

The Florida Bar
President's Special Task Force to Study Enhancement of Diversity
in the Judiciary and on the JNC's

APPENDICES TO TASK FORCE REPORT

1. *The Integrity of Our Judiciary Depends on Diversity*, Professor Aaron Taylor, April 2014
2. Demographics of Florida's State Judiciary
3. Task Force Surveys: Scholars, Charts, and Tables
 - (a) Biographical Sketch of Jay Rayburn, Ph.D.
 - (b) Biographical Sketch of Minna Jia, Ph.D.
 - (c) Charts by Minna Jia, Ph.D. for Task Force Consideration at its April 30, 2014 Meeting
 - (d) Frequency Tables by Jay Rayburn, Ph.D. for Task Force Consideration at its April 30, 2014 Meeting
4. Full Text of Written Responses to Open-Ended Survey of JNC Members, JNC Applicants, and The Florida Bar General Membership.
5. Lists of Slates of Candidates for JNC Appointments and Gubernatorial Resolution of Their Candidacies.
6. Subcommittee's Report - Recommendations Regarding Recruiting and Mentoring JNC Applicants
7. Subcommittee Report on Local Bar Leader's Assistance for Newly Appointed Diverse Judges with their Initial Elections
8. The Florida Bar's 2004 "Diversity in the Legal Profession Report"
9. *Where the Injured Fly for Justice*, A Summary of the Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission, The Florida Bar Journal, 1991
10. *Schuette v. Coalition to Defend Affirmative Action*, 133 S.Ct. 1633, 1648, 2013 WL 1187585 (March, 2014)

11. Brief of ABA *In re Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 01—1447) (2001) WL 34624916.
12. The Brennan Center for Justice – Executive Summary of Recommendations as Adopted by the Task Force

The Integrity of our Judiciary Depends on Diversity

By Aaron N. Taylor

Public trust and confidence in the judiciary is essential to the continued functioning of our society. Notions of fairness cut to the heart of our adversarial system of justice—one that requires impartial arbiters to foster the resolution of disputes in ways that the public will accept as legitimate. Unfortunately, reams of research and anecdotal evidence show that perceptions of judicial fairness and impartiality vary along racial and ethnic lines.¹ Black and Hispanics tend to have less confidence in the courts than whites. The sources of these differing perspectives are multifaceted; but the lack of diversity among judges undoubtedly serves as a major contributing factor.

Florida is one of the most racially and ethnically diverse states in the country. This diversity contributes to the character and culture of the state and is a primary driver of its vast growth. People of color make up 43% of the population, and projections have the state reaching “majority minority” status within a decade.

Unfortunately, Florida’s judiciary is woefully unrepresentative of its population. Of the 981 judges serving in the state court system, only 156 (or 16%) of them are people of color. This proportion has remained relatively stagnant since 2000, when there was optimism generated by the “unprecedented” number of judges of color having been appointed by Lawton Chiles and, to a lesser extent, Jeb Bush. This optimism was warranted. The proportion of county and circuit court judges of color almost doubled between 1990 (6%) and 2000 (11%). At the court of appeals level, the proportion quadrupled, from 4% in 1990 to 15% in 2000.

Had these trends continued, Florida’s judiciary would be a compelling reflection of the population it serves. Unfortunately, the trends have mostly stalled. In the 14 years since that period, the proportion of county and circuit court judges has increased a mere 5%, to 16%. At the court of appeals level, the proportion has actually fallen two points, to 13%.

Based on county-level Census data, judges of color are underrepresented in every judicial circuit, ranging from a deficit of 11% in the 7th Circuit (Flagler, Putnam, St. Johns, and Volusia counties) to deficits of 42% in both the 9th (Orange and Osceola) and 11th (Dade) circuits. The same trend is found at the court of appeals level, with deficits ranging from 13% in the First District (serving counties in the Panhandle and North Florida) to a whopping 63% in the Third District (serving Dade and Monroe counties). The only glimmer is on the Supreme Court, where three of the seven justices (43%) are people of color.

The lack of diversity does not end with race and ethnicity. Women account for half of the state’s population, but only 34% of the state’s judges. Even worse, women of color make up 22% of the state’s population, but only 8% of judges.

The demographics of Florida’s judiciary are a reflection, if not a continuation, of the state’s history of discrimination and exclusion. Previously closed pathways have been opened in principle, but the disparities we see throughout society confirm the uncomfortable reality that equality in principle is not necessarily equality in fact. But in a twist dripping with irony, the legacy of the state’s unfortunate past (and troubling present) is used to justify the judiciary’s lack of diversity.

¹ http://www.flcourts.org/gen_public/family/diversity/bin/perceptions2.pdf

A common refrain is that judicial demographics reflect the pool from which judges are selected. In other words, if you look the demographic make-up of the Florida Bar, the judiciary aligns closely. This argument is surely right on one thing: the lawyer ranks in Florida are similarly devoid of diversity. People of color make up only 16% of the Florida Bar, similar to their proportion of the judiciary. But the argument conveniently misses a fundamental point: the judiciary serves everybody. Not just lawyers. Thus, the lack of diversity among lawyers is irrelevant to the practical and moral necessity that the judiciary reflects the people it serves. Everybody.

Moreover, using the lack of lawyer diversity to justify the lack of judicial diversity is unbearably counterproductive. Implicit in such justifications is a suggestion that there simply are not enough qualified lawyers of color to fill positions on the bench. This suggestion fails in the face of ample evidence that lawyers of color face disadvantages unrelated to merit in being considered for judgeships. Governor Bush once acknowledged that lawyers of color “have not received a fair shot” in the scrum for judicial appointments, and he concluded, “I do not think they will receive one now.”²

Unfortunately, Bush’s prescience has been accurate. Diversity among the Judicial Nominating Commissions remains lacking, as do the pools of lawyers who apply for judgeships. The pool of potential judicial nominees often reflects the extent of one’s social networks, not necessarily one’s talent or ability. Exposure to the nominating process is unevenly dispersed, lowering the odds for someone without the right connections or right politics. And with the unprecedented manner in which Rick Scott has rejected nominations sent to him by the JNCs, the odds of a qualified lawyer of color navigating the process from application to appointment seem exceedingly slim, irrespective of his or her fitness for the job.

Increasing the diversity of the state’s judiciary is of critical importance. In doing so, we must move beyond excuses and rationalizations and make concerted efforts to ensure that qualified lawyers of color are encouraged to pursue judicial nominations and actually have a fair shot of being selected. It can be done. The integrity of our justice system depends on it.

The author is a professor at Saint Louis University School of Law and a member of the Florida Bar.

² http://www.flcourts.org/gen_public/family/diversity/bin/bias_study2.pdf

State Courts System
Demographics for Judicial Officers
1/22/14

By Gender and Race	Male					Female					Grand TOTAL
	White Not Hispanic	Black Not Hispanic	Asian/Pacific Islander	Hispanic	Subtotal Male	White Not Hispanic	Black Not Hispanic	Asian/Pacific Islander	Hispanic	Subtotal Female	
Supreme Court	3	1		1	5	1	1			2	7
District Court of Appeal	43	2		1	46	10	4		1	15	61
Circuit Court	352	18	1	31	402	156	8	1	27	192	594
County Court	174	14		10	198	86	18	1	16	121	319
					651					330	981
					66.4%					33.6%	

By Race	White Not Hispanic	Black Not Hispanic	Asian/Pacific Islander	Hispanic	Grand TOTAL
Supreme Court	4	2	0	1	7
District Court of Appeal	53	6	0	2	61
Circuit Court	508	26	2	58	594
County Court	260	32	1	26	319
Totals	825	66	3	87	981
	84.1%	6.7%	0.3%	8.9%	

Note: 5 vacancies in Circuit Court and 3 vacancies in County Court



FLORIDA STATE UNIVERSITY

[Faculty & Staff Directory](#) » Jay Rayburn, Ph.D.



Jay Rayburn, Ph.D.

Phone:

(850) 644-8750

Fax:

(850) 644-8642

Email:

jrayburn@fsu.edu

Office:

UCC 3142

Associate Professor

Education

- BS, 1970: Murray State University, Speech and Political Science
- MS, 1973: Murray State University, Broadcasting
- PhD, 1977: Florida State University, Mass Communication

Research Interests

Media Uses and Gratifications; Effects of New Technologies; Public Relations “Effects”

Teaching Interests

Public Relations, Research Methods, Media Uses and Effects, Communications Law

Physical Address: 4100 University Center, Building C Tallahassee, FL 32306-2651

Mailing Address: PO Box 3062651, Tallahassee, FL 32306-2651

Dean's Office: (850) 644-9698 | **Student Advising:** (850) 644-7278 | **Fax:** (850) 644-0611

[GO](#)[Home](#)[Projects](#)[Florida Annual Policy Survey \(FAPS\)](#)[Services](#)**People**[■ Faculty](#)[■ Staff](#)[■ Visiting Scholars](#)[Job Opportunities](#)[Contact Us](#)[Quick Links »»](#)**FACULTY**[Home](#)**Dr. Minna Jia****Director****Survey Research Laboratory
College of Social Sciences and Public Policy**

Bellamy 41

850.645.5603

Email: mjia2@fsu.edu**Ph.D.**, Politics and International Relations, University of Southern California, 2012

- Research Fields: Comparative Politics, International Political Economy, and Methodology
- Dissertation: "Political Identity and Political Participation: China's Post-80s Generation"

M.A., Entrepreneurial Culture and Management, Peking University, China, 2003**B.A.**, Economics, Peking University, 2000**B.A.**, Political Science and Public Administration, Peking University, 2000

Dr. Minna Jia is the director of the FSU Survey Research Laboratory and faculty member at the College of Social Sciences and Public Policy. Dr. Jia received her double Bachelors in both Political Science and Economics in 2000 and an MA in Political Science in 2003 from Beijing University. She received her doctorate in Political Science



and International Relations from the University of Southern California in 2012. Before joining FSU, Dr. Jia worked for private sectors in California.

Dr. Jia has conducted surveys for World Value Survey, World Health Organization and other agencies. She has also worked closely with the University of Michigan on survey research training programs for several years. Dr. Jia spent 4 months at the Carter Presidential Center in 2007 as an intern in the China program. Dr. Jia's current research interests are in the area of program evaluation for state government agencies and Sino-US relations. Her most recent work is in the area of public opinions and political participation of young generation in China.

Response Rate of the Survey

SAMPLE	# SURVEYS SENT	SURVEYS RETURNED	RESPONSE RATE
General/Diverse Members	12,975 *	1582	12.2%
JNC Applicants	442	135	30.5%
JNC Members	204	101	49.5%

Perceptions of JNC and Application Process Comparisons by Samples, and by ethnic groups

1. Almost all the JNC members (98%) strongly agree or agree that JNC are part of a process that helps achieve judicial selections based upon merit. However, only 68 percent of general groups agree with this statement.

Chart 1. Judicial Nominating Commissions are part of a process that helps achieve judicial selections based upon merit

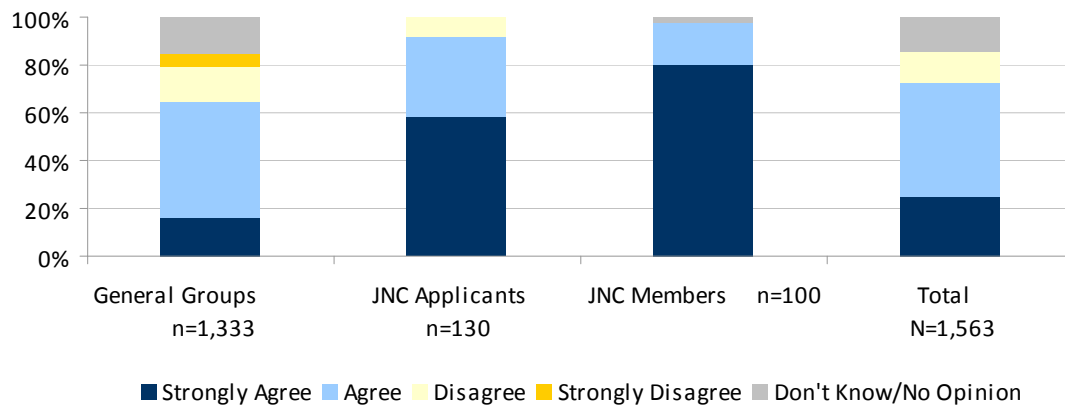
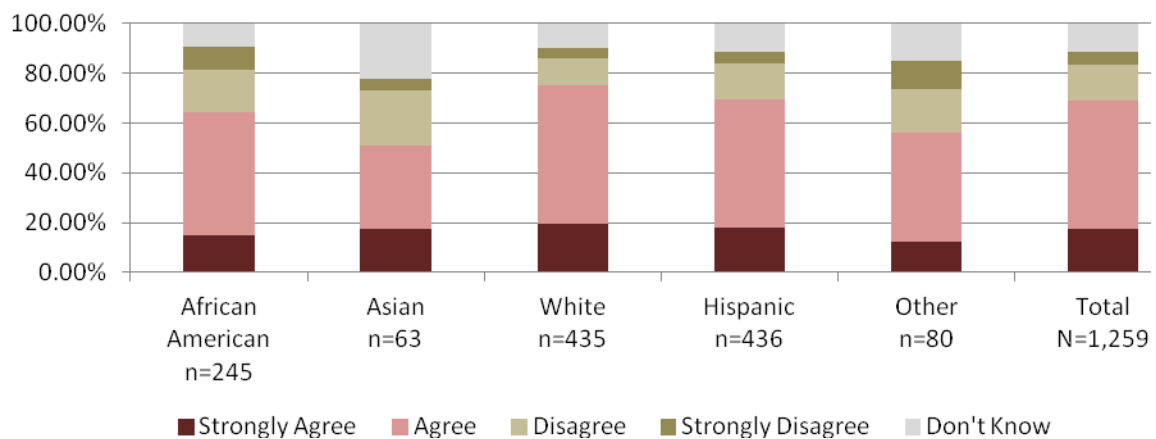
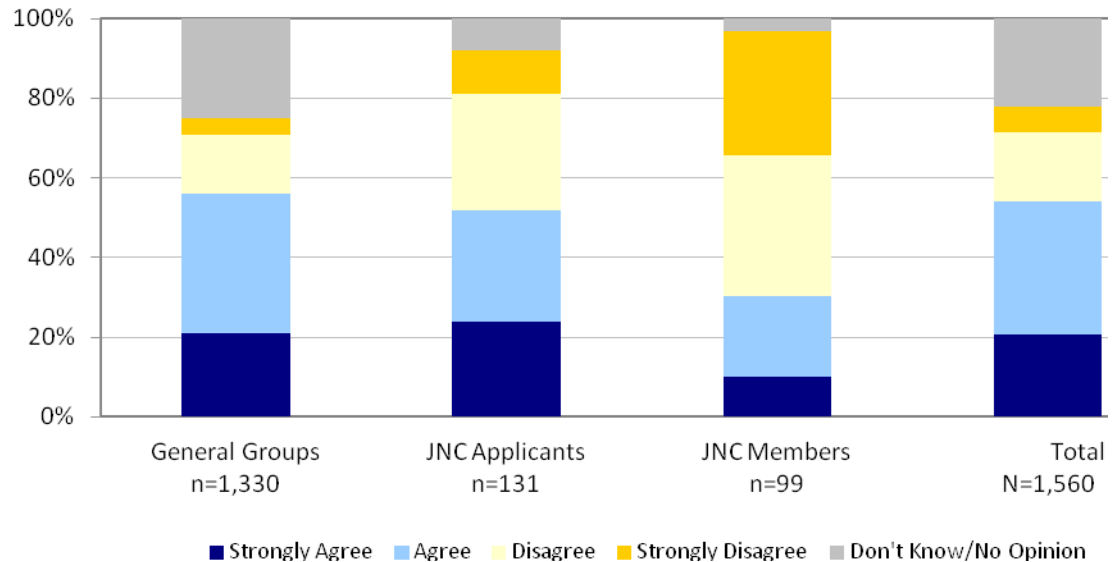


Chart 1.1 Judicial Nominating Commissions are part of a process that helps achieve judicial selections based upon merit; General Groups

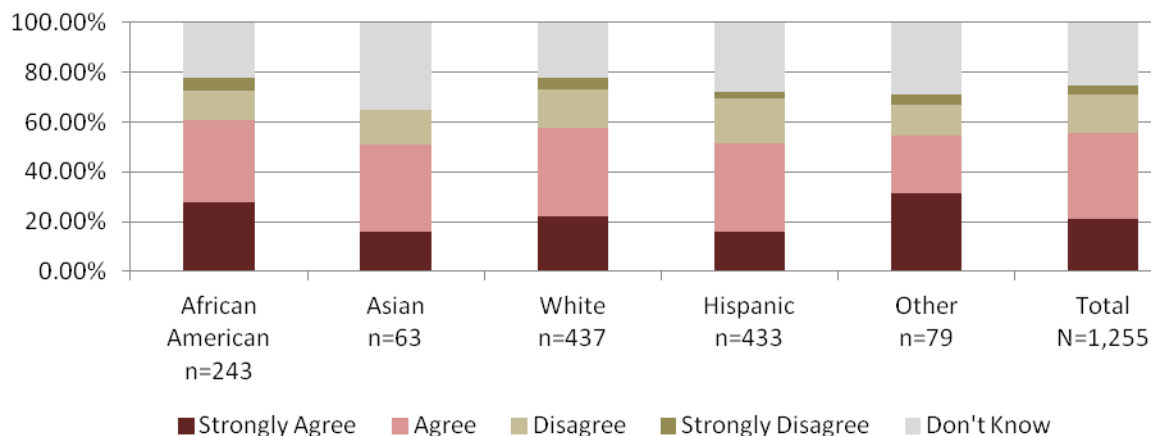


2. More than half of the total respondents strongly agree or agree that strong political overtones compromise the current judicial nominating process. Among them, only 30% of JNC members agree with this statement.

Chart 2. Strong political overtones compromise the current judicial nominating process



2.1 Strong political overtones compromise the current judicial nominating process; General Groups



- Fifty-seven percent of JNC applicants agree with the statement that too often, partisan politics are more important than merit in determining who is selected from a JNC appointment while only 21% of JNC members agree with this statement. Over one half of the general membership/ethnic group also have the view that partisan political plays more important role than merit in determining the JNC appointment selections.

Chart 3. Too often, partisan politics are more important than merit in determining who is selected for a JNC appointment

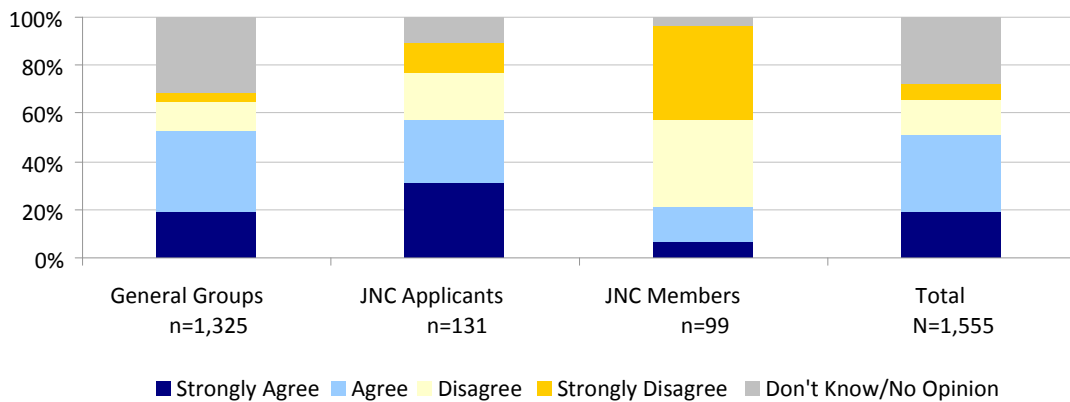
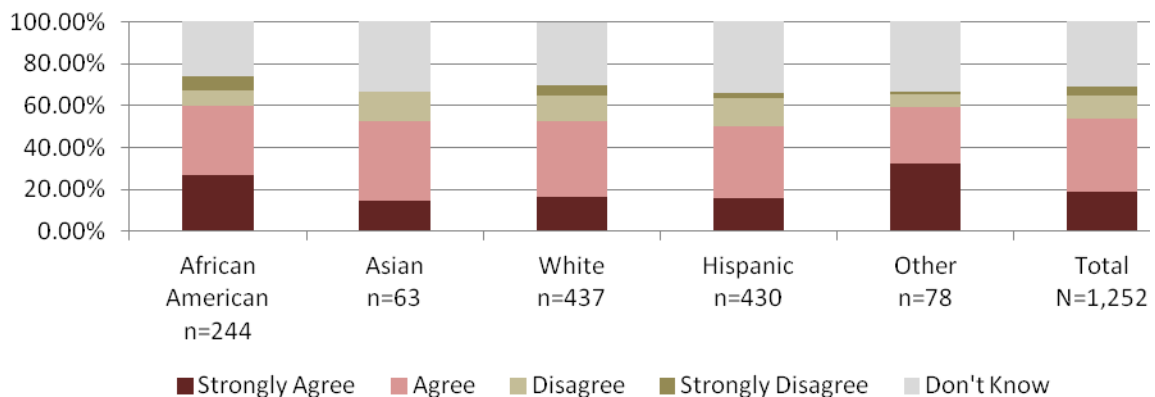


Chart 3.1 Too often, partisan politics are more important than merit in determining who is selected for a Judicial Nominating Committee appointment; General Groups



4. Most of the respondents in all three groups agree overall that the current JNC process is preferable elections. Still, JNC members greatly agree with this statement (88%).

Chart 4. The current Judicial Nominating Commission process is preferable to elections

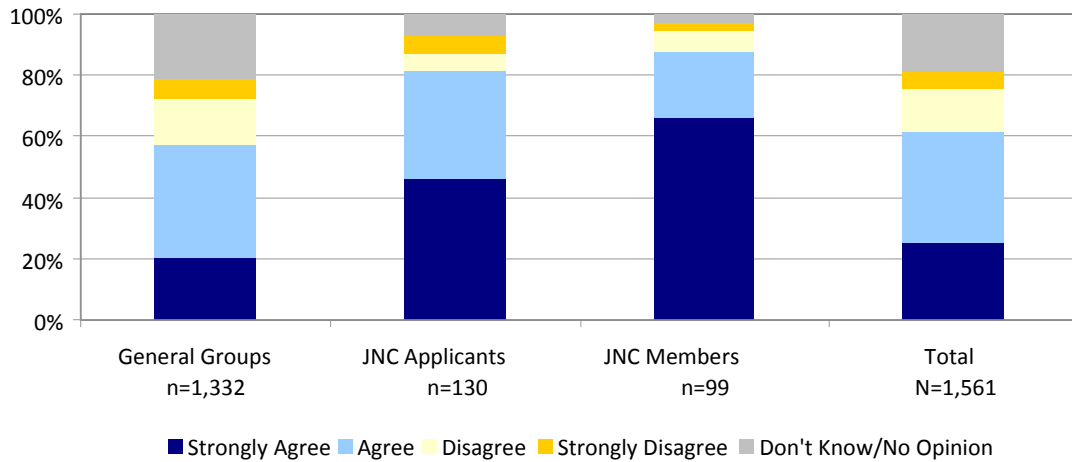
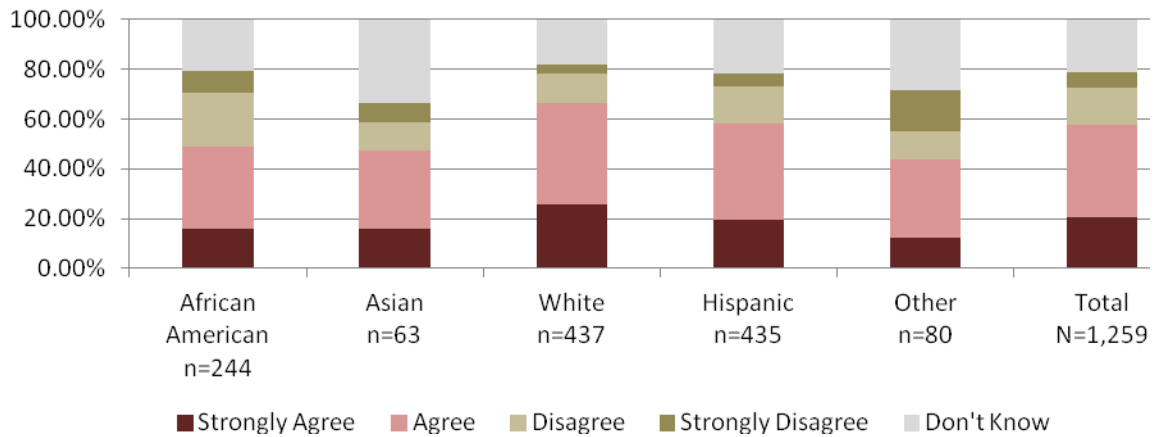


Chart 4.1 The current Judicial Nominating Commission process is preferable to elections; General Groups



5. Almost all the JNC members (98%) strongly agree or agree that JNC help to insulate the process of nominating judges from partisan politics. However, fewer JNC applicants (93%) agree with this statement and only one half of the general membership/ethnic group respondents agree with this statement.

Chart 5. Judicial Nominating Commissions help to insulate the process of nominating judges from partisan politics

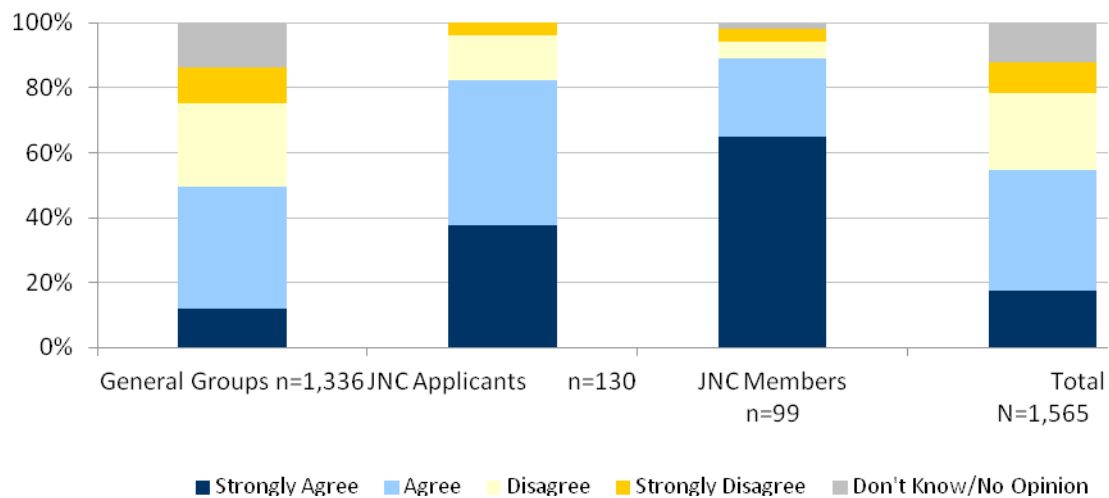
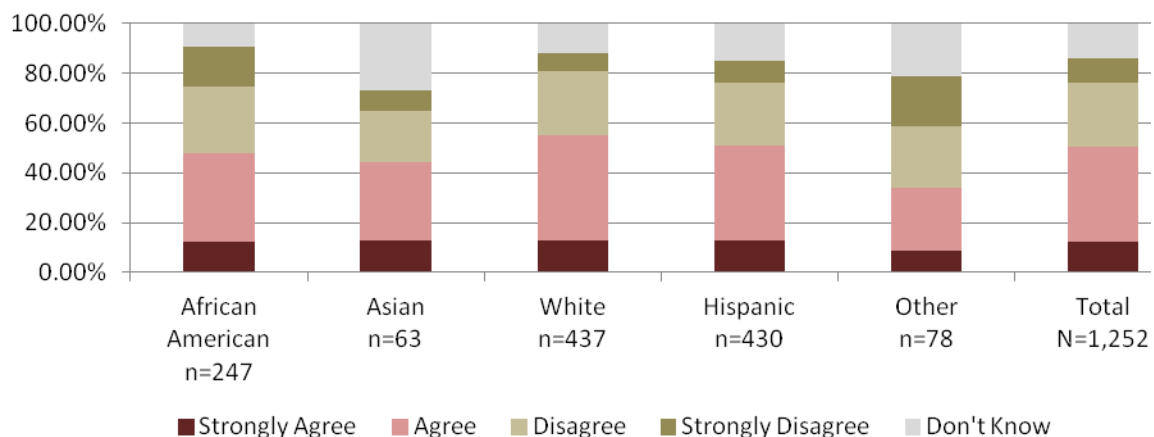


Chart 5.1 Judicial Nominating Commissions help to insulate the process of nominating judges from partisan politics; General Groups



6. Not surprisingly, 91% of JNC members agree that the current JNC process is working well while less than 40% of the total respondents of all three groups agree with this statement. JNC applicants are least satisfied with the JNC process.

