted racial classification. See *ante*, at 24 (opinion of the Court); *ante*, at 1–2 (O'CONNOR, J., concurring).