Chart 6. The current JNC process is working well; I just choose not to seek a JNC appointment

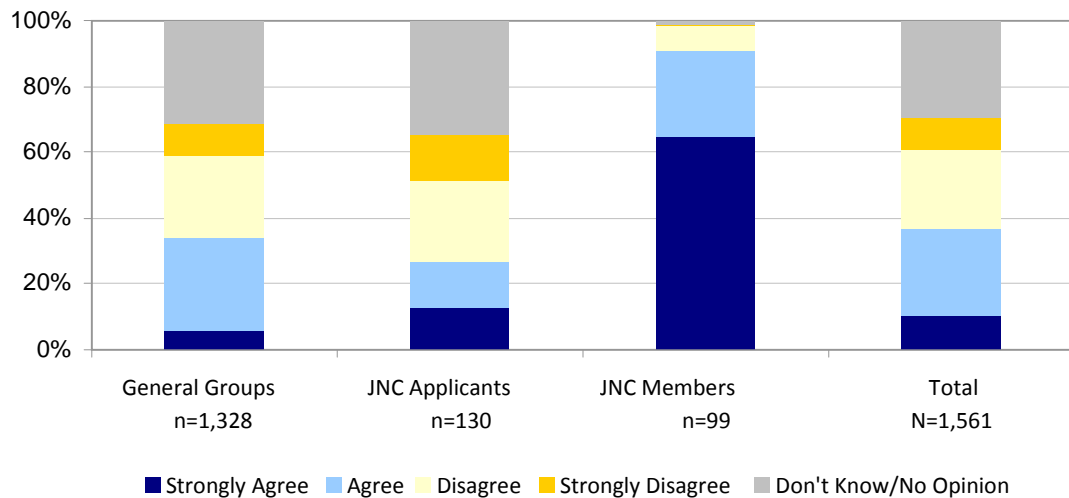
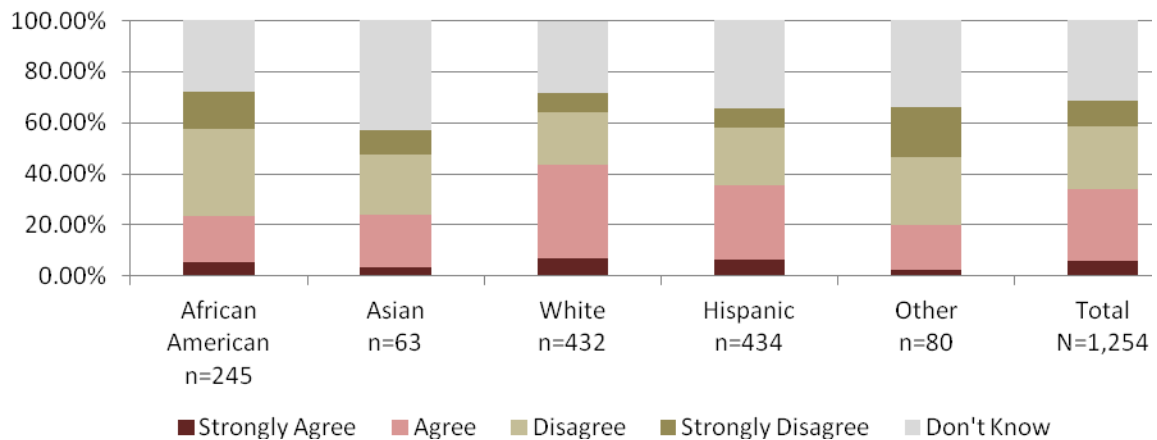


Chart 6.1 The current Judicial Nominating Commissions process is working well; I just choose not to seek a JNC appointment; General Groups



7. In general, slightly over one third of the respondents (35%) agree that lawyers from diverse or ethnic groups do not have the same chance as other candidates to be chosen for JNC membership. However, most of JNC members do not agree with this.

Chart 7. Lawyers from diverse racial or ethnic groups do not have the same chance as other candidates to be chosen for JNC membership

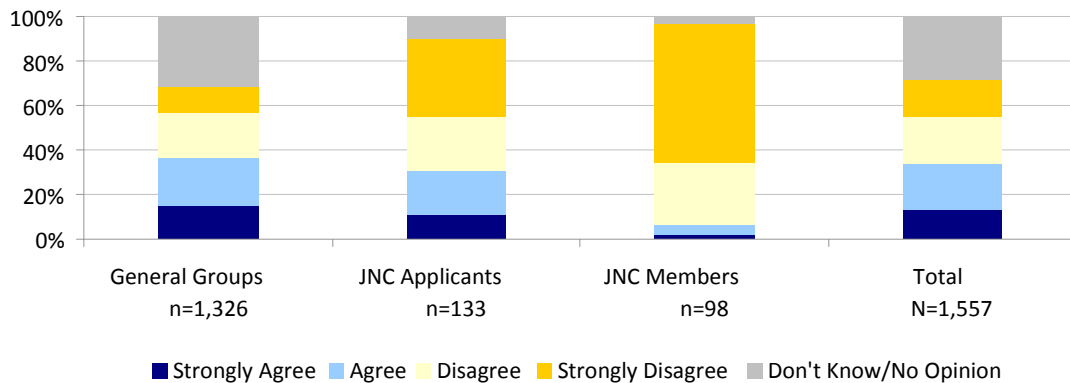
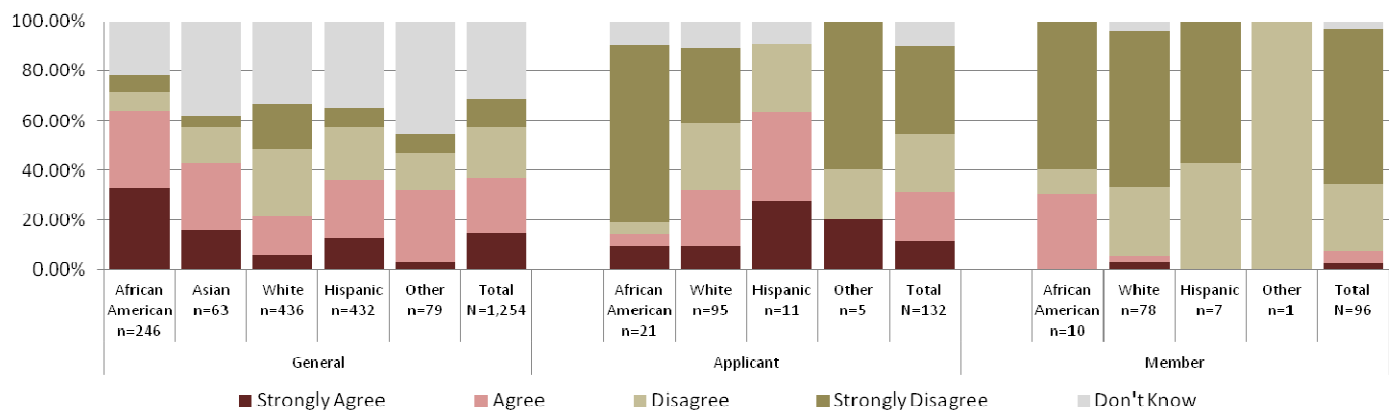
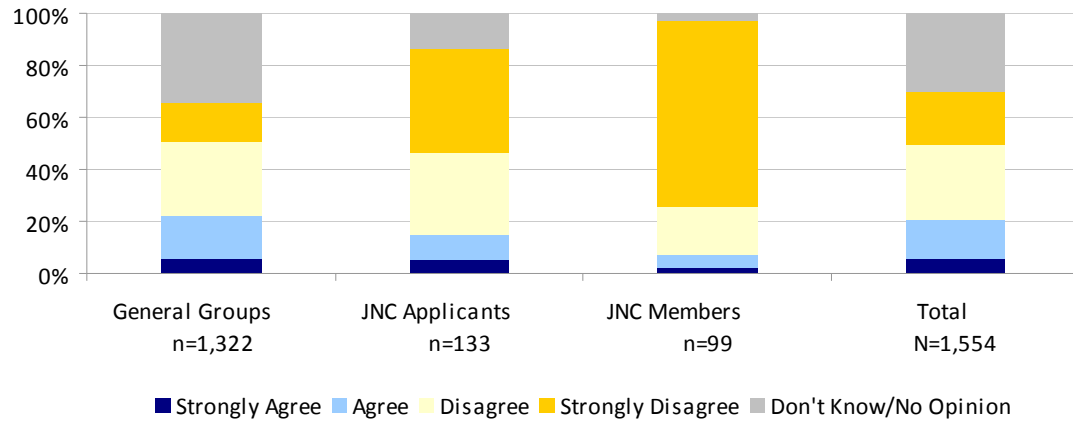


Chart 7.1 Lawyers from diverse racial or ethnic groups do not have the same chance as other candidates to be chosen for JNC membership.



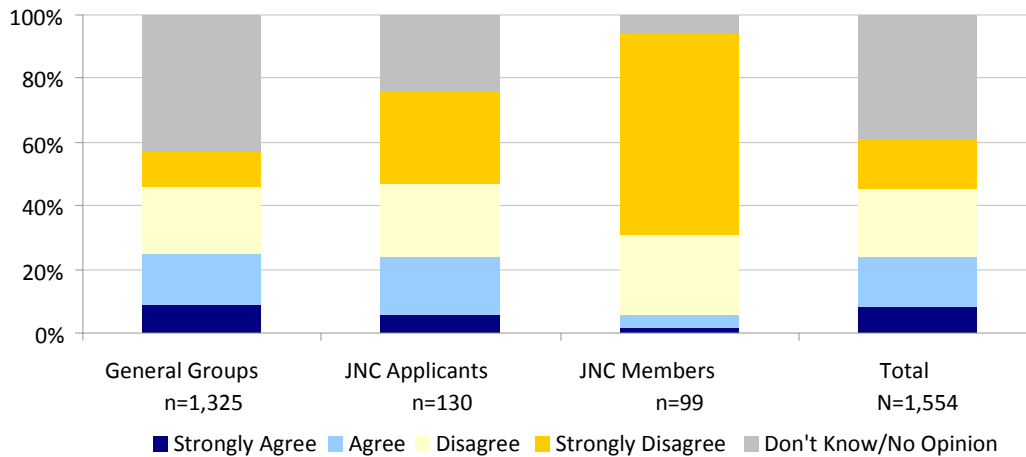
8. In general, respondents of all three groups do not agree that lawyers who are women do not have the same chance as men to be chosen for JNC membership.

**Lawyers who are women do not have the same chance as men
to be chosen for JNC membership**



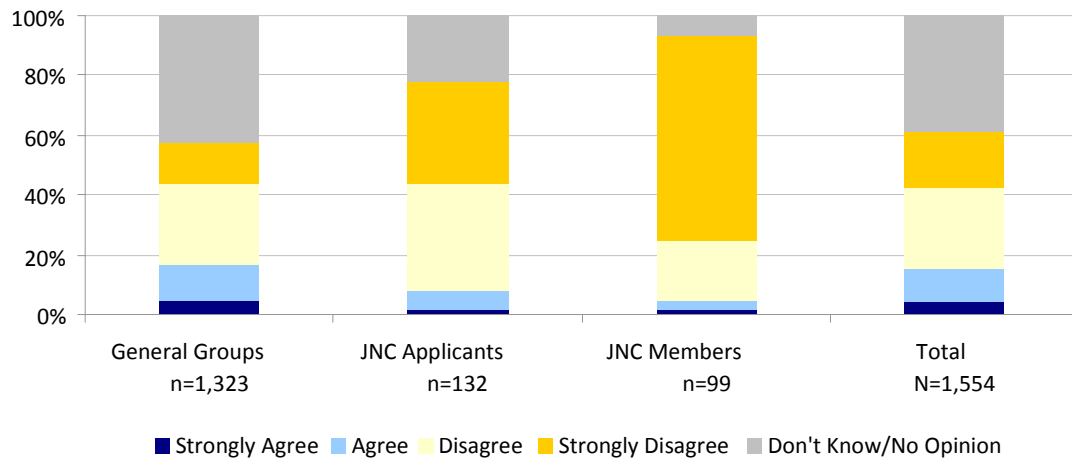
9. In general, only 23% of the total respondents agree with the statement that Lawyers who are Lesbian, Gay, Bisexual or Transsexual do not have the same chance as other candidates to be chosen for JNC membership. Among them, JNC members are the least agreed group.

Chart 9. Lawyers who are Lesbian, Gay, Bisexual or Transsexual do not have the same chance as other candidates to be chosen for JNC membership



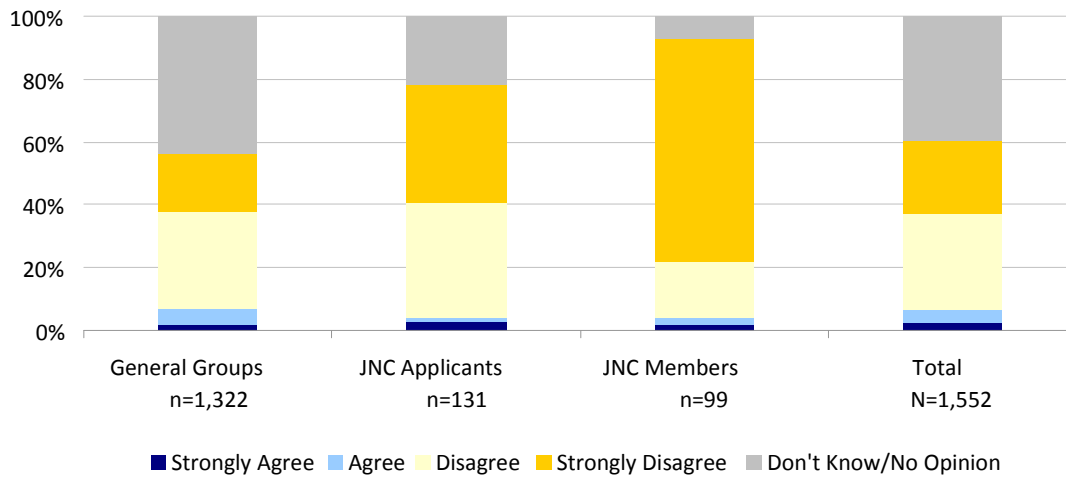
10. Only a small percentage of the surveyed populations agree that lawyers who have physical disabilities do not have the same chance other candidates to be chosen for JNC membership.

Chart 10. Lawyers who have physical disabilities do not have the same chance other candidates to be chosen for JNC membership



11. Most of the people think that a veteran who served on active duty in the U.S. military, ground, naval or air service has the same chance as other candidates to be chosen for JNC membership.

Chart 11. A veteran who served on active duty in the U.S. military, ground, naval or air service does not have the same chance as other candidates to be chosen for JNC membership



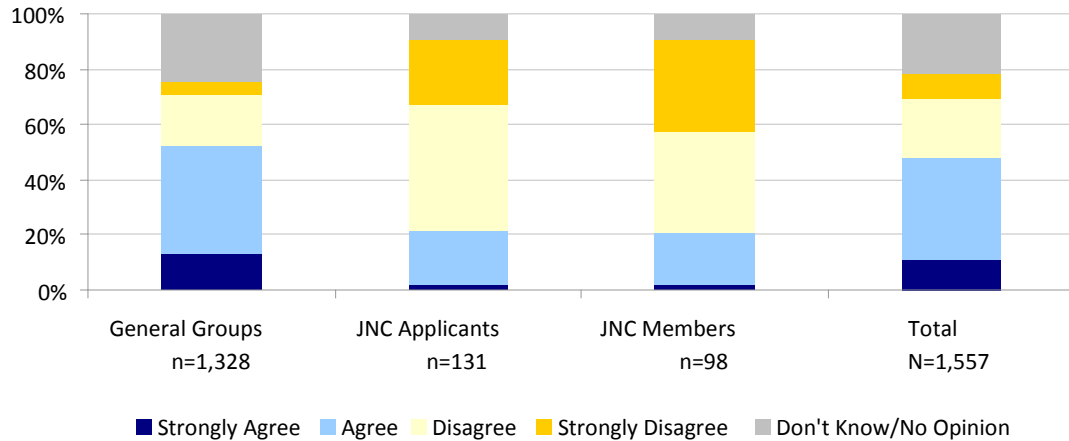
12. Comparison of three groups on perception of JNC membership

Chart 12. Distribution of Different Groups on Perception of JNC membership

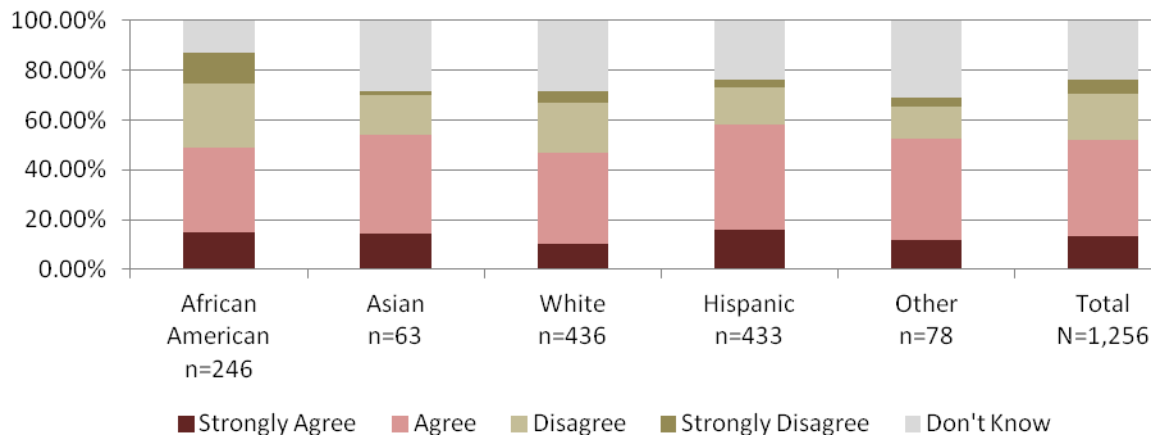
	JNC			
	General Groups n=1,322	JNC Applicants n=131	Members n=99	Total N=1,552
Strongly Agree	2%	3%	2%	2%
Agree	5%	1%	2%	4%
Disagree	31%	37%	18%	31%
Strongly Disagree	18%	37%	71%	23%
Don't Know/No Opinion	44%	22%	7%	40%
Total	100%	100%	100%	100%
N	1322	131	99	1552

13. Almost half of the respondents agree that in general, people don't know how to apply to become a JNC member, especially general groups of bar members.

Chart 13. In general, people don't know how to apply to become a JNC member



13.1 In general, people don't know how to apply to become a Judicial Nominating Commission member; General Groups



14. Not surprisingly, the general bar members agree that the process of applying to be on a JNC is too intimidating. However, only 5% of JNC members think the same.

Chart 14. The process of applying to be on a JNC is too intimidating

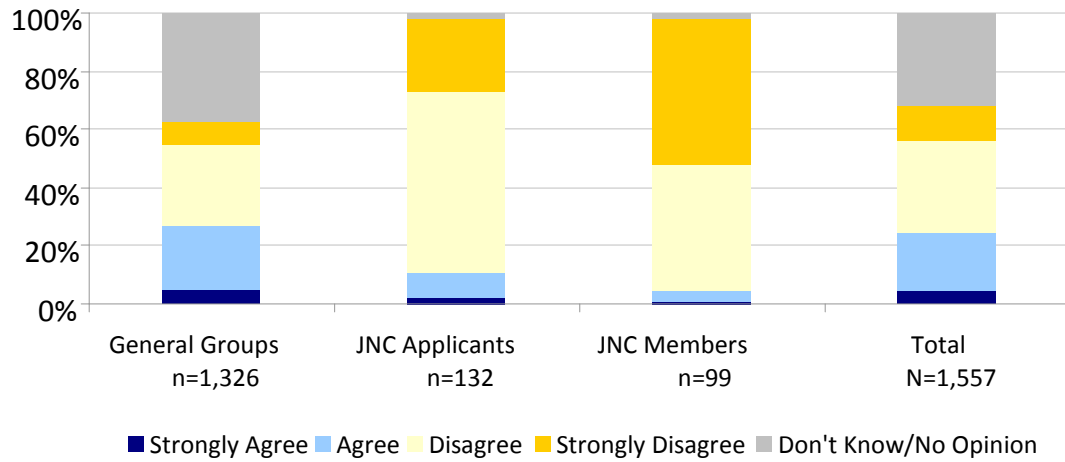
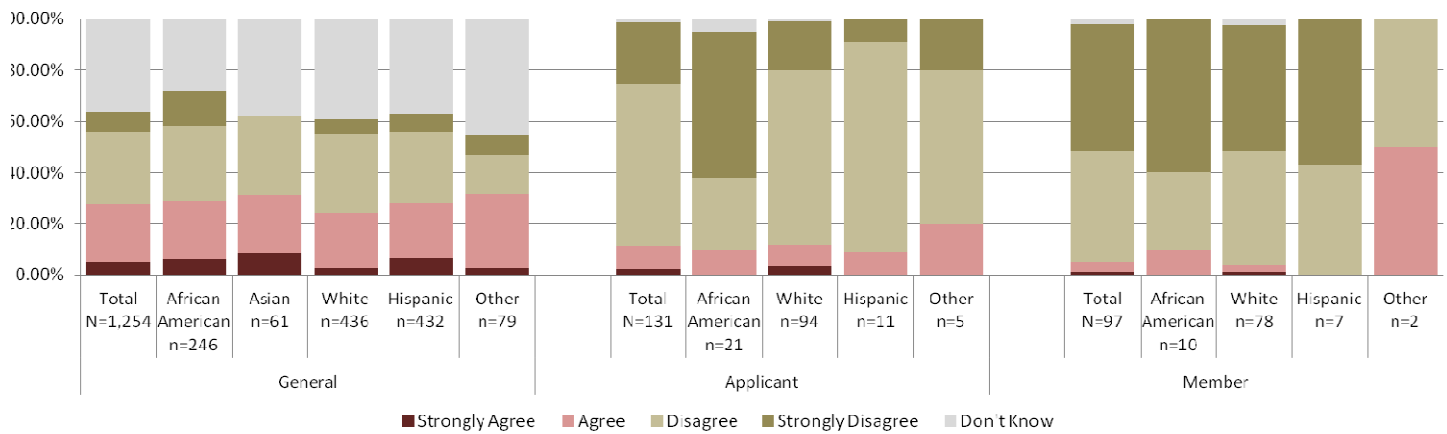


Chart 14.1 The process of applying to be on a Judicial Nominating Commission is too intimidating.



15. Most of the respondents disagree that applicants are generally not well informed about the nominating process.

Applicants are generally not well informed about the nominating process

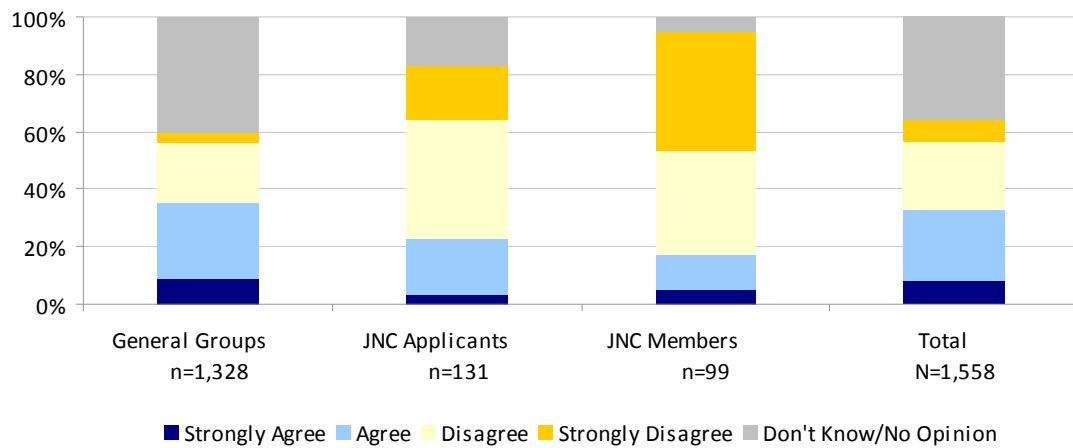
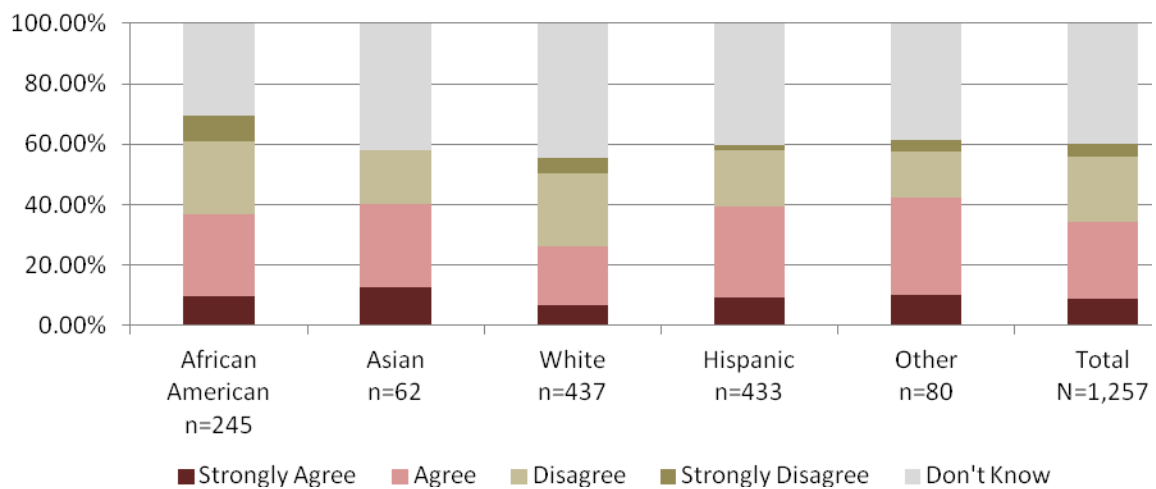


Chart 15.1 Applicants are generally not well informed about the nominating process; General Groups



16. Most of the respondents do not think that JNC service requires too much time away from work.

JNC service requires too much time away from work

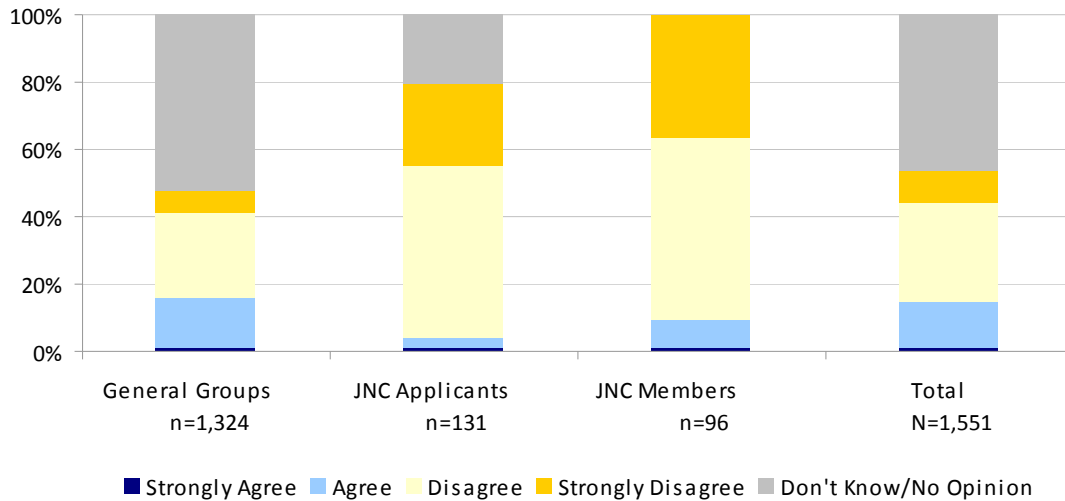
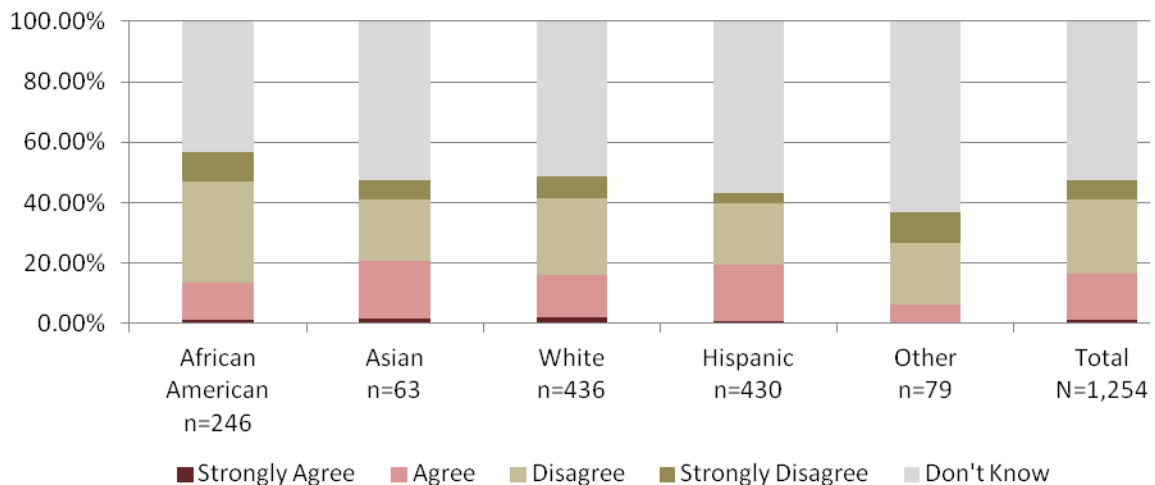


Chart 16.1 Judicial Nominating Commission service requires too much time away from work; General Groups



Frequency Tables: General and Ethnic Samples, April 2014

Have you ever submitted an application to serve on a Judicial Nominating Commission
(JNC)?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	151	9.5	9.6	9.6
	No	1414	89.4	90.4	100.0
	Total	1565	98.9	100.0	
Missing	System	17	1.1		
Total		1582	100.0		

What is the likelihood you will apply to serve on a JNC in the near future?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very likely	61	3.9	4.3	4.3
	Somewhat likely	371	23.5	26.3	30.6
	Not very likely	647	40.9	45.9	76.5
	Not at all likely	332	21.0	23.5	100.0
	Total	1411	89.2	100.0	
Missing	System	171	10.8		
Total		1582	100.0		

Did The Florida Bar nominate you for appointment by the Governor?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	28	1.8	20.0	20.0
	No	112	7.1	80.0	100.0
	Total	140	8.8	100.0	
Missing	System	1442	91.2		
Total		1582	100.0		

Were you given a reason why you were not nominated by The Florida Bar?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	8	.5	7.3	7.3
	No	102	6.4	92.7	100.0
	Total	110	7.0	100.0	
Missing	System	1472	93.0		
Total		1582	100.0		

Did the Governor appoint you to the JNC for which The Florida Bar nominated you?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	24	1.5	85.7	85.7
	No	4	.3	14.3	100.0
	Total	28	1.8	100.0	
Missing	System	1554	98.2		
Total		1582	100.0		

Reasons for Not Applying for JNC Position: Don't know the selection criteria

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	440	27.8	100.0	100.0
Missing	System	1142	72.2		
Total		1582	100.0		

Reasons for Not Applying for JNC Position: Don't have the time

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	404	25.5	100.0	100.0
Missing	System	1178	74.5		
Total		1582	100.0		

Reasons for Not Applying for JNC Position: Service involves financial sacrifices

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	148	9.4	100.0	100.0
Missing System	1434	90.6		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: Don't understand the process/lack of information about the process

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	458	29.0	100.0	100.0
Missing System	1124	71.0		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: Intimidated by the process

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	140	8.8	100.0	100.0
Missing System	1442	91.2		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: Too young/too inexperienced

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	324	20.5	100.0	100.0
Missing System	1258	79.5		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: Not qualified to serve

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	106	6.7	100.0	100.0
Missing System	1476	93.3		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: My political party affiliation places me at a disadvantage

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	138	8.7	100.0	100.0
Missing System	1444	91.3		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: Just not interested

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	153	9.7	100.0	100.0
Missing System	1429	90.3		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: Do not respect the selection process

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	105	6.6	100.0	100.0
Missing System	1477	93.4		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: Considering applying for a judgeship in the near future

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	134	8.5	100.0	100.0
Missing System	1448	91.5		
Total	1582	100.0		

Reasons for Not Applying for JNC Position: Afraid I wouldn't get selected

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	217	13.7	100.0	100.0
Missing	System	1365	86.3		
Total		1582	100.0		

Reasons for Not Applying for JNC Position: Some other reason

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	169	10.7	100.0	100.0
Missing	System	1413	89.3		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Judicial Nominating Commissions are part of a process that helps achieve judicial selections based upon merit.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	230	14.5	17.3	17.3
	Agree	676	42.7	50.7	68.0
	Disagree	197	12.5	14.8	82.7
	Strongly Disagree	77	4.9	5.8	88.5
	DK/NA	153	9.7	11.5	100.0
	Total	1333	84.3	100.0	
Missing	System	249	15.7		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Judicial Nominating Commissions help to insulate the process of nominating judges from partisan politics.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	161	10.2	12.1	12.1
	Agree	506	32.0	37.9	49.9
	Disagree	343	21.7	25.7	75.6
	Strongly Disagree	141	8.9	10.6	86.2
	DK/NA	185	11.7	13.8	100.0
	Total	1336	84.5	100.0	
Missing	System	246	15.5		
Total		1582	100.0		

Perceptions of JNC and Selection Process: The current Judicial Nominating Commission process is preferable to elections.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	269	17.0	20.2	20.2
	Agree	496	31.4	37.2	57.4
	Disagree	202	12.8	15.2	72.6
	Strongly Disagree	85	5.4	6.4	79.0
	DK/NA	280	17.7	21.0	100.0
	Total	1332	84.2	100.0	
Missing	System	250	15.8		
Total		1582	100.0		

Perceptions of JNC and Selection Process: The current JNC process is working well; I just choose not to seek a JNC appointment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	77	4.9	5.8	5.8
	Agree	370	23.4	27.9	33.7
	Disagree	334	21.1	25.2	58.8
	Strongly Disagree	130	8.2	9.8	68.6
	DK/NA	417	26.4	31.4	100.0
	Total	1328	83.9	100.0	
Missing	System	254	16.1		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Strong political overtones compromise the current judicial nominating process.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	283	17.9	21.3	21.3
	Agree	464	29.3	34.9	56.2
	Disagree	196	12.4	14.7	70.9
	Strongly Disagree	51	3.2	3.8	74.7
	DK/NA	336	21.2	25.3	100.0
	Total	1330	84.1	100.0	
Missing	System	252	15.9		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Applicants are generally not well informed about the nominating process.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	116	7.3	8.7	8.7
	Agree	343	21.7	25.8	34.6
	Disagree	279	17.6	21.0	55.6
	Strongly Disagree	58	3.7	4.4	59.9
	DK/NA	532	33.6	40.1	100.0
	Total	1328	83.9	100.0	
Missing	System	254	16.1		
Total		1582	100.0		

Perceptions of JNC and Selection Process: JNC service requires too much time away from work.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	18	1.1	1.4	1.4
	Agree	197	12.5	14.9	16.2
	Disagree	333	21.0	25.2	41.4
	Strongly Disagree	85	5.4	6.4	47.8
	DK/NA	691	43.7	52.2	100.0
	Total	1324	83.7	100.0	
Missing	System	258	16.3		
Total		1582	100.0		

Perceptions of JNC and Selection Process: In general, people don't know how to apply to become a JNC member.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	177	11.2	13.3	13.3
	Agree	514	32.5	38.7	52.0
	Disagree	243	15.4	18.3	70.3
	Strongly Disagree	72	4.6	5.4	75.8
	DK/NA	322	20.4	24.2	100.0
	Total	1328	83.9	100.0	
Missing	System	254	16.1		
Total		1582	100.0		

Perceptions of JNC and Selection Process: The process of applying to be on a JNC is too intimidating.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	63	4.0	4.8	4.8
	Agree	296	18.7	22.3	27.1
	Disagree	373	23.6	28.1	55.2
	Strongly Disagree	104	6.6	7.8	63.0
	DK/NA	490	31.0	37.0	100.0
	Total	1326	83.8	100.0	
Missing	System	256	16.2		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Too often, partisan politics are more important than merit in determining who is selected for a JNC appointment.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	257	16.2	19.4	19.4
	Agree	456	28.8	34.4	53.8
	Disagree	152	9.6	11.5	65.3
	Strongly Disagree	54	3.4	4.1	69.4
	DK/NA	406	25.7	30.6	100.0
	Total	1325	83.8	100.0	
Missing	System	257	16.2		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Lawyers from diverse racial or ethnic groups do not have the same chance as other candidates to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	195	12.3	14.7	14.7
	Agree	289	18.3	21.8	36.5
	Disagree	268	16.9	20.2	56.7
	Strongly Disagree	155	9.8	11.7	68.4
	DK/NA	419	26.5	31.6	100.0
	Total	1326	83.8	100.0	
Missing	System	256	16.2		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Lawyers who are Lesbian, Gay, Bisexual or Transsexual do not have the same chance as other candidates to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	114	7.2	8.6	8.6
	Agree	216	13.7	16.3	24.9
	Disagree	280	17.7	21.1	46.0
	Strongly Disagree	150	9.5	11.3	57.4
	DK/NA	565	35.7	42.6	100.0
	Total	1325	83.8	100.0	
Missing	System	257	16.2		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Lawyers who are women do not have the same chance as men to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	83	5.2	6.3	6.3
	Agree	206	13.0	15.6	21.9
	Disagree	388	24.5	29.3	51.2
	Strongly Disagree	198	12.5	15.0	66.2
	DK/NA	447	28.3	33.8	100.0
	Total	1322	83.6	100.0	
Missing	System	260	16.4		
Total		1582	100.0		

Perceptions of JNC and Selection Process: Lawyers who have physical disabilities do not have the same chance other candidates to be chosen for JNC membership

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	61	3.9	4.6	4.6
	Agree	159	10.1	12.0	16.6
	Disagree	352	22.3	26.6	43.2
	Strongly Disagree	178	11.3	13.5	56.7
	DK/NA	573	36.2	43.3	100.0
	Total	1323	83.6	100.0	
Missing	System	259	16.4		
Total		1582	100.0		

Perceptions of JNC and Selection Process: A veteran who served on active duty in the U.S. military, ground, naval or air service does not have the same chance as other candidates to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	27	1.7	2.0	2.0
	Agree	68	4.3	5.1	7.2
	Disagree	409	25.9	30.9	38.1
	Strongly Disagree	243	15.4	18.4	56.5
	DK/NA	575	36.3	43.5	100.0
	Total	1322	83.6	100.0	
Missing	System	260	16.4		
Total		1582	100.0		

Have you ever applied for appointment to become a judge?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	175	11.1	13.0	13.0
	No	1169	73.9	87.0	100.0
	Total	1344	85.0	100.0	
Missing	System	238	15.0		
Total		1582	100.0		

**What is the likelihood you will apply to become a judge through the appointment process in the
near future?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very likely	31	2.0	2.7	2.7
	Somewhat likely	163	10.3	14.1	16.8
	Not very likely	471	29.8	40.9	57.7
	Not at all likely	487	30.8	42.3	100.0
	Total	1152	72.8	100.0	
Missing	System	430	27.2		
Total		1582	100.0		

Did you receive the appointment?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	12	.8	6.9	6.9
	No	162	10.2	93.1	100.0
	Total	174	11.0	100.0	
Missing	System	1408	89.0		
Total		1582	100.0		

Were you given the reason why you were not selected?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	18	1.1	11.5	11.5
	No	138	8.7	88.5	100.0
	Total	156	9.9	100.0	
Missing	System	1426	90.1		
Total		1582	100.0		

Reasons for not Applying for JNC: Don't know the criteria required to serve

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	185	11.7	100.0	100.0
Missing	System	1397	88.3		
Total		1582	100.0		

Reasons for not Applying for JNC: Don't have the time

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	103	6.5	100.0	100.0
Missing System	1479	93.5		
Total	1582	100.0		

Reasons for not Applying for JNC: Happy practicing law; simply not interested in becoming a judge

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	409	25.9	100.0	100.0
Missing System	1173	74.1		
Total	1582	100.0		

Reasons for not Applying for JNC: Can't afford the cut in pay

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	172	10.9	100.0	100.0
Missing System	1410	89.1		
Total	1582	100.0		

**Reasons for not Applying for JNC: Don't understand the process/lack of information
about the process**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	181	11.4	100.0	100.0
Missing System	1401	88.6		
Total	1582	100.0		

Reasons for not Applying for JNC: Intimidated by the process

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	215	13.6	100.0	100.0
Missing System	1367	86.4		
Total	1582	100.0		

Reasons for not Applying for JNC: Too young/too inexperienced

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	393	24.8	100.0	100.0
Missing System	1189	75.2		
Total	1582	100.0		

Reasons for not Applying for JNC: Not qualified to serve

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	154	9.7	100.0	100.0
Missing System	1428	90.3		
Total	1582	100.0		

Reasons for not Applying for JNC: Afraid I wouldn't get selected

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	241	15.2	100.0	100.0
Missing System	1341	84.8		
Total	1582	100.0		

Reasons for not Applying for JNC: My political party affiliation is a disadvantage

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	138	8.7	100.0	100.0
Missing System	1444	91.3		
Total	1582	100.0		

Reasons for not Applying for JNC: Other

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1	143	9.0	100.0	100.0
Missing System	1439	91.0		
Total	1582	100.0		

Please give us your reaction to the following statement: Elections give lawyers from diverse racial and ethnic groups a better chance to become a judge than the JNC nominating, gubernatorial appointment process.

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly agree	139	8.8	11.1	11.1
Agree	376	23.8	29.9	41.0
Valid Disagree	578	36.5	46.0	87.0
Strongly disagree	163	10.3	13.0	100.0
Total	1256	79.4	100.0	
Missing System	326	20.6		
Total	1582	100.0		

For comparison purposes only, in what Circuit is your primary law or judicial practice?

	Frequency	Percent	Valid Percent	Cumulative Percent
1	27	1.7	2.2	2.2
2	76	4.8	6.1	8.3
3	13	.8	1.0	9.3
4	58	3.7	4.7	14.0
5	19	1.2	1.5	15.5
6	36	2.3	2.9	18.4
7	24	1.5	1.9	20.3
8	15	.9	1.2	21.5
9	114	7.2	9.1	30.7
10	21	1.3	1.7	32.3
Valid 11	349	22.1	28.0	60.4
12	27	1.7	2.2	62.5
13	120	7.6	9.6	72.2
14	7	.4	.6	72.7
15	89	5.6	7.1	79.9
16	2	.1	.2	80.0
17	162	10.2	13.0	93.0
18	27	1.7	2.2	95.2
19	16	1.0	1.3	96.5
20	44	2.8	3.5	100.0
Total	1246	78.8	100.0	
Missing System	336	21.2		
Total	1582	100.0		

Which of the following best describes your legal occupation or classification?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Private Practice Attorney	889	56.2	69.4	69.4
	Government Practice Attorney	226	14.3	17.6	87.0
	Judge	5	.3	.4	87.4
	Corporate Counsel	64	4.0	5.0	92.4
	Other	97	6.1	7.6	100.0
	Total	1281	81.0	100.0	
Missing	System	301	19.0		
Total		1582	100.0		

How many years have you been a member of The Florida Bar?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< 2	122	7.7	9.5	9.5
	2-5	207	13.1	16.1	25.7
	6-10	211	13.3	16.5	42.1
	11-20	301	19.0	23.5	65.6
	20+	441	27.9	34.4	100.0
	Total	1282	81.0	100.0	
Missing	System	300	19.0		
Total		1582	100.0		

In which of the following categories is your age?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	35 or younger	357	22.6	27.8	27.8
	36-49	444	28.1	34.5	62.3
	50-65	389	24.6	30.2	92.5
	Older than 65	96	6.1	7.5	100.0
	Total	1286	81.3	100.0	
Missing	System	296	18.7		
Total		1582	100.0		

What is your race or ethnic origin?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	African American/Black	248	15.7	19.5	19.5
	Asian/Pacific Islander	64	4.0	5.0	24.5
	Caucasian/White	442	27.9	34.7	59.2
	Hispanic	439	27.7	34.5	93.6
	Other	81	5.1	6.4	100.0
	Total	1274	80.5	100.0	
Missing	System	308	19.5		
Total		1582	100.0		

What is your gender?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	680	43.0	53.4	53.4
	Female	594	37.5	46.6	100.0
	Total	1274	80.5	100.0	
Missing	System	308	19.5		
Total		1582	100.0		

Are you a veteran who served on active duty in the U.S. military, ground, naval or air service during a war on in a campaign or expedition for which a campaign badge has been authorized?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	75	4.7	5.9	5.9
	No	1204	76.1	94.1	100.0
	Total	1279	80.8	100.0	
Missing	System	303	19.2		
Total		1582	100.0		

Finally, do you have a physical disability?

	Frequency	Percent	Valid Percent	Cumulative Percent
--	-----------	---------	---------------	-----------------------

	Yes	30	1.9	2.3	2.3
Valid	No	1252	79.1	97.7	100.0
	Total	1282	81.0	100.0	
Missing	System	300	19.0		
Total		1582	100.0		

OPEN-ENDED RESPONSES

Q8

Why do you think you were not appointed by the Governor to the / JNC for which The Florida Bar nominated you?

I was appointed to the JQC for the 16th judicial circuit.

The first time the Governor appointed a white male prosecutor whose ideologies were probably more in line with his. The second time he never chose. He just ignored the panel.

I could not answer the past 3 questions because I recently applied to the JNC and am still awaiting their decision.

Q9

When lawyers choose not to apply for appointment to JNC's, there may be various reasons. If you have not applied, please indicate all the reasons why you have chosen not to apply to serve on a JNC.

conflict with my current duties as a General Magistrate

Practice in one Circuit but reside in another Circuit. Don't have a professional or political presence in the Circuit in which I reside. Nominations and selections are a heavily politicized process and thus would not be considered.

Someone in my firm is already a member of the local JNC

The general sentiment is that the Bar is looking for plaintiff's lawyers or otherwise left leaning candidates

Typically these positions are for people with self-serving aspirations. Not my kind of environment

Someone at my lawfirm was going to re-apply for the JNC position.

just think you have to be well connected or know somebody to get selected.

Feel like I am not "connected" enough to be chosen

I have to support my family and children in college.

Not now, but several years ago was considering applying for a judgeship, now, I just don't have the time.
transactional attorney - very little contact with courts

time constraints

I am not a litigator-- transactional attorney

I practice in an area of law which does not expose me to state or local judges
Previously applied and was not chosen

My firm's billing requirements and the fact that I do not get billable credit for pro bono or community work, I am not able to make time commitment.

I have young children (toddler/baby) and am concerned about being available when needed. Once they are a certain age I intend to apply.

In the final analysis, even if you do happen to get nominated the process is overly, if not entirely, political. By the time your name gets to the Governor's Office, it no longer matters as to how qualified you are...what matters is who you know that knows the Governor.

Spouse is considering applying for a judgeship

Concern that my lack of litigation experience may place me at a disadvantage to properly quantify the qualifications of a good judge

Applied twice and have not heard anything back. I now feel that is a waste of time.

Nothing about the current administration reflects any interest in diversity. In fact, it seems the current administration is seeking to destroy diversity by imposing an unspoken litmus test - only like minded candidates who share the philosophy of the governor need apply.

do not want the public to have access to my business and personal financial records

didn't have the time.

I previously applied and was denied

Not sure it would make a difference given the selection based on what I perceive to be political

I did apply.

politics of the local bar

Active member, but not currently practicing full time as required

already served on Judicial nominating commission

I do not live and work in the same judicial circuit, and I did not want to apply for the JNC of the judicial circuit where I live because I may seek a judgeship in the near future.

Told 10 years of experience is minimum

I did apply and served on a JNC

The Governor is going to appoint the person most closely aligned to his/political affiliation, so it's just a waste of time.

I did apply but was not selected. Not sure about what they are looking for and whether or not if I will apply again.

not a litigator

DO NOT GET INVOLVED IN POLITICAL ACTIVITIES.

Prefer to keep financial information private.

Other commitments

Politics

Too political

Seems like other people are more interested or qualified than I

too busy building a law practice

inactive

Do not like to sit in judgment of others.

Seems like a waste of time when the governr ignores the work of the committee

I've held the perception that to be appointed "network" connections of a particular kind weighed heavily, none of which I participate in.

N/A already served on JNC

the majoirty of my practice does not involve time in court or other interaction with state court judges

I was directly appointed by Governor Bush.

I answered that I had applied to the JNC and was not selected. However, I recently applied (March 2014) and awaiting a decision.

work for appellate court

I have been appointed as a judge

I am not practicing in Florida

transactional lawyer

Health

The financial disclosure seems volunimous.

Employment with government restricts use of time for non-govt work

applicants are required to fill out financial disclosure which is irrelevant to the process in my opinion

I previously served on a JNC when it was by political affiliation. I found that very few less than 3% of applicants made on merits and that all made it on political contacts. so I found the process more political than an election and would be discouraged from serving in a JNC in the future and I would discourage others as well.

my spouse might apply for a judgeship

Do not want to disclose personal financial information if this is required. Don't really know the application process.

Just have not done so

Would be a conflict in my present job

rarely in courtroom b/c I'm a transactional attorney

member of judiciary

Over commitment at this time

enjoy the work i do fully

I will not be selected by the Governor because it is too political.

Currently serving on another Bar Committee

Excessive public financial disclosures

Always assumed you have/had to be politically "connected"

It is my understanding that a minimum of 5 years of experience is required to apply and I am not there yet. I am about 6 month shy of meeting this requirement.

Years ago, the late Henry Latimer, nominated me to the JNC in Broward. I was appointed but for some reason there was never any activities to address and I was unsure about my role.

Work Federal Court only. Not familiar with state court.

Nearing retirement

personal informatin at issue
job restrictions

currently serving in a judicial capacity

Too many family commitments at this time. I did serve in the JNC with the Los Angeles County Bar Association for 3 years (1989-1991). But I am not familiar with the JNC appointment process in Florida.

Not a litigator

Feel that the entire thing is a sham. It is about who you know and where you come from as opposed to being impartial.

Financial Disclosures Required to volunteer is onerous.

I have an office practice. I believe trial lawyers are better suited to serve on JNCs.

I have applied for appointment to the Circuit Court, twice, and have observed the selection process, including the interview with the JNC, first-hand. And I have observed the process and the persons selected over my 39 years of litigation practice in the trial and appellate courts of Florida. My impression, from the questions asked in the JNC interviews, and from the persons selected by JNC's after that, is that the process is frankly political. Not based upon apparent ability, integrity, and temperament. I decided that I did not want to associate myself with what I perceive to be a corrupt process.

Involved in other Bar and RPPTL Section Committees

It's all overtly political

I just relocated back to Florida after 18 years of living in New Jersey.

Perception that I'm too young

Never even thought about it

I believe selection process is politicized

I believe there is a political component to the appointment and as a personal injury attorney I am not likely to be selected.

I serve on the Southern District Federal JNC appointed by our 2 US Senators.

Never gave it serious consideration before now

It is difficult to get the time off from work.

System Racially Biased

I believe that judges should be selected on the basis of ability, NOT race, religion or sex. If I were on a JNC, I would not react well to "suggestions" that I support some politically correct agenda - whether those "suggestions" came from the Governor, the Bar President or anyone else.

Retired

I'm not high profile

Timing is not right ..other commitments

I have already served on the supreme court jnc

I am a judicial candidate.

The JNC process is totally political and nothing to do with qualifications

Never really considered it until lately when someone approached me about applying for appointment

Selection process seems too political

Not sure what the purpose of it is

not trial lawyer

New Attorney

applied for judgeship/campaign for judgeship

I feel it's more of a political and who you know process rather than based on qualifications and I'm not involved enough in the legal community to know the right people.

colleagues and mentors speak poorly about the people who serve, mainly their motives and qualifications

Promotes Cronyism

process too political

process too political

Considering leaving the legal profession; thus, no reason to invest in the judicial selection process.

I have applied approximately 7 times since 2004 and I have never been selected

Age 85 years

retiring
Diversity

Age 81

I do not practice trial law.

Good old boy system

seems to be a political process in which I dont want to be involved

financial disclosure required

institutional bias

I am not a litigator.

The application was too intrusive and/or required information that was too time consuming to obtain

financial disclosure requirements

Big firm bias

I did not get selected the last two times.

Recent service as a judge

just haven't thought of doing it yet

I answered this section because I think it's relevant as to why I had not applied before.

SEMI-RETIRED

Practice outside of community where live so don't know reputations of current judges and likely candidates.

Being an Anglo Saxon, with an English last name, is a huge disadvantage in Miami-Dade County. This is outrageous! Hispanic and Jewish last names are the ones who make it!

when they changed the process to allow the governor to essentially pick all the commission the process went to hell in a handbasket.

previously have not felt ready to serve in this capacity

I am not a litigation attorney and assume (probably without much to substantiate it) that litigation experience is an important precursor to being a productive member of the JNC.

Do not to make "lesser of two evils" decisions

I am not accepting new matters in anticipation of full retirement.

retired

I am 79 yrs old and have never done any litigation.

race and politics

i am an immigration attorney , therefore i only practice federal law.

don't know criteria for selection of judges

semi retired

As a transactional lawyer I never really felt qualified

I would be interested but need to obtain more information

Q26

If you checked "afraid I wouldn't get selected" in the question above, please indicate WHY you were afraid you wouldn't get selected.

I only have general litigation experience.

As a second year associate, I rarely get to go to court for the firm. Most of my time is spent on research and secretarial tasks.
Unknown by my peers.

Practice in one Circuit but reside in another Circuit. Don't have a professional or political presence in the Circuit in which I reside. Nominations and selections are a heavily politicized process and thus would not be considered.

I'm not very political or rich. Members are usually big donors to campaigns or attorneys who attend a lot of social functions.

I have no political influence.

it seems too policitcal

I am not qualified enough

I'm not afraid, but I have always viewed the committee member selection process as being politically driven.

Governor Bush politicized the process and Gov Scott has made it worse. Trial lawyers and democrats out, I am registered Repub, but a trial lawyer

I do not have any political connections that would allow me to stand a chance for selection

because of my age

Because I don't have that much experience as a lawyer yet.

Not politically connected.

The process is just too "political"

I do not know anyone in a position to help me.

Because I am not well connected and did not attend a top tier law school.
Afraid too strong a term; convinced that only political appointments are made.
I believe you get selected by "who you know"

its political and not based on competency

My experience has been mostly in-house.

because I am Hispanic

Resources, contacts, lack of experience

because of my age and inexperience, and sometimes I feel that minorities are not selected as much as whites so once I do become qualified I would be afraid of not getting picked because of my race.

Not enough experience

I am not known by the persons in charge of making the appointments

In Broward, the JNC is perceived as being part of a clique. Family members of the JNC get nominated to be judges. Why would a lowly minority lawyer with no influence be selected to serve on such a commission?

I do not have a litigation background. I am a transactional attorney.

Too many applicants

I was not chosen before

I am a woman attorney working for the State - low paid - not well connected

Seems if you're not a "member of the club" you are considered an outsider. Seems to be run like high school clubs.

I have been practicing for 12 years and I thought that I may too young.

In past years I attempted several times to join certain Bar committees and was never once selected. I believe that for the most part it's still a "who you know" system and if you're hispanic or any othe minority your chances are slim.

Not politically well connected enough

Not well connected/known

Wonder if only people who know people get selected

I do not litigate much and am not familiar with many of the judges and/or the processes in place for many of the courts within the FL Court System

I am not very involved with the Florida Bar.

I have been a licensed attorney for less than five years, so I am still considered a "young lawyer".

Because politics becomes more important than qualifications. Only the affluent and well connected (including Government lawyers who get help from their Agency) get appointed. We have too many career prosecutors on the bench!

Political Party and Race

I have been told it is extremely competitive and difficult to get

No political connections or supporter to ensure my selection.

Because the selection is made by the governor, I felt that my race, gender or political affiliation would prevent me from being selected.

Many years ago I made a list of 4 attorneys for the position of county court judge .I was asked by at least two members of the panel to put my name in the Dade county process since my practice is based in Dade county.It did not matter to them that I did live in Broward County for over 10 years at that time.

Because I am African-American

Because I'm African- American

I am relatively young lawyer who likely does not have the requisite experience desired.

Because the process seems to have taken on very political overtones lately; if you're not a member of the right party you won't get selected.

It seems as though those types of positions hinge on being politically connected.

It appears that the people who get selected to serve on the JNC are juggernauts of the legal industry in the state and who have more clout and connections than I. My fear of not getting chosen may be allayed in the future when I am a more established attorney.

There are so many lawyers that would seem more qualified and involved that I do foresee myself making the cut

I do not have a litigation background.

I'm an apolitical individual and have a tendency to lean towards greater public involvement

I am a young lawyer

I focus on transaction and federal immigration work. I am not a litigator.

Afraid is not the right term. I do not believe that I am politically connected enough to get elected.

I am an African American female of limited financial means.

I don't know the right people and I am a minority woman

I have no political pull, no name recognition.

Not so much 'afraid', but asked myself is it worth the time and effort to complete the application when the odds are so stacked against me despite my qualifications. I have grown tired of my application being used to fulfill diversity/outreach requirements of those making the selections when I know that academically and professionally I am qualified.

I'm not afraid of rejection necessarily, it's more about the fact that I have only been admitted to the bar for a little less than two years and do not feel like I would be taken seriously (due to inexperience) if I applied appears to be based on the "good ole boy" network and where you went to law school/who you know or are related to.

I am not politically connected, do not donate regularly to any campaigns, do not brown nose at Bar functions.

It seems to me that most people who are selected come from big private firms and I am an admin government lawyer.

lack of experience

People would not take me seriously as a candidate because I am a younger hispanic female (3 strikes).

Prior disciplinary proceedings

It seems very prestigious.

I believe that when Judges are appointed it is very political and to run for Judge is very costly.

I have previously expressed an interest on serving on the Grievance Committee and was not selected.

I do not normally get so involved in the politics of judicial selection and do not know if I would be comfortable "judging" who becomes a judge. As a practicing attorney, also don't want someone thinking I have voted for or against them.

I recently moved to this area and I am not familiar with the local voluntary Bar groups and I am not politically connected

'Afraid' is the wrong word, at least for me. Its more that I have assumed i would not be selected because of the politics of the process.

There appears to be a type of professional nepotizm. Very few are encouraged to apply.

As a young attorney, I feel that I don't have a wide enough reputation to be recognized.

Don't believe I have the qualifications necessary to be selected.

Because I am Black.

Apparently you need to be well connected in the community, i.e. is it really based solely on merit?

Don't know the selection criteria and I have been nominated 3 times by the local JNC for the bench.

I applied once and did not get selected

I don't believe I will be chosen.

I have heard it tends to be a "good old boys club"

I'm just a sole practitioner. I don't have a big firm behind me or any connections with Bar administration.

I thought I needed to practice for a longer amount of time before being considered.

Not politically active

It seems to be a political process and you have to be well known to be involved

When I look at the list of judges and members of the JNC and do not see an ethnically diverse panel. I believe I do not have the political connections in the local legal community to be selected as a member.

Lack of experience

There is anecdotal thought that if you have certain community activities such as NAACP it is a mark against you and you won't be selected to serve.

Not politically connected

not politically connected enough...

Because I am of a minority race.

I felt I wouldn't get selected because I am a young minority attorney who is not that connected within the legal environment.

Appears to be a political appointment.

Because of experience level.

like any organization it is generally who one knows and not qualifications. the system, as I understand, is not blind. Friends and interest groups or people with agendas get involved.

There are other lawyers with more experience

Process is political or cliquish

I am not "politically" connected enough.

popularity contest

Not politically connected

Process appears to be political!

Not involved in the local Bar or local politics

I am not dialed into Bar politics like I used to be. Also I am not very visible on the regular political scene so I am below everyone's radar.

Gov Scott would do whatever he could to block Democratic party members.

Persons are chosen by whom they know not necessarily their experience, same with the process for nominating judges

I am not a Bar insider, and these seem like plum appointments
It is too political.

I'm not political enough.

My partner serves on a JNC in another county.
lack of experience

As a young attorney from a diverse background, I was not sure whether I met the selection criteria.

I assume such appointments are political (in a Florida Bar sense, if not a partisan sense) and being a younger lawyer (late thirties) and gay would be disadvantages to being selected.

Caucasian female; feel like I am not "diverse" enough to be included

the process is known to be political- do not want to waste my time

Believe that the appointment process is overly political.

Big firm bias

not too much trial experience

I generally regard the Bar and many (but not all) of its committees as being an "old boys club".
The current governor has ignored recommended JNC panel members and JNC recommendations

Not politically connected

I just think that being a woman and a democrat that I would not even be considered

I believe that FL Bar is just as political of a machine as any political party or government entity. My associations with certain political figures in the community, always raise concerns with me that I would be denied selection. It's still not what you know, but who you know. And I am aware that there are some people who sit on the JNC for my circuit that would not agree with my political views and would judge me based on "guilt by association." it's human nature to judge like that.

Because I am an African American lawyer.

Because I am not a Republican nor legal counsel to a state agency.

not politically connected

Previous Bar grievances and a DUI conviction.

I think it's a "Good Ole Boy" Network, and I'm not a Good Ole Boy.

I could have chosen that one, but there is nothing to be "afraid of". It's only something to get disturbed by.

Governor Scott has only appointed those folks who are "lock step" in line with his political ideology and agenda. The quality of appointments has reflected that lack of social and demographic diversity necessary for a fair and impartial judiciary.

It seems as though the process is designed to favor those who have been directors in a voluntary or private bar. There does not appear to be enough emphasis or importance placed on a dedicated commitment to public service beyond Assistant State Attorneys or Public Defenders.

I am a public interest attorney and not politically connected

political affiliation and lack of connections

prior suspension

not politically connected

I'm not active in local Bar, not socially active, not affluent, not a member of the Good Ole Boy Network around here

The process favors folks who know powerful figures.

I am not politically connected.

I'm a sole practitioner--I have no clout or influence in the legal arena.

I am not as well known as other lawyers. I am also coming up on five years as a member of the bar this October.

expect that selection requires connections

I have been told network is very important. I don't have any network since I might be the few mandarin speaking attorneys in south Florida. Also I am not a native speaker and is not a US citizen yet.

Do not meet the criterion established by the politically correct powers that be.

never selected for anything

I'm not political at all. Not in a high profile firm.

I am a Hispanic female that does not fit the typical selection to the JNC. I would love to serve, just do not think I have a chance.

I am an older woman of the Bar and no longer have current political connections

I'm young, I'm a woman and I'm half asian

I assumed appointments were based on financial contributions to political parties or organizations.

Based on the fact that I wasn't in the top percentile of my law school class and my race

good old boy network

The selection of a minority feels unlikely.

Years ago, I declared BK.

Completely political and severely influenced by power brokers, minorities are at a complete disadvantage and are often overlooked

Not political connected to the local party

Background check

because of being a minority

Assumption based on my prio observation that you must be intimately involved in bar politics to be selected

Mostly because I am still a relatively new attorney and I do not fully understand the criteria or the process for selection.

Because i'm a black female who did not go to a top law school

I work for the state and dont have the right connections so I dont think that I would be selected. It appears that those who are selected are part of big firms.

I have been admitted for 8 years and I think that the JNC is comprised of older attorneys

I just assumed it would be difficult for a hispanic to be chosen, and awkward if he or she was.

The process appears to be very political. Thus as a member of the minority party I am not confident that I would be selected.

do not have desire to get involved in the necessary political maneuvering, networking, pandering, etc.

I am physically challenged/handicapped and in the past when I applied for positions this was a problem- they always want someone who is physically well enough to handle any challenge and put in long hours, etc. I have flare-ups of my illness and cannot predict when they will occur.

I presumed the selection process to be somewhat political and believed my inexperience and lack of "connections" would be a hinderance.

Because my law school transcript may not be good enough and my work history may not be solid enough.

I believe the bar may already be irreparably biased and those of any real authority are making purely subjective or polictical decisions or decisions based on economic benefits without regard to the benefit to society. As explanation, I applied for a position on the advertising committee due to the unbelievable, scandalous, offensive and blatantly biased and inaccurate positions that are allowed to be taken in

advertising by the Plaintiffs' bar, and thought that even a little bit of balance would assist in fixing the remarkable damage being done to the Bar by these advertising campaigns (i.e.; jury pool misinformation campaigns) and subsequent litigation, but was shot down pretty perfunctorily. As such, I am left with the impression that certain sections of the bar have an undue influence that permits or perhaps even encourages such bias. Perhaps mistakenly, I presume I would meet the same bias in the JNC -- having been before massive numbers of judge's throughout the state that parrot or even advocate for these jury pool misinformation campaign talking points. If perpetuation of frivolous litigation and general corporate/insurer bias is an overriding principle for the Bar (e.g., plaintiff's work proving opportunity for defense counsel), then it is probably on the right track. Unfortunately, I am naive enough to hope that the Bar would be equally offended by the bias evident in the Plaintiffs' bar's advertising despite increasing business opportunity for all regardless of how badly same is destroying the fabric of our society. I am afraid this Diversity issue may be of the same character. If diversity is truly a key component in determining which candidates can be reasonable, objective, patient, and willing to work hard and listen, then we are in a sadder state of affairs than I feared. Wrong focus! Pick the best candidates regardless of ethnicity, sex, sexual preference or religion. Ask yourselves, does the bench currently reflect the percentage of whichever special interest group that you are targeting as an underrepresented class. (and yes, you are picking or selecting target classes, which itself is a form of bias by the JNC). While I am caucasian, my son is half -- dark complexed Puerto Rican, and easily mistaken for African American (whatever that is in today's society -- is 1/8 African heritage still an African American? Is a girl of Hutu ancestry the same as an Ethiopian Jew because they are both dark complexed? Is a Coptic Egyptian the same as a Afrikaners South African? Are they all African American?). Is a lesbian woman different or more special than a heterosexual former housewife who went back to school? Is one going to be more sensitive/objective/fair than the other? We are talking about the future here; how are you going to class my son!? How are you going to class the dark skinned Dominican kid next door? The french speaking Haitian kid? The Mayan kid born from Chiapas stock -- is she really Mexican, indigenous indian, Latino, some other class? The White guy that's 1/16 Seminole (which itself is a racially mixed group)? Who gets to choose? So, if you are looking into "Diversity" you are really looking at select classes that you have already identified arbitrarily based on some biased interpretation of the word "diversity." Diversity itself is a matter of biased individual perception, not objectivity. Regardless, to answer the question, I reiterate --- if the percentages of the special classes as represented on the bench actually matches the percentage as represented in the Bar, which they probably do, then you are engaged in a fruitless activity that is actually a means of avoiding the real damaging issues confronting the Bar. This is probably why I would be afraid to get selected -- I am too honest, too color blind, too indifferent to the sexual orientation of others. I am not biased enough or angry enough over a nearly non-existent issue to make up a non-existent special class to prop that group up and place them above someone that is more qualified based on criteria that does not necessarily make them better judges. While I agree that any candidate must not be biased against or for any special class, that does not mean they have to be from any particular class. Somebody is making up busy work that is meaningless. The selection process should be based purely on merit. To do otherwise is to be motivated by politics or something far worse.

I don't look nor do I have the pedigree of members of the JNC. Seems like a "good ole boy" club. Must have connections to be chosen.

Young lawyer

I was rejected before. The reason for the rejection was that I did not have experience and should first apply to other committees. I applied and was accepted to the unlicensed practice committee but unfortunately I changed jobs and moved from one city to another. With the new job, it became very difficult to participate and I had to resign.

I did apply and was the candidate recommended to the Board of Governors in 2001, however, the BOG member from my area asked the BOG to hold the appointment so that he could submit another applicant. He then selected a friend of his and submitted his name who was then appointed. I only learned of all the series of events from the FAWL and YLD reps present at the BOG meeting. They gave me a copy of the Florida Bar staff recommendation that I be appointed. I had been chair of one of the Florida Bar's primary rulemaking committees the prior year, had been a local bar president and had received numerous awards. There was no reason for me not to be appointed.

I have applied the past 2 or 3 years to serve on Fla Bar Committees I served on in the nineties and was not selected.

former judge, political party affiliation

I am a Caucasian Jewish male, with conservative viewpoints

I have no political connections

No one really cares what I think unless I fit a certain stereotype.

Lack of experience

The reality is that "young" "female" "black" attorney's (of which I am one) are rarely selected for judicial positions and while I am not usually intimidated by much in life, the thought of being rejected or wasting valuable time is not very appealing. In particular in North-East Florida, where the "good ole boy" network is still strong and prevalent.

I am not active in politics.

I believe progressive individuals are given preference if applying through the Bar, and my credentials out me as someone who isn't progressive or liberal.

Empirical data that suggests that minority applicants are not likely to be selected

Not well connected enough

I don't feel my background is clean enough.

"Afraid" is not the appropriate word to use. I believe it is a political process and I would be at a disadvantage because I am not politically involved.

Not distinguishable from other candidates.

Lack of experience.

I am awoman. I am a senior citizen. I am apparently "out of the loop." When I applied for a committee, I got a service" plaque only

In my mind, an individual has to know some of the right people to be ultimately selected to serve on the JNC. I do not feel as if I am in a place currently where I know the right people.

I am considered too independent and judging from not being even promoted to Chairships in committees indicates that reason.

Appears only older men are selected

Because of my race and gender.

I have been practicing 6 years and I would imagine this position would require 25+ years experience.

I have only been an attorney for 1.5 years.

I was once "admonished" by The Florida Bar

I have only been in practice for about a year and half.

Not being Hispanic nor Jewish places me at a huge disadvantage and discourages me to even contemplating it in Miami-Dade. Similarly, my fiancé, a former prosecutor for 14 years (highly respected and who was the highest Division Chief), and prior to that a public defender, and who has been in private practice for the past 10+ years, he has an immense desire to run for circuit/county court judge in Miami-Dade, he is extremely intelligent and has a brilliant legal mind, he has all that it takes, but feels highly discouraged just because of his English last name. It is absurd that Anglo males feel highly discriminated against in Miami-Dade Country, giving up a one in a lifetime career pursuit for having an English/Irish/Scottish name, as the actual minorities, Hispanics & Jews (w/ all due respect) control the elections in our county.

I'm not "afraid" I wouldn't get selected; I think I'd have a chance of being nominated but I know there is no way this governor is going to put me or anyone like me on the JNC

not well known in the legal community

My law practice over the years has been limited to criminal appellate practice.

Process is too political and has nothing to do with qualifications but party lines.

It's all too political and who you know is important. I'm not a political animal and I don't think I have enough connections.

I am Dominican and a woman and I feel that certain prejudices may keep me from being selected

race and politics

My sense, right or wrong, is that the process is tilted in favor of people with political connections with the party currently occupying the governor's mansion.

I understand it to be a VERY political process that I did not think I had a fair opportunity to win.

It's well known that these positions are not for minorities and you have to have an "in" to get selected. I don't have a huge networking circle of attorneys for this.

Lack of experience, background

Q15

People may have various reasons for not applying for appointment to become a judge. If you have not applied to become a judge, please indicate all the reasons why you have chosen not to apply.

Past misdemeanor conviction while a full time student twenty five years ago and financial issues will be publicly disclosed causing embarrassment to my family and me.

Do not want to

Don't want to be a judge.

Too much politics involved and the financial contribution is substantial

transactional lawyer, not involved with courts much

Intend to when time is right

not in my current plans

I do not have a litigation background

I practice immigration law; judges are governed by federal law in my practice.

Can't afford the expense of running
it has little to do with merit its about how connected one is to the selection powerbase.

Privacy issues

I don't make much money, and having to disclose tax returns would show that. I feel that would be used unfairly against me. Also, in the past I declared bankruptcy, although prior to that and since I never failed to pay a bill and never was late. I fear that the bankruptcy would mean I have no chance at an appointment and that my only chance would be an election.

By the time your nomination gets to Tallahassee, it no longer about what your experience/background is, but instead on who you know and what party do you belong to.

Spouse is applying

As with the JNC process, I wonder if my transactional background and lack of litigation experience would make me less desirable as a judge than someone with litigation experience

Not politically connected.

the process is too political

I did apply prior.

too expensive

No t a litigator

Waiting for a better time financially

i know the process all to well.

Tried once but no selection

With Governor Scott in office, being an African American automatically disqualifies me.

I am not a litigator. i focus on transactions and Federal Immigration work.

I am Black and only a certain number of Blacks get appointed.

The process is too political and intrusive. Factors other than competence are more important than competence.

No interest in becoming a judge.

I don't practice in the County in which I reside and would therefore be relatively unknown in the County where I would sit.

I waited to obtain experience as a judicial officer. As I approach the completion of my one year appointment, and supplemented with my 22 plus year experience in private practice, I am now eager to apply to become a judge. Jorge L. Maxion

my race and unmarried status are a disadvantage

Politics

Don't feel I have the necessary connections

Concerned about job security/re-election

No vacancies

inactive

I don't believe I am popular or well connected in the political process.

Too expensive to run

The election process to keep the job requires too much time and is not merit based.

need at least 5 years

Smart enough to stay away from judicial politics

My husband is a judge

nearing retirement age

My race(Black)

Not interested

TOO OLD

I am 69 years old and won't be selected to serve 6 months

N/A

not practicing in Florida

Political process in general

Age

personal and financial disclosure requirements. Do not mind background checks, etc. but personal financial information and other personal information is too intrusive.

Not fond of politics

age

Age/Other Applicants

Not politically connected

I think it would be intellectually boring.

I love to litigate.

Too old

Don't feel I have adequate state court connections to be considered

Nearing retirement

Too old

Most judges are incompetent
waste of time as I would not be selected

Timing not right.

No substantial trial experience even though I have practiced for 30+ years

too old

Even if initially appointed -- which politically is not very likely --I do not have the financial resources for or the political resources to run a re-election campaign. At my age (64), I am now planning for retirement.

over 70 now

substantial fundraising required

Not a Republican nor general counsel to a state agency.

Apathy and waited to late to get paperwork together

simply not interested in becoming a judge

I did apply, but it's a disgusting and pathetic process

The right time had not arisen to do so

There is an over-emphasis on participation in voluntary/private bar. There should be a genuine focus on commitment to serving the public as opposed to status climbing or marketing

Not politically connected

I was arrested for misdemeanor marijuana possession when I was 18.

retired

Not socially active, outgoing. It's partially a popularity contest among white males

You have to be on the "inside" to get selected. I have seen it for over 18 years. Same bullshit day in day out

As a personal injury attorney I don't think there is a chance in the world Gov Scott would appoint me.

I don't care for the election process which is inevitable in a bifurcated system. The job doesn't pay enough for all the money that's required to defend your seat should you draw opposition.

Not interested

too old, out of politics

Disabled Veteran

I have applied. Appointment has not been made yet. I am a minority status.

Don't want to change divisions.

I declared BK years ago

No interest in elections ever

Currently not serving in traditional practice and virtually invisible to legal community

Too old

do not want to be a judge

Am retiring w/in year

New Attorney

Not practicing, but not interested

prior disciplinary history

Colleagues and mentor speak poorly of the judges, particularly the motives and qualifications. General tone I hear is that lawyers with failing practices, low self-esteem, and an axe to grind, apply to the bench. The JNC should weed these applicants out, but do they?

retired

Too much politics

I have a business-oriented practice

process too political

Not interested in the politics of being a judge.

85 yrs old still busy in practice.

would not want to run for re-election if appointed

retiring

Nationality/Disability

I do not practice trial law.

Past negative career events

retired from law practice

It is all political. Has nothing to do with merit.

I am a male and caucasian

Too old

I'm not a litigator

News Attention

not interested

Don't have the political connections or influence to stand a chance.

Has nothing to do with qualifications; all about who you know and party affiliation.

over age

Live in Broward and black

No interest

NOT INTERESTED

The process is very political and I am not very well connected politically.
too old

I have be "admonished" by The Florida Bar

Over emphasis on politics/connections versus merit.

Q18

Which of the following best describes your legal occupation or classification?

General Magistrate

Civil Legal Aid

Legal Aid

public interest/non profit

Federal Law Clerk

non profit, public interest

Nonprofit Attorney

foreclosure

Legal Services Attorney

public defender

Law Teacher

former government practice

Traffic Court Hearing Officer

Corporate and Real Estate

Law Clerk to Judge

LEGAL SERVICES

Arbitrator/Mediator

Investigations manager

Firm private practice and now on business side of firm
legal aid attorney

Corporate Business Leadership Role

Insurance Defense

Public Interest

Legal Aid

Legal Aid Attorney

Non-profit organization

legal aid

Legal aid

General Magistrate

Compliance Officer/Consultant

Financial Planner

not practicing

public interest lawyer

retired

retired

mediator

35 years as a trial attorney

active but not practicing

Legal Aid

Public interest attorney

Legal Services

Labor organization

judicial law clerk

Not practicing

public interest

Congressional aid

Retired from private practice

mediator

Public interest/civil legal aid practitioner

Not currently practicing

Law Professor

Retired

Non-profit

Legal Aid Attorney

Mediator

Bank employee

I represent a governmental entity while working in a private law firm

trust officer

Trial Court Law Clerk

Insurance Company Staff Counsel

nonprofit law firm

private practice but mostly retired

Mediator

Public Interest

judicial staff

non profit

Retired Judge

Not currently practicing

Legal Aid Attorney

professor

Legal Aid

Q21

What is your race or ethnic origin?

White of Hispanic Origin

Latino/ Caucasian

White is my race; hispanic is my ethnicity

Cuban /American

White Hispanic

American

East Indian

Hindu - Indian

Mixed

Hispanic/White

Hispanic/Asian/White
mixed

Caucasian/Latino
AmerAsian

Filipino and Colombian

American

white/native american

Caribbean American

mixed

Mixed- Hispanic & SE Asian

Pacific Islander/White/Hispanic

Black/Hispanic

white spanish

caucasian/cuban

Biracial

Black, White, Native American

Indian

West Indian Non-Black

Human

Irrelevant

Native American

Black/Haitian

Asian/Black

Caucasian/Hispanic

Bi-racial: White & Asian

Get off this. % of minorities is high in the judiciary given # of lawyers

European

white Cuban American

American

Greek
caucasian/cuban descent

Human

East Indian

American

Haitian American

Guatemalan/American

Latina

Cuban Exile. Do not like the term "Hispanic" as it tends to throw many different people into one bucket. You should not be using this.
Iberian American

White and Hispanic

black and white

Black Hispanic

Caucasian / Asian

AA and Hispanic

Jewish

Jewish

Cuban Polish

Hispanic & White

lebanese

mix

Multiracial (Black & Hispanic

Frequency Tables: JNC Applicants, April 2014

How many times have you applied to serve on a Judicial Nominating Commission?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	50	37.0	39.4	39.4
	2	41	30.4	32.3	71.7
	3	26	19.3	20.5	92.1
	4	5	3.7	3.9	96.1
	5 or more	5	3.7	3.9	100.0
	Total	127	94.1	100.0	
Missing	System	8	5.9		
Total		135	100.0		

Were you ever selected to serve on a Judicial Nominating Commission?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	33	24.4	25.2	25.2
	No	98	72.6	74.8	100.0
	Total	131	97.0	100.0	
Missing	System	4	3.0		
Total		135	100.0		

Would you ever consider applying to serve on a Judicial Nominating

Commission in the future?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	95	70.4	70.9	70.9
Valid Maybe	36	26.7	26.9	97.8
Valid No	3	2.2	2.2	100.0
Valid Total	134	99.3	100.0	
Missing System	1	.7		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: Judicial Nominating

Commissions are part of a process that helps achieve judicial selections based upon merit.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	76	56.3	58.5	58.5
Valid Agree	44	32.6	33.8	92.3
Valid Disagree	10	7.4	7.7	100.0
Valid Total	130	96.3	100.0	
Missing System	5	3.7		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: Judicial Nominating

Commissions help to insulate the process of nominating judges from partisan politics.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	49	36.3	37.7	37.7
	Agree	58	43.0	44.6	82.3
	Disagree	18	13.3	13.8	96.2
	Strongly Disagree	5	3.7	3.8	100.0
	Total	130	96.3	100.0	
Missing	System	5	3.7		
Total		135	100.0		

Applicant Perceptions of JNC and Selection Process: The current Judicial Nominating

Commission process is preferable to elections.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	60	44.4	46.2	46.2
	Agree	45	33.3	34.6	80.8
	Disagree	8	5.9	6.2	86.9
	Strongly Disagree	8	5.9	6.2	93.1
	DK/NA	9	6.7	6.9	100.0
Total		130	96.3	100.0	
Missing	System	5	3.7		
Total		135	100.0		

Applicant Perceptions of JNC and Selection Process: The current JNC process is working well; I just choose not to seek a JNC appointment.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	17	12.6	13.1	13.1
	Agree	18	13.3	13.8	26.9
	Disagree	32	23.7	24.6	51.5
	Strongly Disagree	18	13.3	13.8	65.4
	DK/NA	45	33.3	34.6	100.0
	Total	130	96.3	100.0	
Missing	System	5	3.7		
Total		135	100.0		

Applicant Perceptions of JNC and Selection Process: Strong political overtones compromise the current judicial nominating process.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	31	23.0	23.7	23.7
	Agree	37	27.4	28.2	51.9
	Disagree	38	28.1	29.0	80.9
	Strongly Disagree	14	10.4	10.7	91.6
	DK/NA	11	8.1	8.4	100.0
	Total	131	97.0	100.0	
Missing	System	4	3.0		
Total		135	100.0		

Applicant Perceptions of JNC and Selection Process: Applicants are generally not well informed about the process.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	4	3.0	3.0	3.0
	Agree	26	19.3	19.7	22.7
	Disagree	55	40.7	41.7	64.4
	Strongly Disagree	25	18.5	18.9	83.3
	DK/NA	22	16.3	16.7	100.0
	Total	132	97.8	100.0	
Missing	System	3	2.2		
Total		135	100.0		

Applicant Perceptions of JNC and Selection Process: J NC service requires too much time away from work.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	1	.7	.8	.8
	Agree	4	3.0	3.1	3.8
	Disagree	68	50.4	51.9	55.7
	Strongly Disagree	31	23.0	23.7	79.4
	DK/NA	27	20.0	20.6	100.0
	Total	131	97.0	100.0	
Missing	System	4	3.0		
Total		135	100.0		

Applicant Perceptions of JNC and Selection Process: In general, people don't know how to apply to become a JNC member.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	3	2.2	2.3	2.3
Valid Agree	26	19.3	19.8	22.1
Valid Disagree	59	43.7	45.0	67.2
Valid Strongly Disagree	31	23.0	23.7	90.8
Valid DK/NA	12	8.9	9.2	100.0
Valid Total	131	97.0	100.0	
Missing System	4	3.0		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: The process of applying to be on a JNC is too intimidating.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	3	2.2	2.3	2.3
Valid Agree	12	8.9	9.1	11.4
Valid Disagree	82	60.7	62.1	73.5
Valid Strongly Disagree	33	24.4	25.0	98.5
Valid DK/NA	2	1.5	1.5	100.0
Valid Total	132	97.8	100.0	
Missing System	3	2.2		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: Too often, partisan politics are more important than merit in determining who is selected for a JNC appointment.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	41	30.4	31.3	31.3
Agree	34	25.2	26.0	57.3
Disagree	26	19.3	19.8	77.1
Strongly Disagree	16	11.9	12.2	89.3
DK/NA	14	10.4	10.7	100.0
Total	131	97.0	100.0	
Missing System	4	3.0		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: Lawyers from diverse racial or ethnic groups do not have the same chance as other candidates to be chosen for JNC membership.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	15	11.1	11.3	11.3
Agree	26	19.3	19.5	30.8
Disagree	32	23.7	24.1	54.9
Strongly Disagree	47	34.8	35.3	90.2
DK/NA	13	9.6	9.8	100.0
Total	133	98.5	100.0	
Missing System	2	1.5		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: Lawyers who are Lesbian, Gay, Bisexual or Transsexual do not have the same chance as other candidates to be chosen for JNC membership.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	8	5.9	6.2	6.2
Valid Agree	23	17.0	17.7	23.8
Valid Disagree	30	22.2	23.1	46.9
Valid Strongly Disagree	38	28.1	29.2	76.2
Valid DK/NA	31	23.0	23.8	100.0
Valid Total	130	96.3	100.0	
Missing System	5	3.7		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: Lawyers who are women do not have the same chance as other candidates to be chosen for JNC membership.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	7	5.2	5.3	5.3
Valid Agree	13	9.6	9.8	15.0
Valid Disagree	42	31.1	31.6	46.6
Valid Strongly Disagree	53	39.3	39.8	86.5
Valid DK/NA	18	13.3	13.5	100.0
Valid Total	133	98.5	100.0	
Missing System	2	1.5		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: Lawyers who have physical disabilities do not have the same chance as other candidates to be chosen for JNC membership.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	3	2.2	2.3	2.3
Valid Agree	8	5.9	6.1	8.3
Valid Disagree	47	34.8	35.6	43.9
Valid Strongly Disagree	45	33.3	34.1	78.0
Valid DK/NA	29	21.5	22.0	100.0
Valid Total	132	97.8	100.0	
Missing System	3	2.2		
Total	135	100.0		

Applicant Perceptions of JNC and Selection Process: A veteran who served on active duty in the U.S. military, ground, naval or air service does not have the same chance as other candidates to be chosen for JNC membership.

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Agree	4	3.0	3.1	3.1
Valid Agree	1	.7	.8	3.8
Valid Disagree	48	35.6	36.6	40.5
Valid Strongly Disagree	49	36.3	37.4	77.9
Valid DK/NA	29	21.5	22.1	100.0
Valid Total	131	97.0	100.0	
Missing System	4	3.0		
Total	135	100.0		

For comparison purposes, in what Circuit is your primary law or judicial
practice?

	Frequency	Percent	Valid Percent	Cumulative Percent
2	7	5.2	5.4	5.4
3	2	1.5	1.6	7.0
4	13	9.6	10.1	17.1
5	3	2.2	2.3	19.4
6	6	4.4	4.7	24.0
7	6	4.4	4.7	28.7
8	6	4.4	4.7	33.3
9	12	8.9	9.3	42.6
11	21	15.6	16.3	58.9
Valid 12	3	2.2	2.3	61.2
13	16	11.9	12.4	73.6
14	1	.7	.8	74.4
15	10	7.4	7.8	82.2
16	2	1.5	1.6	83.7
17	7	5.2	5.4	89.1
18	2	1.5	1.6	90.7
19	3	2.2	2.3	93.0
20	9	6.7	7.0	100.0
Total	129	95.6	100.0	
Missing System	6	4.4		
Total	135	100.0		

Which of the following best describes your legal occupation or classification?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Private Practice Attorney	111	82.2	83.5	83.5
	Government Practice Attorney	19	14.1	14.3	97.7
	Corporate Counsel	1	.7	.8	98.5
	Other	2	1.5	1.5	100.0
	Total	133	98.5	100.0	
Missing	System	2	1.5		
Total		135	100.0		

How many years have you been a member of The Florida Bar?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	2-5	6	4.4	4.5	4.5
	6-10	18	13.3	13.5	18.0
	11-20	35	25.9	26.3	44.4
	> 20	74	54.8	55.6	100.0
Total		133	98.5	100.0	
Missing	System	2	1.5		
Total		135	100.0		

In what category is your age?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	35 or younger	9	6.7	6.9	6.9
	36-49	57	42.2	43.5	50.4
	50-64	43	31.9	32.8	83.2
	65 or older	22	16.3	16.8	100.0
	Total	131	97.0	100.0	
Missing	System	4	3.0		
Total		135	100.0		

What is your race or ethnic origin?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	African American/Black	21	15.6	15.9	15.9
	Caucasian/White	95	70.4	72.0	87.9
	Hispanic	11	8.1	8.3	96.2
	Other	5	3.7	3.8	100.0
	Total	132	97.8	100.0	
Missing	System	3	2.2		
Total		135	100.0		

What is your gender?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Male	91	67.4	68.9	68.9
Valid Female	41	30.4	31.1	100.0
Total	132	97.8	100.0	
Missing System	3	2.2		
Total	135	100.0		

Are you a veteran who served on active duty in the U.S. military, ground, naval or air service during a war on in a campaign or expedition for which a campaign badge has been authorized?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	11	8.1	8.3	8.3
Valid No	121	89.6	91.7	100.0
Total	132	97.8	100.0	
Missing System	3	2.2		
Total	135	100.0		

Do you have a physical disability?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	4	3.0	3.0	3.0
	No	128	94.8	97.0	100.0
	Total	132	97.8	100.0	
Missing	System	3	2.2		
Total		135	100.0		

OPEN-ENDED RESPONSES

Q2

Please state your primary reasons for applying to serve on a / Judicial Nominating Commission?

Passion for public service and interest in a quality judicial system as a litigator

Public service and to do what I can to make sure that the most qualified candidates are appointed as state court judges.

Public service

To act as a check on who serves on the bench on the trial court level.

making sure we have good and qualified judges

Interest in public service

I was interested in being part of the process.

Maintain quality of the judiciary

in order to contribute to the selection of the judiciary

Concern about the quality of judicial nominations.

It's crucial that our circuit invest in and retain qualified judges for the near future and in the long term.

To help serve the Bar

To give back to the legal profession and make sure we have qualified and diverse judges.

As a practicing trial lawyer, I may bring some insight on some of the judicial candidates that may help the selection process.

to nominate the best candidates for the judiciary and to represent the criminal/government practice areas in the process

To secure the independence and competence of judges

Bar service; importance of judicial selection process; given that I practice extensively before a particular court, I feel I have a duty to take part, to the extent possible, in the selection process

Ensure qualified judicial applicants are sent to the governor in the event a vacancy occurs.

To insure that quality judges are appointed

To serve my profession and the State, and to ensure that the best candidates are selected to serve as Judges.

To be involved in the important selection process of our State judiciary

I wanted to have input and help select better judges. In particular, our circuit needs judges who are hardworking, with restrained temperments, who are fair to both sides, and who understand issues that members of the community who go before them face. Many, if not most, judges see things from their cocooned and privileged upbringings. This can lead to unjust rulings and decisions. Diversity is in fact essential in changing the culture of our judiciary.

to participate in the selection of the judiciary and to learn what is needed to become a judge.

I am interested in assisting with the selection of qualified candidates to the bench.

I wish to participate in the selection of the best, most qualified candidates for the bench

Public service and impacting quality of judiciary

I want a judiciary which applies the law and not one that legislates.

To ensure that the best candidates for judgeships are sent to the Governor's office for consideration.

Advance my career.

to positively impact the selection of our Judiciary.

To help ensure a high quality judiciary

I am a longtime appellate lawyer and a former staff attorney at an appellate court. For both reasons, the quality of the bench at the 2d DCA is incredibly important to me.

to ensure high quality nominees for the judiciary

Networking

I wanted to advance my status.

I was interested in participating in an essential element of the Judicial Branch and in having input towards the selection of fair, impartial and qualified candidates for the bench in an apolitical setting.

Have practices for many years and believe that As a woman and disabled person I would promote diversity

selection of good candidates

Because I had been a judge for 25 years before returning to private practice, and felt I had some unique perspectives into what makes a good judge.

To assist in the selection of competent, qualified candidates.

I want to have a positive influence on the process by which judges are selected.

Participation in the JNC is one of the best ways a practitioner can ensure the public our Judiciary is of the highest quality.

Influence the process

My interest in insuring the highest quality of candidates

To ensure fair and impartial judges get appointed

I believe I am qualified to assist the Governor to select the best judges to serve our state

I believe I should serve my community. I have knowledge of the bench, the bar, and an interest in a qualified judiciary.

I wanted an opportunity to help shape the Bench based upon my personal experiences as a member of the Bar and my community. I felt my input would add value to the commission.

To my knowledge I have never applied to sit on a JNC.

so my community will have great judges

To try to encourage better quality applicants

The quality of individuals serving as judges has a major impact on our society.

I am a trial lawyer and the quality of the bench is important to me.
Upgrade the quality of the Bench.

I thought my 40 years of practice and having been Miami Dade Bar President would give me a good background to judge the potential candidates. I've been a trial lawyer and commercial litigator for over 30 years and I've appeared in federal and state courts throughout the country. So I'm about as well-qualified as you can be for a position on the JNC. I also occasionally happen upon really bad judges (I stress "occasionally") and I want to do everything in my power to limit the chances of any lawyer or client having to suffer through that. I've also served as Chair of The Florida Bar's Judicial Evaluation and Administration Committee.

To maintain a fair and diverse judiciary

To serve my community by improving the quality of the judiciary

I completed a five year term on Florida Supreme Court Criminal Jury Instruction advisory Committee and was looking for another service opportunity. My impression is that Assistant State Attorneys are under-represented on these Commissions. I had almost thirty years experience at the time; was Board Certified in Criminal Trial practice for many years; and thought I was reasonably qualified for the position.

A desire to serve, an extensive background in interviewing, hiring and assessment of candidates

As a litigator with 42 years' experience with the court systems of two states, I believe I have much to contribute toward preserving the independence of the judiciary. (I have an application pending at the present time.)

To help ensure qualified candidates are being considered for vacant judicial positions.

Encouragement from other bar members, and having a desire to participate in the JNC process.

To ensure that Broward County continues to have well qualified jurists

Service to community

to provide a service for the Bar and assist with the selection of qualified judicial candidates

Chaired Ninth Circuit Committee once in 80's; Asked to serve, again, on 5th DCA, by Board of Governors; Not selected by Governor the second time

To select fair judges

service to the community and the Bar

To have input in the selection of judges.

Service to the Bar, increased diversity on the JNC

I believe I am very well qualified to perform the function of the JNC and believe it is the best way for me to do public service at this stage of my career.

Another African-American lawyer of prestige told me I needed to do it to increase my status in the legal community.

To make selections

To ensure that qualified candidates be appointed to the bench

to use ability to use my experience in appellate practice to help the judicial selection process

To ensure our community has the most qualified bench.

Fla Bar leader suggested it

Peg on the ladder to success

I am interested in ensuring that quality attorneys are nominated as candidates for judicial selection.
Service.

Interested in improving the judiciary

I was asked to do so.

To give back to the community and participate in the selection of the most qualified judicial candidates
opportunity to serve the public and the profession

Prestige

Career oriented move and networking.

I was told I needed to be on some of the elite committees but I did not think I met the qualifications.

Ensure quality judiciary

To assist with the selection of quality members of the Judiciary

I want to assist in making sure we have good judges on the bench, making good decisions and following the law.

I want to serve the Florida Bar to improve the quality of Judges serving our community.

I am very interested in the quality and diversity of our bench

interest in having great judges decide my cases

I used to be active in The Bar by serving for 6 years on the Criminal Board Certification Committee. It seemed a natural progression to get
appointed to a Judicial Nominating Commission since I have been a trial lawyer in state and federal court for 24 years.

To assure that qualified lawyers become members of the judiciary.

I feel that I have a solid grasp on what it takes to be a good judge, and I want to participate in the process of ensuring that Florida continues to
maintain a strong judiciary.

As a litigator, I am understandably interested in the judicial candidates and the selection of qualified candidates for the bench.

To support our community and the Bar, in what I believe is my duty, in ensuring the public is provided with the best our state has to offer the
Third Branch of Government.

As a civil litigator who spends a tremendous amount of time in front of state court judges all over the State, I can provide critical experienced
insight into the skills and traits that make for an efficient and fair judge. I also know that the current judiciary needs dramatic improvement in
terms of diversity.

Serve public

To ensure fairness and competent judges. Since I am a trial lawyer, experience in the Courtroom is essential to qualifying a candidate.

Because I felt that civil trial lawyers were underrepresented on the commission.

To be involved in the process of screening the good from the bad

I served on the JQC and BOG and have a good knowledge of judicial qualifications
To ensure the quality of judges presiding over disputes in my circuit.
Overriding interest in the quality of the judiciary.

to get good judges appointed

To serve the profession

To assist in selecting qualified candidates for the Judiciary

My experience as trial lawyer gives me a good perspective on what it takes to be a good judge.

I served on the Workers' Compensation Commission for 7 or 8 years & decided it was time for others to serve & applied to the 20th circuit commission. I think I was recommended by the BOG but denied by the governor (I believe Scott)

I believe in giving back to the profession.

To make sure that women are appropriately represented both on the JNCs and in judicial candidates going up to the Governor for consideration.

Interview and select good prospects

To contribute my time and talents to trying to enhance the quality of the judiciary

Court composition

To provide a unique perspective to the selection process. It appears most apply for political gain. I see the position as one that protects parties' rights to a fair hearing in front of a learned judge.

Help ensure diverse input, especially to non-trial lawyer input

i HAVE A KEEN INTEREST IN HELPING SELECT QUALITY ATTORNEYS TO SERVE AS JUDGES

Empowerment

To insure that we maintain the high quality of judiciary in our circuit.

To serve my community and the Bar

Improve the quality of the Bench.

Q12

Why would you not consider applying to serve again?

After numerous unsuccessful applications, I felt there wasn't a chance of being appointed.

Q7

What is your race or ethnic origin?

Afro-Hispanic

Like most people, I have a mixed racial/ethnic background

Q9

Finally, please offer any comments, suggestions or feedback you may / have about the Judicial Nomination Commission process.

E-mail blasts from the Florida Bar whenever a Florida Bar or gubernatorial appointment for a JNC is upcoming.

The diversity campaign is wrongheaded. The problems of "diversity" occur way before any candidates reach the JNC stage. Check your history.

It seems political and selections are not based on merit.

I think from my experience it's too politically charged and not enough emphasis on merit

Governor Scott has attempted to pack the JNC's with political hacks. My service on the JNC was with completely merit-based people

Selection of JNC members is incredibly political, which is disheartening to those who are trying to maintain a nonpartisan bench.

The process overall is pretty good, what happens afterwards once the names get to the governor is ridiculous.

Was not selected to serve on the JNC by the Governor because of my political party affiliation.

If the Florida Bar is serious about having a diverse judiciary, it needs to be more proactive in its efforts to become more inclusive. I appreciate the current Florida Bar's efforts in trying to achieve this goal, and the Leadership forum is a good start.

Too much cronyism -- does not select the best applicants

JNC 16 has not had a vacancy to fill since 2000. We are a small circuit in terms of numbers but I try to recruit members from all regions of the circuit as well as members from diverse backgrounds and experiences.

The process is too politicized.

I believe the JNC serves an important function, and will continue to apply.

There is a perception that our current attorney general has great influence with our current governor in the ultimate selection, and there appears to be a basis for this perception. Although I am myself interested in seeking appointment for a judicial vacancy, I know better than to apply in the current political climate where I am neither a supporter of our governor nor a prosecutor or a member of a civil firm with influence. Irrespective of the JNC's recommendations, persons like me do not stand a chance at the level of the governor. The reason why I no longer continue to apply for a JNC appointment is the prohibition on seeking appointment for office, as a side note. It is my opinion that someone like myself would be better served by waiting for a change of administration at the level of the governor, before seeking appointment to an elected position vacancy.

Different Governors have different "agendas" in selecting JNC members. All, to some extent, are looking to place individuals who share the Governor's judicial philosophy, which will inevitably lead to GOP governors appointing GOP lawyers and Democratic governors appointing Democratic lawyers. GOP governors are generally nondiscriminatory with respect to race, sex, etc. in their appointments, looking for merit based on philosophical/political (to the victors go the spoils); Democratic governors are a bit more discriminatory, as they are bean counters when it comes to diversity, though it's easier for them to do so because of the disproportion of "minorities" who are Democrats.

The process has become too political. I was a finalist of 3. We were all refused by the Governor.

The current governor cleared the 2d DCA JNC of members with backgrounds suggesting they might oppose his agenda. In my case, I am an appellate lawyer who specializes in representing plaintiffs in personal injury actions.

I was asked by members of the Board of Governors to apply for the JNC. I did so, and was selected as one of three to go to the governor. I know the other selected lawyers and can say honestly that I was honored to be placed in the same company with them. I consider both of them to be extremely bright, competent attorneys that have been involved with their communities. They, like I do, have a great deal of respect for our constitutional structure and the process of selecting both JNC members and candidates for the bench through the JNC process, IF IT WERE DONE AS DESIGNED. The governor rejected the slate of the three of us and there, in my mind, could be no other reason that pure partisan politics for doing so, notwithstanding the fact that despite my formal party affiliation I vote across party lines where logic, reason, and thoughtful discourse make that the proper choice for my sensibilities. No attempt was made to determine whether or not that was the case for me. Upon the information I have, the same was true for one of the others selected by the Bar. The push to remove the ability of the governor to select all of the JNC members needs to be strong. the 3 Members by the Bar, 3 by the governor, and 3 selected by those 6 was and is an elegant and effective model. Furthermore, the governor should not be able to reject entire slates of either JNC candidates or judicial candidates. If, within a timeframe of say 90 days, the governor makes no selection is made from a slate proposed by the Bar, then the Bar should be empowered to

select from that slate. the partisan politics dramatically effecting the judicial branch has to be stopped or the neutrality and public trust of the courts will inevitably be put in jeopardy.

I still have not heard anything. I am assuming that I was not selected. However, I should not have to assume.

The selection process should revert back to that in place before the Republican-controlled legislature changed it in 2000.

I hope that candidates would be selected based on their access to the judiciary and experience. We need good non-partisan judges.

1. Judges have no choice but to suck up to the lawyers who are on the JNC. Such contact should not take place during the judicial application process. 2. The governor is not picking the most qualified people to sit on JNCs. 3. The JNCs are not picking the most qualified people to sit as judges; and 4.

The process in the 4th Circuit works well. We need to solicit greater diversity

I think it is too politically motivated

Although the JNC process is not perfect I believe it is preferable to an election process which can reward good campaigners over more qualified candidates. Although diversity is important the ultimate goal must be to focus on finding qualified individuals

All articles I have read in the Bar Journal about judicial diversity say absolutely nothing about Gay judges. This survey is the first mention that there might actually be Gay judges out there or that we might want a few more. I think we can do better than we have been about discussing the subject.

Appointment to the JNC should be done locally not by the Governor.

We were better off when governor made his own selections. Good governor - Good judges; Bad governor - bad judges. Current system promotes less than stellar applicants

Minority Bar Associations can play an important role in recruiting JNC applicants.

I do not believe the governor should be able to determine who is on JNCs. He should determine who is on the bench after the JNC process takes place. He stacks the deck by appointing people that agree with his politics, then pick the judges from the people those people pick. The bar should choose all the JNC members.

I am applying for the fourth or fifth time. I respect, and I support, any efforts to put more minorities (ethnic, gender and sexual lifestyle preference) on the bench and, I suppose, on the JNCs. But, to be quite candid, I think this year's much-publicized effort to get such people on the JNCs has made it pretty much a "stacked deck," and I see my otherwise meritorious, albeit non-minority application as having little chance. So if I'm not picked as one of the names to be sent up to the Governor, although I will wholly support and endorse whoever is, I will have a

difficult time believing that those chosen in my stead are, given my breadth of experience (as well as my passion for wanting the best judges possible), more qualified candidates to sit on the JNCs. Andy Tramont
Too political

While partisan politics may not dominate the selection of Judicial Nominating Commission members, make no mistake, it remains an intra-Florida Bar political process. Unfortunately in recent years, Executive branch appointments increasingly reflect a political agenda. As to the nomination process and the Executive's appointments, I am a lot less concerned with diversity than excellence.

I am not certain that the candidates for the JNC are fully vetted and wonder if each candidate's experience and background is fully explored. Frankly, my perception is that it is unlikely I would be chosen to serve on the JNC because I am a white man over 50 years old.

The JNC prior to the changes made by Governors Bush and Scott was much less political and achieved far more qualified candidates for the bench.

JNC appointment should be based upon years of experience in court and in trial as it takes this experience to understand the rigors of the most stressful part of being a judge - trying a case where someone's money, family or life is at stake. Many JNC applicants are looking for prestige and authority before it is earned or properly developed.
Increase diversity

recent JNC appointments made by the Governor's Office appear to be overtly political- the underlying intent of the JNC was to "vet" the most qualified candidates and THEN allow some level of politics to be considered when the Governor makes the final appointment- now, the system appears to be "frontloaded" to send up finalists who fit the Governor's political preferences, not necessarily the most qualified candidates
Ensure politics does not dictate who sits on the commission. Perhaps that is an impossible task.

I applied to the JNC for appointment before I served on the JNC. During the application process I found it very intimidating. The system works well, and regardless of JNC composition has resulted in merit-based and representative opportunities for judicial appointments. It's one of its jobs.

When I interviewed with the Governor's office they seemed to be more concerned how much I would allow him/his office to influence my decision. That was not an appropriate question and probably what kept me from being on the JNC.

interview with the governor's office seemed to be the most effective part of the process

It has become too political. Partisanship political views are more important than qualifications.

JNC candidates selected by the Bar should automatically go onto the JNC. I realize it may require amending the Florida Constitution. However, I believe such a change will minimize or even eliminate partisan politics by removing the selection/acceptance process from the Governor's Office. Given that the Governor's Office chose a far less qualified white male candidate over me, a woman with tremendous litigation experience and military service, I feel this effort to improve diversity is critical to protecting our system of justice.

In recent years the JNC is partially compromised by the two Governors who failed to abide by the Fla Constitution when selecting candidates, but the biggest problem it faces is the daunting task of asking qualified, minority and solo practitioners to navigate the application process. Despite that these might be some of the best judges or JNC members, they do not have the financial or personnel support of a large firm. The result is we have JNC members that are largely coming from corporate firms, as well as an absolute failure to identify minority Judicial candidates and assist them through the process.

JEB Bush ruined the independence of the JNCs by putting too much power in the Governor's hands
The four picks that the Governor took away from the Bar should be returned. He has turned this process into a sham.

Too political. The Bar should have independent appointment power.

I am for the ABA determining the qualifications of potential Florida judges as they do now for federal judge applicants. I don't believe that anytime soon the "political vectors" will allow for a more inclusive, non-political, non-Governor controlled, Florida Bar orientated and managed judicial selection process since the Florida Bar is an integrated bar supervised by the Florida Supreme Court. A totally independent body such as the Florida ABA Membership should be set up to evaluate the applicants. Whether the Governors listen can't be mandated.

I think that it is unfair that the same people get renominated over and over again while qualified new candidates are not chosen
Race, sex, and ethnicity should not be factors in JNC selections.

Service should not create a conflict for other service.

The Governor's conduct has created a negative perception of openness, as well as a less diverse judiciary. No real discrimination on appointmentst to JNC, except now must be a republican.

Frequency Tables, JNC Member Survey, 2014

How long have you served on your current Judicial Nominating Commission (JNC)?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 1 year or less	15	14.9	15.2	15.2
2-3 years	52	51.5	52.5	67.7
4-5 years	18	17.8	18.2	85.9
more than 5 years	14	13.9	14.1	100.0
Total	99	98.0	100.0	
Missing System	2	2.0		
Total	101	100.0		

Since joining your current Judicial Nominating Commission, how many times have you participated in the review of applicants to fill a judicial vacancy?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid none yet	7	6.9	6.9	6.9
1-3	51	50.5	50.5	57.4
4-6	26	25.7	25.7	83.2
7-10	12	11.9	11.9	95.0
more than 10	5	5.0	5.0	100.0
Total	101	100.0	100.0	

How many applications does your Commission receive on average for each judicial vacancy?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1-5	10	9.9	10.6	10.6
	6-10	10	9.9	10.6	21.3
	11-15	9	8.9	9.6	30.9
	16-20	20	19.8	21.3	52.1
	more than 20	45	44.6	47.9	100.0
Total		94	93.1	100.0	
Missing	System	7	6.9		
Total		101	100.0		

JNC Information Sources for Applicant Review: Review of past professional work including legal opinions, briefs, law review, etc.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	65	64.4	66.3	66.3
	Somewhat Important	28	27.7	28.6	94.9
	Not Very Important	5	5.0	5.1	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Solicitation of written recommendations

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	25	24.8	25.5	25.5
	Somewhat Important	47	46.5	48.0	73.5
	Not Very Important	24	23.8	24.5	98.0
	Not At All Important	1	1.0	1.0	99.0
	N/A	1	1.0	1.0	100.0
Total		98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Review of candidate questionnaires

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	73	72.3	74.5	74.5
	Somewhat Important	21	20.8	21.4	95.9
	Not Very Important	2	2.0	2.0	98.0
	N/A	2	2.0	2.0	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Review of records of disciplinary bodies

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	85	84.2	86.7	86.7
	Somewhat Important	13	12.9	13.3	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Verbal comments received from lawyers

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	50	49.5	51.0	51.0
	Somewhat Important	33	32.7	33.7	84.7
	Not Very Important	12	11.9	12.2	96.9
	Not At All Important	3	3.0	3.1	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Verbal comments received from judges

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	66	65.3	68.0	68.0
	Somewhat Important	22	21.8	22.7	90.7
	Not Very Important	6	5.9	6.2	96.9
	Not At All Important	3	3.0	3.1	100.0
	Total	97	96.0	100.0	
Missing	System	4	4.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Verbal comments received from non-lawyer members of the public

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	30	29.7	30.6	30.6
	Somewhat Important	44	43.6	44.9	75.5
	Not Very Important	16	15.8	16.3	91.8
	Not At All Important	5	5.0	5.1	96.9
	N/A	3	3.0	3.1	100.0
Total		98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Written comments from all sources

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	28	27.7	28.9	28.9
	Somewhat Important	53	52.5	54.6	83.5
	Not Very Important	15	14.9	15.5	99.0
	N/A	1	1.0	1.0	100.0
	Total	97	96.0	100.0	
Missing	System	4	4.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Interviews of candidates

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	91	90.1	91.9	91.9
	Somewhat Important	8	7.9	8.1	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Review of biographical data

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	54	53.5	55.1	55.1
	Somewhat Important	33	32.7	33.7	88.8
	Not Very Important	7	6.9	7.1	95.9
	Not At All Important	4	4.0	4.1	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

**JNC Information Sources for Applicant Review: Social media such as Facebook, LinkedIn, Twitter,
etc.**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	3	3.0	3.1	3.1
	Somewhat Important	29	28.7	29.6	32.7
	Not Very Important	33	32.7	33.7	66.3
	Not At All Important	19	18.8	19.4	85.7
	N/A	14	13.9	14.3	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Candidate law practice websites

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	4	4.0	4.1	4.1
	Somewhat Important	27	26.7	27.8	32.0
	Not Very Important	38	37.6	39.2	71.1
	Not At All Important	18	17.8	18.6	89.7
	N/A	10	9.9	10.3	100.0
	Total	97	96.0	100.0	
Missing	System	4	4.0		
Total		101	100.0		

JNC Information Sources for Applicant Review: Background checks

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very Important	76	75.2	77.6	77.6
	Somewhat Important	18	17.8	18.4	95.9
	Not Very Important	1	1.0	1.0	96.9
	N/A	3	3.0	3.1	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Practices: My Commission follows a written process in evaluating candidates.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	28	27.7	28.0	28.0
	Agree	41	40.6	41.0	69.0
	Disagree	19	18.8	19.0	88.0
	Strongly Disagree	5	5.0	5.0	93.0
	DK/NA	7	6.9	7.0	100.0
	Total	100	99.0	100.0	
Missing	System	1	1.0		
Total		101	100.0		

JNC Practices: My Commission periodically receives training on how to conduct candidate interviews.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	24	23.8	24.2	24.2
	Agree	46	45.5	46.5	70.7
	Disagree	21	20.8	21.2	91.9
	Strongly Disagree	2	2.0	2.0	93.9
	DK/NA	6	5.9	6.1	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Practices: My Commission advertises vacancies in general circulation newspapers or their websites.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	57	56.4	57.6	57.6
	Agree	24	23.8	24.2	81.8
	Disagree	4	4.0	4.0	85.9
	DK/NA	14	13.9	14.1	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Practices: My Commission advertises vacancies in business publications.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	29	28.7	29.6	29.6
	Agree	20	19.8	20.4	50.0
	Disagree	19	18.8	19.4	69.4
	Strongly Disagree	2	2.0	2.0	71.4
	DK/NA	28	27.7	28.6	100.0
Total		98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Practices: My Commission advertises vacancies in one local bar association publication.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	47	46.5	47.5	47.5
	Agree	23	22.8	23.2	70.7
	Disagree	8	7.9	8.1	78.8
	Strongly Disagree	6	5.9	6.1	84.8
	DK/NA	15	14.9	15.2	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Practices: My Commission advertises vacancies in more than one local bar publication.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	49	48.5	49.5	49.5
	Agree	25	24.8	25.3	74.7
	Disagree	8	7.9	8.1	82.8
	DK/NA	17	16.8	17.2	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Practices: My Commission has a website.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	10	9.9	10.2	10.2
	Agree	8	7.9	8.2	18.4
	Disagree	32	31.7	32.7	51.0
	Strongly Disagree	20	19.8	20.4	71.4
	DK/NA	28	27.7	28.6	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Practices: When advertising vacancies, my Commission uses these words or substantially similar words, "The Judicial System of the State of Florida is an Equal Employment Opportunity/Affirmative Action Employer."

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	22	21.8	22.4	22.4
	Agree	9	8.9	9.2	31.6
	Disagree	7	6.9	7.1	38.8
	Strongly Disagree	4	4.0	4.1	42.9
	DK/NA	56	55.4	57.1	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

JNC Practices: When communicating in writing with potential applicants and applicants, my Commission uses these words or substantially similar words, “The Judicial System of the State of Florida is an Equal Employment Opportunity/Affirmative Action Employer.”

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	19	18.8	19.6	19.6
	Agree	7	6.9	7.2	26.8
	Disagree	9	8.9	9.3	36.1
	Strongly Disagree	5	5.0	5.2	41.2
	DK/NA	57	56.4	58.8	100.0
	Total	97	96.0	100.0	
Missing	System	4	4.0		
Total		101	100.0		

JNC Practices: My Commission has received diversity training.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	22	21.8	22.2	22.2
	Agree	21	20.8	21.2	43.4
	Disagree	25	24.8	25.3	68.7
	Strongly Disagree	9	8.9	9.1	77.8
	DK/NA	22	21.8	22.2	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Practices: My Commission has used data from The Florida Bar to determine the numbers of African American, Asian/Pacific Islander, or Hispanic lawyers who practice in the jurisdiction for which it nominates candidates for judicial appointment.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	13	12.9	13.1	13.1
	Agree	7	6.9	7.1	20.2
	Disagree	32	31.7	32.3	52.5
	Strongly Disagree	22	21.8	22.2	74.7
	DK/NA	25	24.8	25.3	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Practices: My Commission has used data from The Florida Bar to identify the African American, Asian/Pacific Islander, or Hispanic lawyers who practice in the jurisdiction for which it nominates candidates for judicial appointment.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	11	10.9	11.1	11.1
	Agree	7	6.9	7.1	18.2
	Disagree	36	35.6	36.4	54.5
	Strongly Disagree	22	21.8	22.2	76.8
	DK/NA	23	22.8	23.2	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Practices: My Commission has used data from the U.S. Census to reflect the numbers of African American, Asian/Pacific Islander, or Hispanic who are in the population of the jurisdiction for which it nominates candidates for judicial appointment.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	11	10.9	11.1	11.1
	Agree	5	5.0	5.1	16.2
	Disagree	37	36.6	37.4	53.5
	Strongly Disagree	23	22.8	23.2	76.8
	DK/NA	23	22.8	23.2	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

JNC Practices: Members of my Commission usually know the ethnic or racial background of applicants before we meet or interview the applicants.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	29	28.7	29.3	29.3
	Agree	38	37.6	38.4	67.7
	Disagree	13	12.9	13.1	80.8
	Strongly Disagree	9	8.9	9.1	89.9
	DK/NA	10	9.9	10.1	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Judicial Nominating Commissions are part of a process that helps achieve judicial selections based upon merit.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	80	79.2	80.0	80.0
	Agree	18	17.8	18.0	98.0
	DK/NA	2	2.0	2.0	100.0
	Total	100	99.0	100.0	
Missing	System	1	1.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Judicial Nominating Commissions help to insulate the process of nominating judges from partisan politics.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	64	63.4	64.6	64.6
	Agree	24	23.8	24.2	88.9
	Disagree	5	5.0	5.1	93.9
	Strongly Disagree	4	4.0	4.0	98.0
	DK/NA	2	2.0	2.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: The current Judicial Nominating

Commission process is preferable to elections.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	65	64.4	65.7	65.7
	Agree	22	21.8	22.2	87.9
	Disagree	7	6.9	7.1	94.9
	Strongly Disagree	2	2.0	2.0	97.0
	DK/NA	3	3.0	3.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: The current JNC process is working well.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	64	63.4	64.6	64.6
	Agree	26	25.7	26.3	90.9
	Disagree	7	6.9	7.1	98.0
	Strongly Disagree	1	1.0	1.0	99.0
	DK/NA	1	1.0	1.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Strong political overtones compromise the current judicial nominating process.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	10	9.9	10.1	10.1
	Agree	20	19.8	20.2	30.3
	Disagree	35	34.7	35.4	65.7
	Strongly Disagree	31	30.7	31.3	97.0
	DK/NA	3	3.0	3.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Too often, partisan politics are more important than merit in determining who is selected for a JNC appointment.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	7	6.9	7.1	7.1
	Agree	14	13.9	14.1	21.2
	Disagree	36	35.6	36.4	57.6
	Strongly Disagree	38	37.6	38.4	96.0
	DK/NA	4	4.0	4.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Applicants are generally not well informed about the nominating process.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	5	5.0	5.1	5.1
	Agree	12	11.9	12.1	17.2
	Disagree	36	35.6	36.4	53.5
	Strongly Disagree	41	40.6	41.4	94.9
	DK/NA	5	5.0	5.1	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: NC service requires too much time away from work.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	1	1.0	1.0	1.0
	Agree	8	7.9	8.3	9.4
	Disagree	52	51.5	54.2	63.5
	Strongly Disagree	35	34.7	36.5	100.0
	Total	96	95.0	100.0	
Missing	System	5	5.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: In general, people don't know how to apply to become a JNC member.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	2	2.0	2.0	2.0
	Agree	19	18.8	19.4	21.4
	Disagree	35	34.7	35.7	57.1
	Strongly Disagree	33	32.7	33.7	90.8
	DK/NA	9	8.9	9.2	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: The process of applying to be on a JNC is too intimidating.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	1	1.0	1.0	1.0
	Agree	4	4.0	4.0	5.1
	Disagree	43	42.6	43.4	48.5
	Strongly Disagree	49	48.5	49.5	98.0
	DK/NA	2	2.0	2.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Lawyers from diverse racial or ethnic groups do not have the same chance as other candidates to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	2	2.0	2.0	2.0
	Agree	5	5.0	5.1	7.1
	Disagree	26	25.7	26.5	33.7
	Strongly Disagree	62	61.4	63.3	96.9
	DK/NA	3	3.0	3.1	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Lawyers who are Lesbian, Gay, Bisexual or Transsexual do not have the same chance as other candidates to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	2	2.0	2.0	2.0
	Agree	4	4.0	4.0	6.1
	Disagree	25	24.8	25.3	31.3
	Strongly Disagree	62	61.4	62.6	93.9
	DK/NA	6	5.9	6.1	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Lawyers who are women do not have the same chance as men to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	2	2.0	2.0	2.0
	Agree	5	5.0	5.1	7.1
	Disagree	19	18.8	19.2	26.3
	Strongly Disagree	70	69.3	70.7	97.0
	DK/NA	3	3.0	3.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: Lawyers who have physical disabilities do not have the same chance other candidates to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	2	2.0	2.0	2.0
	Agree	3	3.0	3.0	5.1
	Disagree	20	19.8	20.2	25.3
	Strongly Disagree	67	66.3	67.7	92.9
	DK/NA	7	6.9	7.1	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Member Perceptions of JNC and Nominating Process: A veteran who served on active duty in the U.S. military, ground, naval or air service does not have the same chance as other candidates to be chosen for JNC membership.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	2	2.0	2.0	2.0
	Agree	2	2.0	2.0	4.0
	Disagree	18	17.8	18.2	22.2
	Strongly Disagree	70	69.3	70.7	92.9
	DK/NA	7	6.9	7.1	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Would greater outreach by your JNC help it to obtain applications from lawyers who are any of the following? African American

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	20	19.8	20.2	20.2
	No	50	49.5	50.5	70.7
	DK/NA	29	28.7	29.3	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

**Would greater outreach by your JNC help it to obtain applications from lawyers who
are any of the following? Asian/Pacific Islander**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	17	16.8	17.2	17.2
	No	47	46.5	47.5	64.6
	DK/NA	35	34.7	35.4	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

**Would greater outreach by your JNC help it to obtain applications from lawyers who
are any of the following? Hispanic**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	19	18.8	19.2	19.2
	No	53	52.5	53.5	72.7
	DK/NA	27	26.7	27.3	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

**Would greater outreach by your JNC help it to obtain applications from lawyers who
are any of the following? Women**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	17	16.8	17.2	17.2
	No	58	57.4	58.6	75.8
	DK/NA	24	23.8	24.2	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

**Would greater outreach by your JNC help it to obtain applications from lawyers who
are any of the following? Lesbian, Gay, Bisexual or Transsexual**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	18	17.8	18.4	18.4
	No	46	45.5	46.9	65.3
	DK/NA	34	33.7	34.7	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

**Would greater outreach by your JNC help it to obtain applications from lawyers who
are any of the following? An individual with physical disabilities**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	19	18.8	19.4	19.4
	No	47	46.5	48.0	67.3
	DK/NA	32	31.7	32.7	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

Would greater outreach by your JNC help it to obtain applications from lawyers who are any of the following? A veteran

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	18	17.8	18.4	18.4
	No	48	47.5	49.0	67.3
	DK/NA	32	31.7	32.7	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

For comparison purposes, in what Circuit is your primary law or judicial practice?

	Frequency	Percent	Valid Percent	Cumulative Percent
1	4	4.0	4.2	4.2
2	6	5.9	6.3	10.4
3	2	2.0	2.1	12.5
4	5	5.0	5.2	17.7
5	4	4.0	4.2	21.9
6	5	5.0	5.2	27.1
7	2	2.0	2.1	29.2
8	5	5.0	5.2	34.4
9	8	7.9	8.3	42.7
10	5	5.0	5.2	47.9
Valid 11	7	6.9	7.3	55.2
12	5	5.0	5.2	60.4
13	4	4.0	4.2	64.6
14	3	3.0	3.1	67.7
15	8	7.9	8.3	76.0
16	4	4.0	4.2	80.2
17	8	7.9	8.3	88.5
18	4	4.0	4.2	92.7
19	2	2.0	2.1	94.8
20	5	5.0	5.2	100.0
Total	96	95.0	100.0	
Missing System	5	5.0		
Total	101	100.0		

Which of the following best describes your legal occupation or classification?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Private Practice	83	82.2	83.8	83.8
	Judge/federal, state or local government attorney	10	9.9	10.1	93.9
	Corporate counsel	4	4.0	4.0	98.0
	Other	2	2.0	2.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

How many years have you been a member of The Florida Bar?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	6-10	9	8.9	9.1	9.1
	11-20	36	35.6	36.4	45.5
	> 20	54	53.5	54.5	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

In which of the following categories is your age?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	35 or younger	7	6.9	7.1	7.1
	36 to 49	36	35.6	36.7	43.9
	50 to 65	45	44.6	45.9	89.8
	older than 65	10	9.9	10.2	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

What is your race or ethnic origin?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	African American/Black	10	9.9	10.1	10.1
	Caucasian/White	80	79.2	80.8	90.9
	Hispanic	7	6.9	7.1	98.0
	Other	2	2.0	2.0	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

Are you a veteran who served on active duty in the U.S. military, ground, naval or air service during a war on in a campaign or expedition for which a campaign badge has been authorized?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	8	7.9	8.2	8.2
	No	90	89.1	91.8	100.0
	Total	98	97.0	100.0	
Missing	System	3	3.0		
Total		101	100.0		

Do you have a physical disability?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	5	5.0	5.1	5.1
	No	94	93.1	94.9	100.0
	Total	99	98.0	100.0	
Missing	System	2	2.0		
Total		101	100.0		

OPEN-ENDED REPONSES

Q16

Please list any other sources of information your Commission / reviews when reviewing applicants.

None

Comments from opposing counsel in cases.

Better Business Bureau

Checking references and other material in the application
I ask each reference given by applicant for others who know applicant

State Attorney, Public Defender, Chief Judge, County Attorney

personal knowledge of commission members

All information attached to the application and unsolicited phone calls.

Listed References and identified opposing counsels are routinely contacted.

None

We call opposing counsel on previous trials and the Judges on those cases as well as references.

comments from opposing counsel listed in application

what does the candidate post on social websites.

interviews of candidate's list of references and candidate's opposing counsel in prior cases

Community involvement and service.

We all do our own vetting of assigned candidates. I can't tell you how important one part of the vetting is to anyone other than myself.

Comments from other Commission members who know a candidate professionally or personally

personal knowledge. Our Commission represents many decades of practice in our circuit. It is rare to find a candidate that has not had an interaction with a Commissioner.

Financial information, credit report, dhsmv record, google

Attachments to application including IRS returns

Q22

Please explain how you would like to see such greater outreach / occur.

Don't try to fix what ain't broke

To be clear, my JNC performs great outreach to all of the people described above. My JNC and its members speak and present and publish materials at events for local, state, minority and women bar associations. Outreach is very important to my JNC and we are working hard to accomplish it. I have personally organized and moderating panels and sat on other panels at women and minority bar association meetings to achieve outreach for my JNC. I have also personally encourage women and minority lawyers to both apply to be a judge and apply to sit on the JNC. I believe that these efforts are working!

JNC members should be actively soliciting applications from qualified lawyers through any means necessary allowed by law. As a JNC member, I am a public servant and it is my duty to actively solicit and encourage ALL qualified lawyers, regardless of race, ethnicity, gender, sexual orientation, veteran status, marital status or any other qualifying group, to apply for a judicial position. I have no knowledge of whether other JNC members are actively engaging candidates. There is a disparity between the number of African American, Asian, and female judges in the judicial circuit that I serve as a JNC member. This is disconcerting and should be remedied. I am not aware if the other groups specifically identified in this survey are not represented on the bench in my circuit. However, I do not feel like the current process is preventing these groups from applying. Qualified, respectable lawyers that represent these groups should be mentored and encouraged to apply. However, the assistance should not stop there. Once they make a decision to apply the Florida Bar and other leaders in the community need to actively encourage the JNC members to select the candidates for nomination. This process should be implemented regardless of any identifiable ethnic, religious, etc. group. In my opinion, the substantial majority are very busy and neglect their duty to actively participate in the judicial process. Can this be remedied? Absolutely and I hope the Florida Bar takes an active role in educating and soliciting lawyers to take a more active role in their local judicial selection process. Perhaps specific training in this area, with the training conducted locally with the commission or alternatively through web based training on an individual basis.

I am not sure it is job of JNC to "recruit" applicants. I want applicants who are informed enough and have the desire/drive to apply. JNC's job is to nominate the best qualified, not to fill a politically correct "quota". I do not vote for a class of applicant, I vote for those who I believe can do a good job as a judge. You had Q's above re politicizing the JNC, this has elements of that very thing. A JNC is a neutral body and should not conduct outreach efforts.

Education about the vetting process; if an applicant is not selected for interview, provide an opportunity for review of the application and what could be done to strengthen the application; survey of non-applicants to gauge their perception of the process.

The target audience can be reached through minority bar organizations. Each JNC should as a matter of policy and practice reach out to those minority bar organizations to insure the message is disseminated.

our JNC actively reaches out now with success

More diversity on the JNC - more women and people of color.
don't think there is any need for greater outreach regarding the jnc on which i serve.

Better publication of openings and more time allotted to fill out tedious applications

I think the outreach process is appropriate the way it is.

No need

The JNC members should encourage submission of applications from attorneys with strong legal backgrounds who are likely to be highly qualified for a judicial position. Many times, this encouragement is by communications with the various minority bar associations. The larger problem regarding minority applicants is that if the applicant is not selected on the first attempt, it is assumed that the denial is based on race, sexual orientation, etc. I have prepared a chart of applicants from the past 10-15 positions in my circuit and it is clear that most white male applicants apply repeatedly before making the "Governor's list". The repetition improves the quality of the application and the applicant's interview skills. This can help a "borderline" applicant become a strong applicant. But don't forget, some attorneys that apply are simply not likely to be good judges. It is the JNC's job to make sure we do not have poor judges as much as it is the JNC's job to make sure we have a qualified and diverse judiciary.

I don't think the process should be laid out at the applicants' feet. If they want it bad enough, the process is not hard. All they have to do is educate themselves a little bit. We don't want judges who can't even figure out how to apply on their own.

It is occurring already and working fine and should not be tinkered with

WHY is a JNC doing outreach

More precise discussion among the Bar Associations concerning even the basic premise of the JNC and its operation

Return JNC appointments to The Florida Bar..

I think the outreach is my Commission is sufficient

Advertising, press releases, and word of mouth has enabled us to receive a large number of qualified applicants already.

I believe everyone has the same opportunity to apply and be considered for a vacancy, regardless of the information in the above section.

More discussion and specific advertising at local bar level

Publish the vacancies in the Florida Bar News and local mass media publications.

I am in a small circuit; all attorneys know each other MOL; we employed advertising in a way that achieved great outreach in our process

Greater State and Local Bar outreach.

My current commission has a blind commissioner. We would utilize his resources to expand our efforts.

JNC members should be active in the legal community and reaching out to qualified and diversified individuals. So that we may have greater diversity in the judiciary

outreach should not occur from a JNC.

It will help diversity for highly qualified applicants to be encouraged to apply for judicial openings.

Q7 What is your race or ethnic origin?

Caucasian Cuban American

Q9

Please offer any comments, suggestions or feedback you may have / about how Judicial Nomination Commissions can help in maintaining a / fair and impartial court system that is reflective of the rich diversity or our state.

I believe a review of JQC records would reveal that more often it is elected judges who have issues before them then those vetted by their peers through the JNC process. Stereotypes about the types of law people practice clouding their judgment as to whom they choose is counterproductive.

How much did the Florida Bar spend on this survey?

I would like to see a merit-based court system, blind to race, sex, disability and military service, and I hope my contribution to the nominating process reflects that. Diversity is important only in the context of diverse life experience (as distinguished from diverse immutable characteristics) helps a judge understand the range of situations and life experiences the judge might encounter in a courtroom at the trial level. At the appellate level, even this type of diversity has less merit. The purpose of a judge is to fairly and predictably apply the law to the facts. A

high-quality lawyer of good character with a strong work ethic can do this regardless of race, sex, of physical ability, and those factors should be disregarded by nominators.

President Pettis's efforts to achieve greater diversity on JNCs should be commended. As should his efforts to see JNCs nominate the highest qualified applicants with a specific value to nominate a diverse slate of applicants for each open judgeship. I believe that my JNC is completely non-partisan and currently places a very high value on diversity in its nominations. This is being accomplished without any compromise in the highest priority of the JNC, which is to nominate the highest qualified applicants. This can be attributed, at least partially, to the integrity, civility and professionalism of the members of the bar in the 13th Circuit and to the specific efforts of our JNC to seek out and encourage applications from a diverse pool of highly qualified attorneys. I am honored to be a part of this process. Regarding judicial elections, particularly elections where there is no incumbent in the race, I find the quality of judicial candidates to be extremely lower than the quality of those nominated for judicial office by our JNC. Simply put, our JNC does a great job weeding out non-qualified candidates. The election process often fails in this regard.

See comments in response to question above.

Conducting of this survey is a good step in hopefully making the judicial appointment process appear more open and fair to those who may feel otherwise.

You can lead a horse to water, but you can't make him drink. Encouragement from the Bar directed at ALL persons, not a certain class, to apply should be made. Maybe the fact the best of your "targeted classes" are sought by the firms that pay the big bucks makes it less likely that they will apply and forego the financial benefits of big firm employment. Small circuits also may have limited numbers of these "targeted classes" to draw from. If I perceive an applicant has a "targeted class" agenda to advance, I would be reluctant to vote to send that name up. We have too much political correctness now. We need judges who follow the law, not make it !!

need more procedural and substantive guidelines

Conduct a public information session once per year regarding the application process.

Diversity should be a consideration in the nomination process. It should not be determinative, but it should be a factor. We all have an obligation to insure that our bench represents the diversity of the community over which it exercises jurisdiction.

Keep the JNC system and have the Governor's office actually speak with JNC members as they review the submissions.

The focus has shifted from getting the best candidates to getting commissioners and judicial candidate with a diverse background. If we can improve the caliber of judicial candidates, we will see an increase in the diversity of candidates and commissioners. The problem now is that not enough good attorneys want to be judges. For example , in the federal system, we see diversity for both magistrate and judges and excellent attorneys applying. In the state system , we don't see that caliber. When we do, we will see diversity.

More diversity on the JNC will ensure more diversity on the bench.

when there is an appointive system there will always be some politicking for appointments. the issue is minimizing the politicking. i have not given the matter enough thought to articulate the method or means to eliminate or minimize politicking for appointments.

The Governor should accept panels sent to him/her by the Florida Bar and not interfere with those seats allotted to the Bar.

It is perceived by lawyers that the Governor's appointment of JNC members is greatly influenced by political considerations.

Each community (African-American, LGBT, Hispanic, military, etc) should encourage highly qualified attorneys to submit applications as these communities are probably more aware than JNC members of possible applicants.

I think they are perfectly fair and impartial. I can't imagine any part of the process which would impede diversity
System is working well

Return the Florida Bar's autonomy to make its selections, the way the system was originally designed.

I am a female commission member

The selection of judges should be based on merit. A candidate's ethnicity, race, gender, sexual preference, etc. does not influence my evaluation of judicial candidates. I, along with my fellow JNC members, evaluate candidates based on their qualifications alone and spend a great deal of time learning about and getting to know the candidates in order to recommend the most qualified applicants.

My JNC has gender, ethnic, age, geographic, and practice area diversity. We routinely send up applicants to the governor's office that are diverse. I think it is harmful - and untrue as to my JNC - to assume that JNCs are a bunch of old white men sending up a bunch of names for old white men.

There should be strict, not selective, adherence to the term limits for JNC members; no one should have long term tenure.

The system works. Do NOT attempt to fine tune it with false diversity activities. When qualified minorities apply their names are usually forwarded to the Governor for consideration.

Eliminate public and press access to the process. The assurance of confidentiality among the Commissioners is reassuring to all applicants and should be to minority applicants as well. Press presence or non lawyer presence has a chilling effect.

Give the Governor less control over the appointment of members to the JNC. I was a member of the JNC years ago when the Governor appointed three members, the Bar appointed three members, and the Commission itself chose three members. It resulted in a better less political process.

Members on the JNC should stop looking at a judgeship as though they are lowering the bar if a minority is including in a list to the Governor. We all have diverse past and experiences and should look to include all members of the bar regardless of race, color, sex or religion.

It is my belief that the most qualified candidates be nominated for appointment by the Governor for a judicial opening. An applicant's race, gender, national origin, sexual orientation, etc. should have no impact in determining whether or not he or she is qualified for nomination to a judicial position. A question is asked on the judicial applications regarding gender and ethnicity, which I believe, if legally permissible, should be removed.

More opportunities to share information in an appropriate manner will be appreciated.

RESPONSES TO OPEN-ENDED SURVEY OF JNC MEMBERS, JNC APPLICANTS, AND THE FLORIDA BAR GENERAL MEMBERSHIP

Q2

Please state your primary reasons for applying to serve on a / Judicial Nominating Commission?

Passion for public service and interest in a quality judicial system as a litigator

Public service and to do what I can to make sure that the most qualified candidates are appointed as state court judges.

Public service

To act as a check on who serves on the bench on the trial court level.

making sure we have good and qualified judges

Interest in public service

I was interested in being part of the process.

Maintain quality of the judiciary

in order to contribute to the selection of the judiciary

Concern about the quality of judicial nominations.

It's crucial that our circuit invest in and retain qualified judges for the near future and in the long term.

To help serve the Bar

To give back to the legal profession and make sure we have qualified and diverse judges.

As a practicing trial lawyer, I may bring some insight on some of the judicial candidates that may help the selection process.

to nominate the best candidates for the judiciary and to represent the criminal/government practice areas in the process

To secure the independence and competence of judges

Bar service; importance of judicial selection process; given that I practice extensively before a particular court, I feel I have a duty to take part, to the extent possible, in the selection process

Ensure qualified judicial applicants are sent to the governor in the event a vacancy occurs.

To insure that quality judges are appointed

To serve my profession and the State, and to ensure that the best candidates are selected to serve as Judges.

To be involved in the important selection process of our State judiciary

I wanted to have input and help select better judges. In particular, our circuit needs judges who are hardworking, with restrained temperaments, who are fair to both sides, and who understand issues that members of the community who go before them face. Many, if not most, judges see things from their cocooned and privileged upbringings. This can lead to unjust rulings and decisions. Diversity is in fact essential in changing the culture of our judiciary.

to participate in the selection of the judiciary and to learn what is needed to become a judge.

I am interested in assisting with the selection of qualified candidates to the bench.

I wish to participate in the selection of the best, most qualified candidates for the bench

Public service and impacting quality of judiciary

I want a judiciary which applies the law and not one that legislates.

To ensure that the best candidates for judgeships are sent to the Governor's office for consideration.

Advance my career.

to positively impact the selection of our Judiciary.

To help ensure a high quality judiciary

I am a longtime appellate lawyer and a former staff attorney at an appellate court. For both reasons, the quality of the bench at the 2d DCA is incredibly important to me.

to ensure high quality nominees for the judiciary

Networking

I wanted to advance my status.

I was interested in participating in an essential element of the Judicial Branch and in having input towards the selection of fair, impartial and qualified candidates for the bench in an apolitical setting.

Have practices for many years and believe that As a woman and disabled person I would promote diversity

selection of good candidates

Because I had been a judge for 25 years before returning to private practice, and felt I had some unique perspectives into what makes a good judge.

To assist in the selection of competent, qualified candidates.

I want to have a positive influence on the process by which judges are selected.

Participation in the JNC is one of the best ways a practitioner can ensure the public our Judiciary is of the highest quality.

Influence the process

My interest in insuring the highest quality of candidates

To ensure fair and impartial judges get appointed

I believe I am qualified to assist the Governor to select the best judges to serve our state

I believe I should serve my community. I have knowledge of the bench, the bar, and an interest in a qualified judiciary.

I wanted an opportunity to help shape the Bench based upon my personal experiences as a member of the Bar and my community. I felt my input would add value to the commission.

To my knowledge I have never applied to sit on a JNC.

so my community will have great judges

To try to encourage better quality applicants

The quality of individuals serving as judges has a major impact on our society.

I am a trial lawyer and the quality of the bench is important to me.

Upgrade the quality of the Bench.

I thought my 40 years of practice and having been Miami Dade Bar President would give me a good background to judge the potential candidates

I've been a trial lawyer and commercial litigator for over 30 years and I've appeared in federal and state courts throughout the country. So I'm about as well-qualified as you can be for a position on the JNC. I also occasionally happen upon really bad judges (I stress "occasionally") and I want to do everything in my power to limit the chances of any lawyer or client having to suffer through that. I've also served as Chair of The Florida Bar's Judicial Evaluation and Administration Committee.

To maintain a fair and diverse judiciary

To serve my community by improving the quality of the judiciary

I completed a five year term on Florida Supreme Court Criminal Jury Instruction advisory Committee and was looking for another service opportunity. My impression is that Assistant State Attorneys are under-represented on these Commissions. I had almost thirty years experience at the time; was Board Certified in Criminal Trial practice for many years; and thought I was reasonably qualified for the position.

A desire to serve, an extensive background in interviewing, hiring and assessment of candidates

As a litigator with 42 years' experience with the court systems of two states, I believe I have much to contribute toward preserving the independence of the judiciary. (I have an application pending at the present time.)

To help ensure qualified candidates are being considered for vacant judicial positions.

Encouragement from other bar members, and having a desire to participate in the JNC process.

To ensure that Broward County continues to have well qualified jurists

Service to community

To provide a service for the Bar and assist with the selection of qualified judicial candidates

Chaired Ninth Circuit Committee once in 80's; Asked to serve, again, on 5th DCA, by Board of Governors; Not selected by Governor the second time

To select fair judges

service to the community and the Bar

To have input in the selection of judges.

Service to the Bar, increased diversity on the JNC

I believe I am very well qualified to perform the function of the JNC and believe it is the best way for me to do public service at this stage of my career.

Another African-American lawyer of prestige told me I needed to do it to increase my status in the legal community.

To make selections

To ensure that qualified candidates be appointed to the bench

to use ability to use my experience in appellate practice to help the judicial selection process

To ensure our community has the most qualified bench.

Fla Bar leader suggested it

Peg on the ladder to success

I am interested in ensuring that quality attorneys are nominated as candidates for judicial selection.

Service.

Interested in improving the judiciary

I was asked to do so.

To give back to the community and participate in the selection of the most qualified judicial candidates opportunity to serve the public and the profession

Prestige

Career oriented move and networking.

I was told I needed to be on some of the elite committees but I did not think I met the qualifications.

Ensure quality judiciary

To assist with the selection of quality members of the Judiciary

I want to assist in making sure we have good judges on the bench, making good decisions and following the law.

I want to serve the Florida Bar to improve the quality of Judges serving our community.

I am very interested in the quality and diversity of our bench

interest in having great judges decide my cases

I used to be active in The Bar by serving for 6 years on the Criminal Board Certification Committee. It seemed a natural progression to get appointed to a Judicial Nominating Commission since I have been a trial lawyer in state and federal court for 24 years.

To assure that qualified lawyers become members of the judiciary.

I feel that I have a solid grasp on what it takes to be a good judge, and I want to participate in the process of ensuring that Florida continues to maintain a strong judiciary.

As a litigator, I am understandably interested in the judicial candidates and the selection of qualified candidates for the bench.

To support our community and the Bar, in what I believe is my duty, in ensuring the public is provided with the best our state has to offer the Third Branch of Government.

As a civil litigator who spends a tremendous amount of time in front of state court judges all over the State, I can provide critical experienced insight into the skills and traits that make for an efficient and fair judge. I also know that the current judiciary needs dramatic improvement in terms of diversity.

Serve public

To ensure fairness and competent judges. Since I am a trial lawyer, experience in the Courtroom is essential to qualifying a candidate.

Because I felt that civil trial lawyers were underrepresented on the commission.

To be involved in the process of screening the good from the bad

I served on the JQC and BOG and have a good knowledge of judicial qualifications

To ensure the quality of judges presiding over disputes in my circuit.

Overriding interest in the quality of the judiciary.

to get good judges appointed

To serve the profession

To assist in selecting qualified candidates for the Judiciary

My experience as trial lawyer gives me a good perspective on what it takes to be a good judge.

I served on the Workers' Compensation Commission for 7 or 8 years & decided it was time for others to serve & applied to the 20th circuit commission. I think I was recommended by the BOG but denied by the governor (I believe Scott)

I believe in giving back to the profession.

To make sure that women are appropriately represented both on the JNCs and in judicial candidates going up to the Governor for consideration.

Interview and select good prospects

To contribute my time and talents to trying to enhance the quality of the judiciary

Court composition

To provide a unique perspective to the selection process. It appears most apply for political gain. I see the position as one that protects parties' rights to a fair hearing in front of a learned judge.

Help ensure diverse input, especially to non-trial lawyer input

i HAVE A KEEN INTEREST IN HELPING SELECT QUALITY ATTORNEYS TO SERVE AS JUDGES

Empowerment

To insure that we maintain the high quality of judiciary in our circuit.

To serve my community and the Bar

Improve the quality of the Bench.

OPEN-ENDED RESPONSES from JNC APPLICANTS

Q12

Why would you not consider applying to serve again?

After numerous unsuccessful applications, I felt there wasn't a chance of being appointed.

Q7

What is your race or ethnic origin?

Afro-Hispanic

Like most people, I have a mixed racial/ethnic background

Q9

Finally, please offer any comments, suggestions or feedback you may / have about the Judicial Nomination Commission process.

E-mail blasts from the Florida Bar whenever a Florida Bar or gubernatorial appointment for a JNC is upcoming.

The diversity campaign is wrongheaded. The problems of "diversity" occur way before any candidates reach

the JNC stage. Check your history.

It seems political and selections are not based on merit.

I think from my experience it's too politically charged and not enough emphasis on merit

Governor Scott has attempted to pack the JNC's with political hacks. My service on the JNC was with completely merit-based people

Selection of JNC members is incredibly political, which is disheartening to those who are trying to maintain a nonpartisan bench.

The process overall is pretty good, what happens afterwards once the names get to the governor is ridiculous.

Was not selected to serve on the JNC by the Governor because of my political party affiliation.

If the Florida Bar is serious about having a diverse judiciary, it needs to be more proactive in its efforts to become more inclusive. I appreciate the current Florida Bar's efforts in trying to achieve this goal, and the Leadership forum is a good start.

Too much cronyism -- does not select the best applicants

JNC 16 has not had a vacancy to fill since 2000. We are a small circuit in terms of numbers but I try to recruit members from all regions of the circuit as well as members from diverse backgrounds and experiences.

The process is too politicized.

I believe the JNC serves an important function, and will continue to apply.

There is a perception that our current attorney general has great influence with our current governor in the ultimate selection, and there appears to be a basis for this perception. Although I am myself interested in seeking appointment for a judicial vacancy, I know better than to apply in the current political climate where I am neither a supporter of our governor nor a prosecutor or a member of a civil firm with influence. Irrespective of the JNC's recommendations, persons like me do not stand a chance at the level of the governor. The reason why I no longer continue to apply for a JNC appointment is the prohibition on seeking appointment for office, as a side note. It is my opinion that someone like myself would be better served by waiting for a change of administration at the level of the governor, before seeking appointment to an elected position vacancy.

Different Governors have different "agendas" in selecting JNC members. All, to some extent, are looking to place individuals who share the Governor's judicial philosophy, which will inevitably lead to GOP governors appointing GOP lawyers and Democratic governors appointing Democratic lawyers. GOP governors are generally nondiscriminatory with respect to race, sex, etc. in their appointments, looking for merit based on philosophical/political (to the victors go the spoils); Democratic governors are a bit more discriminatory, as they are bean counters when it comes to diversity, though it's easier for them to do so because of the disproportion of "minorities" who are Democrats.

The process has become too political. I was a finalist of 3. We were all refused by the Governor.

The current governor cleared the 2d DCA JNC of members with backgrounds suggesting they might oppose his agenda. In my case, I am an appellate lawyer who specializes in representing plaintiffs in personal injury actions.

I was asked by members of the Board of Governors to apply for the JNC. I did so, and was selected as one of three to go to the governor. I know the other selected lawyers and can say honestly that I was honored to be placed in the same company with them. I consider both of them to be extremely bright, competent attorneys that have been involved with their communities. They, like I do, have a great deal of respect for our constitutional structure and the process of selecting both JNC members and candidates for the bench through the JNC process, IF IT WERE DONE AS DESIGNED. The governor rejected the slate of the three of us and there, in my mind, could be no other reason that pure partisan politics for doing so, notwithstanding the fact that despite formal party affiliation vote across party lines where logic, reason, and thoughtful discourse make that the proper choice for my sensibilities. No attempt was made to determine whether or not that was the case for me. Upon the information I have, the same was true for one of the others selected by the Bar. The push to remove the ability of the governor to select all of the JNC members needs to be strong. The 3 Members buy the Bar, 3 by the governor, and 3 selected by those 6 was and is an elegant and effective model. Furthermore, the governor should not be able to reject entire slates of either JNC candidates or judicial candidates. If, within a timeframe of say 90 days, the governor makes no selection is made from a slate proposed by the Bar, then the Bar should be empowered to select from that slate. The partisan politics dramatically affecting the judicial branch has to be stopped or the neutrality and public trust of the courts will inevitably be put in jeopardy.

I still have not heard anything. I am assuming that I was not selected. However, I should not have to assume.

The selection process should revert back to that in place before the Republican-controlled legislature changed it in 2000.

I hope that candidates would be selected based on their access to the judiciary and experience. We need good non-partisan judges.

1. Judges have no choice but to suck up to the lawyers who are on the JNC. Such contact should not take place during the judicial application process. 2. The governor is not picking the most qualified people to sit on JNCs. 3. The JNCs are not picking the most qualified people to sit as judges; and 4.

The process in the 4th Circuit works well. We need to solicit greater diversity

I think it is too politically motivated

Although the JNC process is not perfect I believe it is preferable to an election process which can reward good campaigners over more qualified candidates. Although diversity is important the ultimate goal must be to focus on finding qualified individuals

All articles I have read in the Bar Journal about judicial diversity say absolutely nothing about Gay judges.

This survey is the first mention that there might actually be Gay judges out there or that we might want a few more. I think we can do better than we have been about discussing the subject.

Appointment to the JNC should be done locally not by the Governor.

We were better off when governor made his own selections. Good governor - Good judges; Bad governor - bad judges. Current system promotes less than stellar applicants

Minority Bar Associations can play an important role in recruiting JNC applicants.

I do not believe the governor should be able to determine who is on JNCs. He should determine who is on the bench after the JNC process takes place. He stacks the deck by appointing people that agree with his politics, then pick the judges from the people those people pick. The bar should choose all the JNC members.

Too political

While partisan politics may not dominate the selection of Judicial Nominating Commission members, make no mistake, it remains an intra-Florida Bar political process. Unfortunately in recent years, Executive branch appointments increasingly reflect a political agenda. As to the nomination process and the Executive's appointments, I am a lot less concerned with diversity than excellence.

I am not certain that the candidates for the JNC are fully vetted and wonder if each candidates experience and background is fully explored.

Frankly, my perception is that it is unlikely I would be chosen to serve on the JNC because I am a white man over 50 years old.

The JNC prior to the changes made by Governors Bush and Scott was much less political and achieved far more qualified candidates for the bench.

JNC appointment should be based upon years of experience in court and in trial as it takes this experience to understand the rigors of the most stressful part of being a judge - trying a case where someone's money, family or life is at stake. Many JNC applicants are looking for prestige and authority before it is earned or properly developed.

Increase diversity

recent JNC appointments made by the Governor's Office appear to be overtly political- the underlying intent of the JNC was to "vet" the most qualified candidates and THEN allow some level of politics to be considered when the Governor makes the final appointment- now, the system appears to be "frontloaded" to send up finalists who fit the Governor's political preferences, not necessarily the most qualified candidates. Ensure politics does not dictate who sits on the commission. Perhaps that is an impossible task.

I applied to the JNC for appointment before I served on the JNC. During the application process I found it very intimidating.

The system works well, and regardless of JNC composition has resulted in merit-based and representative opportunities for judicial appointments. It's one of its jobs.

When I interviewed with the Governor's office they seemed to be more concerned how much I would allow him/his office to influence my decision. That was not an appropriate question and probably what kept me from being on the JNC.

Interview with the governor's office seemed to be the most effective part of the process.

It has become too political. Partisanship political views are more important than qualifications.

JNC candidates selected by the Bar should automatically go onto the JNC. I realize it may require amending the Florida Constitution. However, I believe such a change will minimize or even eliminate partisan politics by removing the selection/acceptance process from the Governor's Office.

Given that the Governor's Office chose a far less qualified white male candidate over me, a woman with tremendous litigation experience and military service, I feel this effort to improve diversity is critical to protecting our system of justice.

In recent years the JNC is partially compromised by the two Governors who failed to abide by the Florida Constitution when selecting candidates, but the biggest problem it faces is the daunting task of asking qualified, minority and solo practitioners to navigate the application process. Despite that these might be some of the best judges or JNC members, they do not have the financial or personnel support of a large firm. The result is we have JNC members that are largely coming from corporate firms, as well as an absolute failure to identify minority judicial candidates and assist them through the process.

JEB Bush ruined the independence of the JNCs by putting too much power in the Governor's hands. The four picks that the Governor took away from the Bar should be returned. He has turned this process into a sham.

Too political. The Bar should have independent appointment power.

I am for the ABA determining the qualifications of potential Florida judges as they do now for federal judge applicants. I don't believe that anytime soon the "political vectors" will allow for a more inclusive, non-political, non-Governor controlled, Florida Bar oriented and managed judicial selection process since the Florida Bar is an integrated bar supervised by the Florida Supreme Court. A totally independent body such as the Florida ABA Membership should be set up to evaluate the applicants. Whether the Governors listen can't be mandated.

I think that it is unfair that the same people get renominated over and over again while qualified new candidates are not chosen.

Race, sex, and ethnicity should not be factors in JNC selections.

Service should not create a conflict for other service.

The Governor's conduct has created a negative perception of openness, as well as a less diverse judiciary. No

real discrimination on appointments to JNC, except now must be a republican.

OPEN-ENDED REPONSES FROM JNC MEMBERS

Q16

Please list any other sources of information your Commission / reviews when reviewing applicants.

None

Comments from opposing counsel in cases.

Better Business Bureau

Checking references and other material in the application

I ask each reference given by applicant for others who know applicant

State Attorney, Public Defender, Chief Judge, County Attorney

personal knowledge of commission members

All information attached to the application and unsolicited phone calls.

Listed References and identified opposing counsels are routinely contacted.

None

We call opposing counsel on previous trials and the Judges on those cases as well as references.

comments from opposing counsel listed in application

what does the candidate post on social websites.

interviews of candidate's list of references and candidate's opposing counsel in prior cases

Community involvement and service.

We all do our own vetting of assigned candidates. I can't tell you how important one part of the vetting is to anyone other than myself.

Comments from other Commission members who know a candidate professionally or personally

personal knowledge. Our Commission represents many decades of practice in our circuit. It is rare to find a candidate that has not had an interaction with a Commissioner.

Financial information, credit report, DHSMV record, google

Attachments to application including IRS returns

Please explain how you would like to see such greater outreach / occur.

Don't try to fix what ain't broke

To be clear, my JNC performs great outreach to all of the people described above. My JNC and its members speak and present and publish materials at events for local, state, minority and women bar associations. Outreach is very important to my JNC and we are working hard to accomplish it. I have personally organized and moderating panels and sat on other panels at women and minority bar association meetings to achieve outreach for my JNC. I have also personally encouraged women and minority lawyers to both apply to be a judge and apply to sit on the JNC. I believe that these efforts are working!

JNC members should be actively soliciting applications from qualified lawyers through any means necessary allowed by law. As a JNC member, I am a public servant and it is my duty to actively solicit and encourage ALL qualified lawyers, regardless of race, ethnicity, gender, sexual orientation, veteran status, marital status or any other qualifying group, to apply for a judicial position. I have no knowledge of whether other JNC members are actively engaging candidates. There is a disparity between the between the number of African American, Asian, and female judges in the judicial circuit that I serve as a JNC member. This is disconcerting and should be remedied. I am not aware if the other groups specifically identified in this survey are not represented on the bench in my circuit. However, I do not feel like the current process is preventing these groups from applying. Qualified, respectable lawyers that represent these groups should be mentored and encouraged to apply. However, the assistance should not stop there. Once they make a decision to apply the Florida Bar and other leaders in the community need to actively encourage the JNC members to select the candidates for nomination. This process should be implemented regardless of any identifiable ethnic, religious, etc. group. In my opinion, the substantial majority are very busy and neglect their duty to actively participate in the judicial process. Can this be remedied? Absolutely and I hope the Florida Bar takes an active role in educating and soliciting lawyers to take a more active role in their local judicial selection process.

Perhaps specific training in this area, with the training conducted locally with the commission or alternatively through web based training on an individual basis.

I am not sure it is job of JNC to "recruit" applicants. I want applicants who are informed enough and have the desire/drive to apply. JNC's job is to nominate the best qualified, not to fill a politically correct "quota". I do not vote for a class of applicant, I vote for those who I believe can do a good job as a judge. You had Q's above re politicizing the JNC, this has elements of that very thing.

A JNC is a neutral body and should not conduct outreach efforts.

Education about the vetting process; if an applicant is not selected for interview, provide an opportunity for review of the application and what could done to strengthen the application; survey of non-applicants to gauge their perception of the process.

The target audience can be reached through minority bar organizations. Each JNC should as a matter of policy and practice reach out to those minority bar organizations to insure the message is disseminated.

our JNC actively reaches out now with success

More diversity on the JNC - more women and people of color.

don't think there is any need for greater outreach regarding the jnc on which i serve.

Better publication of openings and more time allotted to fill out tedious applications

I think the outreach process is appropriate the way it is.

No need

The JNC members should encourage submission of applications from attorneys with strong legal backgrounds who are likely to be highly qualified for a judicial position. Many times, this encouragement is by communications with the various minority bar associations. The larger problem regarding minority applicants is that if the applicant is not selected on the first attempt, it is assumed that the denial is based on race, sexual orientation, etc. I have prepared a chart of applicants from the past 10-15 positions in my circuit and it is clear that most white male applicants apply repeatedly before making the "Governor's list". The repetition improves the quality of the application and the applicant's interview skills. This can help a "borderline" applicant become a strong applicant. But don't forget, some attorneys that apply are simply not likely to be good judges. It is the JNC's job to make sure we do not have poor judges as much as it is the JNC's job to make sure we have a qualified and diverse judiciary.

I don't think the process should be laid out at the applicants' feet. If they want it bad enough, the process is not hard. All they have to do is educate themselves a little bit. We don't want judges who can't even figure out how to apply on their own.

It is occurring already and working fine and should not be tinkered with.

WHY is a JNC doing outreach?

More precise discussion among the Bar Associations concerning even the basic premise of the JNC and its operation

Return JNC appointments to The Florida Bar..

I think the outreach is my Commission is sufficient

Advertising, press releases, and word of mouth has enabled us to receive a large number of qualified applicants already.

I believe everyone has the same opportunity to apply and be considered for a vacancy, regardless of the

information in the above section.

More discussion and specific advertising at local bar level

Publish the vacancies in the Florida Bar News and local mass media publications.

I am in a small circuit; all attorneys know each other MOL; we employed advertising in a way that achieved great outreach in our process

Greater State and Local Bar outreach.

My current commission has a blind commissioner. We would utilize his resources to expand our efforts.

JNC members should be active in the legal community and reaching out to qualified and diversified individuals.

So that we may have greater diversity in the judiciary

outreach should not occur from a JNC.

It will help diversity for highly qualified applicants to be encouraged to apply for judicial openings.

Q7 What is your race or ethnic origin?

Caucasian Cuban American

Q9

Please offer any comments, suggestions or feedback you may have / about how Judicial Nomination Commissions can help in maintaining a / fair and impartial court system that is reflective of the rich diversity or our state.

I believe a review of JQC records would reveal that more often it is elected judges who have issues before them then those vetted by their peers through the JNC process. Stereotypes about the types of law people practice clouding their judgment as to whom they choose is counterproductive.

How much did the Florida Bar spend on this survey?

I would like to see a merit-based court system, blind to race, sex, disability and military service, and I hope my contribution to the nominating process reflects that. Diversity is important only in the context of diverse life experience (as distinguished from diverse immutable characteristics) helps a judge understand the range of situations and life experiences the judge might encounter in a courtroom at the trial level. At the appellate level, even this type of diversity has less merit. The purpose of a judge is to fairly and predictably apply the

law to the facts. A high-quality lawyer of good character with a strong work ethic can do this regardless of race, sex, of physical ability, and those factors should be disregarded by nominators.

President Pettis's efforts to achieve greater diversity on JNCs should be commended. As should his efforts to see JNCs nominate the highest qualified applicants with a specific value to nominate a diverse slate of applicants for each open judgeship. I believe that my JNC is completely non-partisan and currently places a very high value on diversity in its nominations. This is being accomplished without any compromise in the highest priority of the JNC, which is to nominate the highest qualified applicants. This can be attributed, at least partially, the integrity, civility and professionalism of the members of the bar in the 13th Circuit and to the specific efforts of our JNC to seek out and encourage applications from a diverse pool of highly qualified attorneys. I am honored to be a part of this process. Regarding judicial elections, particularly elections where there is no incumbent in the race, I find the quality of judicial candidates to be extremely lower than the quality of those nominated for judicial office by our JNC. Simply put, our JNC does a great job weeding out non-qualified candidates. The election process often fails in this regard.

See comments in response to question above.

Conducting of this survey is a good step in hopefully making the judicial appointment process appear more open and fair to those who may feel otherwise.

You can lead a horse to water, but you can't make him drink. Encouragement from the Bar directed at ALL persons, not a certain class, to apply should be made. Maybe the fact the best of your "targeted classes" are sought by the firms that pay the big bucks makes it less likely that they will apply and forego the financial benefits of big firm employment. Small circuits also may have limited numbers of these "targeted classes" to draw from. If I perceive an applicant has a "targeted class" agenda to advance, I would be reluctant to vote to send that name up. We have too much political correctness now. We need judges who follow the law, not make it !!

need more procedural and substantive guidelines

Conduct a public information session once per year regarding the application process.

Diversity should be a consideration in the nomination process. It should not be determinative, but it should be a factor. We all have an obligation to insure that our bench represents the diversity of the community over which it exercises jurisdiction.

Keep the JNC system and have the Governor's office actually speak with JNC members as they review the submissions.

The focus has shifted from getting the best candidates to getting commissioners and judicial candidate with a diverse background. If we can improve the caliber of judicial candidates, we will see an increase in the diversity of candidates and commissioners. The problem now is that

not enough good attorneys want to be judges. For example , in the federal system, we see diversity for both magistrate and judges and excellent attorneys applying. In the state system , we don't see that caliber. When we do, we will see diversity.

More diversity on the JNC will ensure more diversity on the bench.

When there is an appointive system there will always be some politicking for appointments. the issue is minimizing the politicking. i have not given the matter enough thought to articulate the method or means to eliminate or minimize politicking for appointments.

The Governor should accept panels sent to him/her by the Florida Bar and not interfere with those seats allotted to the Bar.

It is perceived by lawyers that the Governor's appointment of JNC members is greatly influenced by political considerations.

Each community (African-American, LBGT, Hispanic, military, etc) should encourage highly qualified attorneys to submit applications as these communities are probably more aware than JNC members of possible applicants.

I think they are perfectly fair and impartial. I can't imagine any part of the process which would impede diversity

System is working well

Return the Florida Bar's autonomy to make its selections, the way the system was originally designed.

I am a female commission member

The selection of judges should be based on merit. A candidate's ethnicity, race, gender, sexual preference, etc. does not influence my evaluation of judicial candidates. I, along with my fellow JNC members, evaluate candidates based on their qualifications alone and spend a great deal of time learning about and getting to know the candidates in order to recommend the most qualified applicants.

My JNC has gender, ethnic, age, geographic, and practice area diversity. We routinely send up applicants to the governor's office that are diverse. I think it is harmful - and untrue as to my JNC - to assume that JNCs are a bunch of old white men sending up a bunch of names for old white men.

There should be strict, not selective, adherence to the term limits for JNC members; no one should have long term tenure.

The system works. Do NOT attempt to fine tune it with false diversity activities. When qualified minorities apply their names are usually forwarded to the Governor for consideration. Eliminate public and press access to the process. The assurance of confidentiality among the

Commissioners is reassuring to all applicants and should be to minority applicants as well. Press presence or non lawyer presence has a chilling effect.

Give the Governor less control over the appointment of members to the JNC. I was a member of the JNC years ago when the Governor appointed three members, the Bar appointed three members, and the Commission itself chose three members. It resulted in a better less political process.

Members on the JNC should stop looking at a judgeship as though they are lowering the bar if a minority is including in a list to the Governor. We all have diverse past and experiences and should look to include all members of the bar regardless of race, color, sex or religion.

It is my belief that the most qualified candidates be nominated for appointment by the Governor for a judicial opening. An applicant's race, gender, national origin, sexual orientation, etc. should have no impact in determining whether or not he or she is qualified for nomination to a judicial position. A question is asked on the judicial applications regarding gender and ethnicity, which I believe, if legally permissible, should be removed.

More opportunities to share information in an appropriate manner will be appreciated.

OPEN-ENDED RESPONSES FROM GENERAL MEMBERSHIP & ETHIC GROUPS

Q8

Why do you think you were not appointed by the Governor to the / JNC for which The Florida Bar nominated you?

I was appointed to the JQC for the 16th judicial circuit.

The first time the Governor appointed a white male prosecutor whose ideologies were probably more in line with his. The second time he never chose. He just ignored the panel.

I could not answer the past 3 questions because I recently applied to the JNC and am still awaiting their decision.

Q9

When lawyers choose not to apply for appointment to JNC's, there may be various reasons. If you have not applied, please indicate all the reasons why you have chosen not to apply to serve on a JNC.

Conflict with my current duties as a General Magistrate

Practice in one Circuit but reside in another Circuit. Don't have a professional or political presence in the Circuit in which I reside. Nominations and selections are a heavily politicized process and thus would not be considered.

Someone in my firm is already a member of the local JNC

The general sentiment is that the Bar is looking for plaintiff's lawyers or otherwise left leaning candidates

Typically these positions are for people with self serving aspirations. Not my kind of environment

Someone at my law firm was going to re-apply for the JNC position.

Just think you have to be well connected or know somebody to get selected.

Feel like I am not "connected" enough to be chosen

I have to support my family and children in college.

Not now, but several years ago was considering applying for a judgeship, now, I just don't have the time.

Transactional attorney - very little contact with courts

Time constraints

I am not a litigator-- transactional attorney

I practice in an area of law which does not expose me to state or local judges

Previously applied and was not chosen

My firm's billing requirements and the fact that I do not get billable credit for pro bono or community work, I am not able to make time commitment.

I have young children (toddler/baby) and am concerned about being available when needed. Once they are a certain age I intend to apply.

In the final analysis, even if you do happen to get nominated the process is overly, if not entirely, political. By the time your name gets to the Governor's Office, it no longer matters as to how qualified you are...what matters is who you know that knows the Governor.

Spouse is considering applying for a judgeship

Concern that my lack of litigation experience may place me at a disadvantage to properly quantify the qualifications of a good judge

Applied twice and have not heard anything back. I now feel that is a waste of time.

Nothing about the current administration reflects any interest in diversity. In fact, it seems the current administration is seeking to destroy diversity by imposing an unspoken litmus test - only like minded candidates who share the philosophy of the governor need apply.

Do not want the public to have access to my business and personal financial records

Didn't have the time.

I previously applied and was denied

Not sure it would make a difference given the selection based on what I perceive to be political

I did apply.

Politics of the local bar

Active member, but not currently practicing full time as required

Already served on Judicial nominating commission

I do not live and work in the same judicial circuit, and I did not want to apply for the JNC of the judicial circuit where I live because I may seek a judgeship in the near future.

Told 10 years of experience is minimum

I did apply and served on a JNC

The Governor is going to appoint the person most closely aligned to his/political affiliation, so it's just a waste of time.

I did apply but was not selected. Not sure about what they are looking for and whether or not if I will apply again.

Not a litigator

DO NOT GET INVOLVED IN POLITICAL ACTIVITIES.

Prefer to keep financial information private.

Other commitments

Politics

Too political

Seems like other people are more interested or qualified than I

Too busy building a law practice

Inactive

Do not like to sit in judgment of others.

Seems like a waste of time when the governor ignores the work of the committee

I've held the perception that to be appointed "network" connections of a particular kind weighed heavily, none of which I participate in.

N/A already served on JNC

The majority of my practice does not involve time in court or other interaction with state court judges

I was directly appointed by Governor Bush.

I answered that I had applied to the JNC and was not selected. However, I recently applied (March 2014) and awaiting a decision.

Work for appellate court

I have been appointed as a judge

I am not practicing in Florida

Transactional lawyer

Health

The financial disclosure seems voluminous

Employment with government restricts use of time for non-govt work

Applicants are required to fill out financial disclosure which is irrelevant to the process in my opinion

I previously served on a JNC when it was by political affiliation. I found that very few less than 3% of applicants made on merits and that all made it on political contacts. so I found the process more political than an election and would be discouraged from serving in a JNC in the future and I would discourage others as well.

My spouse might apply for a judgeship

Do not want to disclose personal, financial information if this is required. Don't really know the application process.

Just have not done so

Would be a conflict in my present job

Rarely in courtroom b/c I'm a transactional attorney

Member of judiciary

Over commitment at this time

Enjoy the work i do fully

I will not be selected by the Governor because it is too political.

Currently serving on another Bar Committee

Excessive public financial disclosures

Always assumed you have/had to be politically "connected"

It is my understanding that a minimum of 5 years of experience is required to apply and I am not there yet. I am about 6 month shy of meeting this requirement.

Work Federal Court only. Not familiar with state court.

Nearing retirement

Personal information at issue

Job restrictions

Currently serving in a judicial capacity

Too many family commitments at this time. I did serve in the JNC with the Los Angeles County Bar Association for 3 years (1989-1991). But I am not familiar with the JNC appointment process in Florida.

Not a litigator

Feel that the entire thing is a sham. It is about who you know and where you come from as opposed to being impartial.

Financial Disclosures Required to volunteer is onerous.

I have an office practice. I believe trial lawyers are better suited to serve on JNCs.

I have applied for appointment to the Circuit Court, twice, and have observed the selection process, including the interview with the JNC, first-hand. And I have observed the process and the persons selected over my 39 years of litigation practice in the trial and appellate courts of Florida. My impression, from the questions asked in the JNC interviews, and from the persons selected by JNC's after that, is that the process is frankly political. Not based upon apparent ability, integrity, and temperament. I decided that I did not want to associate myself with what I perceive to be a corrupt process.

Involved in other Bar and RPPTL Section Committees

It's all overtly political

I just relocated back to Florida after 18 years of living in New Jersey.

Perception that I'm too young

Never even thought about it

I believe selection process is politicized

I believe there is a political component to the appointment and as a personal injury attorney I am not likely to be selected.

I serve on the Southern District Federal JNC appointed by our 2 US Senators.

Never gave it serious consideration before now

It is difficult to get the time off from work.

System Racially Biased

I believe that judges should be selected on the basis of ability, NOT race, religion or sex. If I were on a JNC, I would not react well to "suggestions" that I support some politically correct agenda - whether those "suggestions" came from the Governor, the Bar President or anyone else.

Retired

I'm not high profile

Timing is not right ..other commitments

I have already served on the supreme, circuit jnc

I am a judicial candidate.

The JNC process is totally political and nothing to do with qualifications

Never really considered it until lately when someone approached me about applying for appointment

Selection process seems too political

Not sure what the purpose of it is

Not trial lawyer

New Attorney

Applied for judgeship/campaign for judgeship

I feel it's more of a political and who you know process rather than based on qualifications and I'm not involved enough in the legal community to know the right people.

Colleagues and mentors speak poorly about the people who serve, mainly their motives and qualifications

Promotes Cronyism

Process too political

Process too political

Considering leaving the legal profession; thus, no reason to invest in the judicial selection process.

I have applied approximately 7 times since 2004 and I have never been selected

Age 85 years

Retiring

Diversity

Age 81

I do not practice trial law.

Good old boy system

Seems to be a political process in which I don't want to be involved

financial disclosure required

institutional bias

I am not a litigator.

The application was too intrusive and/or required information that was too time consuming to obtain

Financial disclosure requirements

Big firm bias

I did not get selected the last two times.

Recent service as a judge

Just haven't thought of doing it yet

I answered this section because I think it's relevant as to why I had not applied before.

SEMI-RETIRED

Practice outside of community where live so don't know reputations of current judges and likely candidates.

Being an Anglo Saxon, with an English last name, is a huge disadvantage in Miami-Dade County. This is outrageous! Hispanic and Jewish last names are the ones who make it!

When they changed the process to allow the governor to essentially pick all the commission the process went to hell in a hand basket.

Previously have not felt ready to serve in this capacity

I am not a litigation attorney and assume (probably without much to substantiate it) that litigation experience is an important precursor to being a productive member of the JNC.

Do not to make "lesser of two evils" decisions

I am not accepting new matters in anticipation of full retirement.

Retired

I am 79 yrs old and have never done any litigation.

Race and politics

I am an immigration attorney , therefore i only practice federal law.

Don't know criteria for selection of judges

Semi retired

As a transactional lawyer I never really felt qualified

I would be interested but need to obtain more information

Q26

If you checked "afraid I wouldn't get selected" in the question above, please indicate WHY you were afraid you wouldn't get selected.

I only have general litigation experience.

As a second year associate, I rarely get to go to court for the firm. Most of my time is spent on research and secretarial tasks.

Unknown by my peers.

Practice in one Circuit but reside in another Circuit. Don't have a professional or political presence in the Circuit in which I reside. Nominations and selections are a heavily politicized process and thus would not be considered.

I'm not very political or rich. Members are usually big donors to campaigns or attorneys who attend a lot of social functions.

I have no political influence.

it seems too political

I am not qualified enough

I'm not afraid, but I have always viewed the committee member selection process as being politically driven.

Governor Bush politicized the process and Gov Scott has made it worse. Trial lawyers and democrats out, I am registered Repub, but a trial lawyer

I do not have any political connections that would allow me to stand a chance for selection

Because of my age

Because I don't have that much experience as a lawyer yet.

Not politically connected.

The process is just too "political"

I do not know anyone in a position to help me.

Because I am not well connected and did not attend a top tier law school.

Afraid too strong a term; convinced that only political appointments are made.

I believe you get selected by "who you know"

Its political and not based on competency

My experience has been mostly in-house.

Because I am Hispanic

Resources, contacts, lack of experience

Because of my age and inexperience, and sometimes I feel that minorities are not selected as much as whites so once I do become qualified I would be afraid of not getting picked because of my race.

Not enough experience

I am not known by the persons in charge of making the appointments

In Broward, the JNC is perceived as being part of a clique. Family members of the JNC get nominated to be judges. Why would a lowly minority lawyer with no influence be selected to serve on such a commission?

I do not have a litigation background. I am a transactional attorney.

Too many applicants

I was not chosen before

I am a woman attorney working for the State - low paid - not well connected

Seems if you're not a "member of the club" you are considered an outsider. Seems to be run like high school clubs.

I have been practicing for 12 years and I thought that I may too young.

In past years I attempted several times to join certain Bar committees and was never once selected. I believe that for the most part it's still a "who you know" system and if you're hispanic or any other minority your chances are slim.

Not politically well connected enough

Not well connected/known

Wonder if only people who know people get selected

I do not litigate much and am not familiar with many of the judges and/or the processes in place for many of the courts within the FL Court System

I am not very involved with the Florida Bar.

I have been a licensed attorney for less than five years, so I am still considered a "young lawyer".

Because politics becomes more important than qualifications. Only the affluent and well connected (including Government lawyers who get help from their Agency) get appointed. We have too many career prosecutors on the bench!

Political Party and Race

I have been told it is extremely competitive and difficult to get

No political connections or supporter to ensure my selection.

Because the selection is made by the governor, I felt that my race, gender or political affiliation would prevent me from being selected.

Many years ago I made a list of 4 attorneys for the position of county court judge .I was asked by at least two members of the panel to put my name in the Dade county process since my practice is based in Dade county. It did not matter to them that I did live in Broward County for over 10 years at that time.

Because I am African-American

I am relatively young lawyer who likely does not have the requisite experience desired.

Because the process seems to have taken on very political overtones lately; if you're not a member of the right party you won't get selected.

It seems as though those types of positions hinge on being politically connected.

It appears that the people who get selected to serve on the JNC are juggernauts of the legal industry in the state and who have more clout and connections than I. My fear of not getting chosen may be allayed in the future when I am a more established attorney.

There are so many lawyers that would seem more qualified and involved that I do foresee myself making the cut

I do not have a litigation background.

I'm an apolitical individual and have a tendency to lean towards greater public involvement

I am a young lawyer

I focus on transaction and federal immigration work. I am not a litigator.

Afraid is not the right term. I do not believe that I am politically connected enough to get elected.

I am an African American female of limited financial means.

I don't know the right people and I am a minority woman

I have no political pull, no name recognition.

Not so much 'afraid', but asked myself is it worth the time and effort to complete the application when the odds are so stacked against me despite my qualifications. I have grown tired of my application being used to fulfill diversity/outreach requirements of those making the selections when I know that academically and professionally I am qualified.

I'm not afraid of rejection necessarily, it's more about the fact that I have only been admitted to the bar for a little less than two years and do not feel like I would be taken seriously (due to inexperience) if I applied

Appears to be based on the "good ole boy" network and where you went to law school/who you know or are related to.

I am not politically connected, do not donate regularly to any campaigns, do not brown nose at Bar functions.

It seems to me that most people who are selected come from big private firms and I am an admin government lawyer.

Lack of experience

People would not take me seriously as a candidate because I am a younger hispanic female (3 strikes).

Prior disciplinary proceedings

It seems very prestigious.

I believe that when Judges are appointed it is very political and to run for Judge is very costly.

I have previously expressed an interest on serving on the Grievance Committee and was not selected.

I do not normally get so involved in the politics of judicial selection and do not know if I would be comfortable "judging" who becomes a judge. As a practicing attorney, also don't want someone thinking I have voted for or against them.

I recently moved to this area and I am not familiar with the local voluntary Bar groups and I am not politically connected

'Afraid' is the wrong word, at least for me. Its more that I have assumed i would not be selected because of the politics of the process.

There appears to be a type of professional nepotism. Very few are encouraged to apply.

As a young attorney, I feel that I don't have a wide enough reputation to be recognized.

Don't believe I have the qualifications necessary to be selected.

Because I am Black.

Apparently you need to be well connected in the community, i.e. is it really based solely on merit?

Don't know the selection criteria and I have been nominated 3 times by the local JNC for the bench.

I applied once and did not get selected

I don't believe I will be chosen.

I have heard it tends to be a "good old boys club"

I'm just a sole practitioner. I don't have a big firm behind me or any connections with Bar administration.

I thought I needed to practice for a longer amount of time before being considered.

Not politically active

It seems to be a political process and you have to be well known to be involved

When I look at the list of judges and members of the JNC and do not see an ethnically diverse panel. I believe I do not have the political connections in the local legal community to be selected as a member.

Lack of experience

There is anecdotal thought that if you have certain community activities such as NAACP it is a mark against you and you won't be selected to serve.

Not politically connected

Not politically connected enough...

Because I am of a minority race.

I felt I wouldn't get selected because I am a young minority attorney who is not that connected within the legal environment.

Appears to be a political appointment.

Because of experience level.

Like any organization it is generally who one knows and not qualifications. the system, as I understand, is not blind. Friends and interest groups or people with agendas get involved.

There are other lawyers with more experience

Process is political or cliquish

I am not "politically" connected enough.

Popularity contest

Not politically connected

Process appears to be political!

Not involved in the local Bar or local politics

I am not dialed into Bar politics like I used to be. Also I am not very visible on the regular political scene so I am below everyone's radar.

Gov Scott would do whatever he could to block Democratic party members.

Persons are chosen by whom they know not necessarily their experience, same with the process for nominating judges

I am not a Bar insider, and these seem like plum appointments

It is too political.

I'm not political enough.

My partner serves on a JNC in another county.

Lack of experience

As a young attorney from a diverse background, I was not sure whether I met the selection criteria.

I assume such appointments are political (in a Florida Bar sense, if not a partisan sense) and being a younger lawyer (late thirties) and gay would be disadvantages to being selected.

Caucasian female; feel like I am not "diverse" enough to be included
The process is known to be political- do not want to waste my time

Believe that the appointment process is overly political.

Big firm bias

Not too much trial experience

I generally regard the Bar and many (but not all) of its committees as being an "old boys club".
The current governor has ignored recommended JNC panel members and JNC recommendations

Not politically connected

I just think that being a woman and a democrat that I would not even be considered

I believe that FL Bar is just as political of a machine as any political party or government entity. My associations with certain political figures in the community, always raise concerns with me that I would be denied selection. It's still not what you know, but who you know. And I am aware that there are some people who sit on the JNC for my circuit that would not agree with my political views and would judge me based on "guilt by association." it's human nature to judge like that.

Because I am an African American lawyer.

Because I am not a Republican nor legal counsel to a state agency.

Not politically connected

Previous Bar grievances and a DUI conviction.

I think it's a "Good Ole Boy" Network, and I'm not a Good Ole Boy.

I could have chosen that one, but there is nothing to be "afraid of". It's only something to get disturbed by.

Governor Scott has only appointed those folks who are "lock step" in line with his political ideology and agenda. The quality of appointments has reflected that lack of social and demographic diversity necessary for a fair and impartial judiciary.

It seems as though the process is designed to favor those who have been directors in a voluntary or private bar. There does not appear to be enough emphasis or importance placed on a dedicated commitment to public service beyond Assistant State Attorneys or Public Defenders.

I am a public interest attorney and not politically connected

Political affiliation and lack of connections

Prior suspension

Not politically connected

I'm not active in local Bar, not socially active, not affluent, not a member of the Good Ole Boy Network around here

The process favors folks who know powerful figures.

I am not politically connected.

I'm a sole practitioner--I have no clout or influence in the legal arena.

I am not as well known as other lawyers. I am also coming up on five years as a member of the bar this October.

Expect that selection requires connections

I have been told network is very important. I don't have any network since I might be the few mandarin speaking attorneys in south Florida. Also I am not a native speaker and is not a US citizen yet.

Do not meet the criterion established by the politically correct powers that be.

Never selected for anything

I'm not political at all. Not in a high profile firm.

I am a Hispanic female that does not fit the typical selection to the JNC. I would love to serve, just do not think I have a chance.

I am an older woman of the Bar and no longer have current political connections

I'm young, I'm a woman and I'm half asian

I assumed appointments were based on financial contributions to political parties or organizations.

Based on the fact that I wasn't in the top percentile of my law school class and my race

Good old boy network

The selection of a minority feels unlikely.

Years ago, I declared BK.

Completely political and severely influenced by power brokers, minorities are at a complete disadvantage and are often overlooked

Not political connected to the local party

Background check

Because of being a minority

Assumption based on my prior observation that you must be intimately involved in bar politics to be selected

Mostly because I am still a relatively new attorney and I do not fully understand the criteria or the process for selection.

Because i'm a black female who did not go to a top law school

I work for the state and don't have the right connections so I don't think that I would be selected. It appears that those who are selected are part of big firms.

I have been admitted for 8 years and I think that the JNC is comprised of older attorneys

I just assumed it would be difficult for a hispanic to be chosen, and awkward if he or she was.

The process appears to be very political. Thus as a member of the minority party I am not confident that I would be selected.

Do not have desire to get involved in the necessary political maneuvering, networking, pandering, etc.

I am physically challenged/handicapped and in the past when I applied for positions this was a problem- they always want someone who is physically well enough to handle any challenge and put in long hours, etc. I have flare-ups of my illness and cannot predict when they will occur.

I presumed the selection process to be somewhat political and believed my inexperience and lack of "connections" would be a hinderance.

Because my law school transcript may not be good enough and my work history may not be solid enough.

I believe the bar may already be irreparably biased and those of any real authority are making purely subjective or political decisions or decisions based on economic benefits without regard to the benefit to society. As explanation, I applied for a position on the advertising committee due to the unbelievable, scandalous, offensive and blatantly biased and inaccurate positions that are allowed to be taken in advertising by the Plaintiffs' bar, and thought that even a little bit of balance would assist in fixing the remarkable damage being done to the Bar by these advertising campaigns (i.e.; jury pool misinformation campaigns) and subsequent litigation, but was shot down pretty perfunctorily. As such, I am left with the impression that certain sections of the bar have an undue influence that permits or perhaps even encourages such bias. Perhaps mistakenly, I presume I would meet the same bias in the JNC -- having been before massive numbers of judge's throughout the state that parrot or even advocate for these jury pool misinformation campaign talking points. If perpetuation of frivolous litigation and general corporate/insurer bias is a overriding principle for the Bar (e.g., plaintiff's work proving opportunity for defense counsel), then it is probably on the right track. Unfortunately, I am naive enough to hope that the Bar would be equally offended by the bias evident in the Plaintiffs' bar's advertising despite increasing business opportunity for all regardless of how badly same is destroying the fabric of our society. I am afraid this Diversity issue may be of the same character. If diversity is truly a key component in determining which candidates can be reasonable, objective, patient, and willing to work hard and listen, then we are in a sadder state of affairs than I feared. Wrong focus! Pick the best candidates regardless of ethnicity, sex, sexual preference or religion. Ask yourselves, does the bench currently reflect the percentage of whichever special interest group that you are targeting as a underrepresented class. (and yes, you are picking or selecting target classes, which itself is a form of bias by the JNC). While I am caucasian, my son is half -- dark complexion Puerto Rican, and easily mistaken for African American (whatever that is in today's society -- is 1/8 African heritage still an African American? Is a girl of Hutu ancestry the same as an Ethiopian Jew because they are both dark complexion? Is a Coptic Egyptian the same as a Afrikaners South African? Are they all African American?). Is a lesbian woman different or more special than a heterosexual former housewife who went back to school? Is one going to be more sensitive/objective/fair than the other? We are talking about the future here; how are you going to class my son!? How are you going to class the dark skinned Dominican kid next door? The french speaking Haitian kid? The Mayan kid born from Chiapas stock -- is she really Mexican, indiginous indian, Latino, some other class? The White guy that's 1/16 Seminole (which itself is a racially mixed group)? Who gets to choose? So, if you are looking into "Diversity" you are really looking at select classes that you have already identified arbitrarily based on some biased interpretation of the word "diversity." Diversity itself is a matter of biased individual perception, not objectivity. Regardless, to answer the question, I reiterate --- if the percentages of the special classes as represented on the bench actually matches the percentage as represented in the Bar, which they probably do, then you are engaged in a fruitless activity that is actually a means of avoiding the real damaging issues confronting the Bar. This is probably why I would be afraid to get selected -- I am too honest, too color blind, too indifferent to the sexual orientation of others. I am not biased enough or angry enough over a nearly non-existent issue to

make up a non-existent special class to prop that group up and place them above someone that is more qualified based on criteria that does not necessarily make them better judges. While I agree that any candidate must not be biased against or for any special class, that does not mean they have to be from any particular class. Somebody is making up busy work that is meaningless. The selection process should be based purely on merit. To do otherwise is to be motivated by politics or something far worse.

I don't look nor do I have the pedigree of members of the JNC. Seems like a "good ole boy" club. Must have connections to be chosen.

Young lawyer

I was rejected before. The reason for the rejection was that I did not have experience and should first apply to other committees. I applied and was accepted to the unlicensed practice committee but unfortunately I changed jobs and moved from one city to another. With the new job, it became very difficult to participate and I had to resign.

I did apply and was the candidate recommended to the Board of Governors in 2001, however, the BOG member from my area asked the BOG to hold the appointment so that he could submit another applicant. He then selected a friend of his and submitted his name who was then appointed. I only learned of all the series of events from the FAWL and YLD reps present at the BOG meeting. They gave me a copy of the Florida Bar staff recommendation that I be appointed. I had been chair of one of the Florida Bar's primary rulemaking committees and was no reason for me not to be appointed

I have applied the past 2 or 3 years to serve on Fla Bar Committees I served on in the nineties and was not selected.

Former judge, political party affiliation

I am a Caucasian Jewish male, with conservative viewpoints

I have no political connections

No one really cares what I think unless I fit a certain stereotype.

Lack of experience

The reality is that "young" "female" "black" attorney's (of which i am one) are rarely selected for judicial positions and while i am not usually intimidated by much in life, the thought of being rejected or wasting valuable time is not very appealing. In particular in North-East Florida, where the "good ole boy" network is still strong and prevalent.

I am not active in politics.

I believe progressive individuals are given preference if applying through the Bar, and my credentials out me as someone who isn't progressive or liberal.

Empirical data that suggests that minority applicants are not likely to be selected

Not well connected enough

I don't feel my background is clean enough.

"Afraid" is not the appropriate word to use. I believe it is a political process and I would be at a disadvantage because I am not politically involved.

Not distinguishable from other candidates.

Lack of experience.

I am a woman. I am a senior citizen. I am apparently "out of the loop." When I applied for a committee, I got a service" plaque only

In my mind, an individual has to know some of the right people to be ultimately selected to serve on the JNC. I do not feel as if I am in a place currently where I know the right people.

I am considered too independent and judging from not being even promoted to Chairships in committees indicates that reason.

Appears only older men are selected

Because of my race and gender.

I have been practicing 6 years and I would imagine this position would require 25+ years experience.

I have only been an attorney for 1.5 years.

I was once "admonished" by The Florida Bar

I have only been in practice for about a year and half.

Not being Hispanic nor Jewish places me at a huge disadvantage and discourages me to even contemplating it in Miami-Dade. Similarly, my fiancé, a former prosecutor for 14 years (highly respected and who was the highest Division Chief), and prior to that a public defender, and who has been in private practice for the past 10+ years, he has an immense desire to run for circuit/county court judge in Miami-Dade, he is extremely intelligent and has a brilliant legal mind, he has all that it takes, but feels highly discouraged just because of his English last name. It is absurd that Anglo males feel highly discriminated against in Miami-Dade County, giving up a one in a lifetime career pursuit for having an English/Irish/Scottish name, as the actual minorities, Hispanics & Jews (w/ all due respect) control the elections in our county.

I'm not "afraid" I wouldn't get selected; I think I'd have a chance of being nominated but I know there is no way this governor is going to put me or anyone like me on the JNC

Not well known in the legal community

My law practice over the years has been limited to criminal appellate practice.

Process is too political and has nothing to do with qualifications but party lines.

It's all too political and who you know is important. I'm not a political animal and I don't think I have enough connections.

I am Dominican and a woman and I feel that certain prejudices may keep me from being selected

Race and politics

My sense, right or wrong, is that the process is tilted in favor of people with political connections with the party currently occupying the governor's mansion.

I understand it to be a VERY political process that I did not think I had a fair opportunity to win.

It's well known that these positions are not for minorities and you have to have an "in" to get selected. I don't have a huge networking circle of attorneys for this.

Lack of experience, background

<u>Date</u>	<u>DCA/Circuit</u>	<u>Seat</u>	<u>Nominated</u>	<u>Outcome</u>	<u>Notes</u>
<u>2010 - (2 seats) 2014 Terms</u>					
March 2013	1st DCA	Bookman (resigned - 2014 term)	Nominees: 3/21/13 Lynn Drysdale, Jacksonville Leonard E. Ireland, Jr., Gainesville John J. Schickel, Jacksonville	Rejected by Governor - April 13, 2013	
June 2013	1st DCA	Bookman (2014 term)	Resubmitted Nominees: 6/3/13 Timothy Cerio, Tallahassee David B. Pleat, Sandestin JoLen R. Wolf, Tallahassee	Appointed: Timothy Cerio, Tallahassee June 14, 2013	
May 2010	4th Circuit	Two seats ending 2010 (O'Quinn & Parker) 1 appointed (Bachara) 1 rejected (2nd seat)	2010 Nominees: 6/1/2010 Henry G. Bachara, Jr., Jacksonville (appt) Oliver D. Barksdale, Jacksonville Scott Sanford Carins, Jacksonville Hugh Cotney, Jacksonville Wesley R. Poole, Fernandina Beach Robert F. Spohrer, Jacksonville	Appointed: Henry G. Bachara, Jr., Jacksonville April 27, 2011 Additional nominees rejected by Governor on October 2011 for 2nd seat	
December 2011	4th Circuit	Two terms ending 2010 (O'Quinn & Parker)	Resubmitted Nominees: 12/21/11 Richard R. Alexander, Jacksonville Michael S. Mullin, Fernandina Beach Richard Plotkin, Jacksonville	Appointed: Michael S. Mullin, Fernandina Bch Sept. 6, 2012	
May 2010	7th Circuit	Two seats ending 2010 (1 Appointed (Tance Roberts) 1 Rejected (2nd seat)	2010 Nominees: 6/1/2010 R. Scott Constantino, Ponte Vedra Beach Craig Sinclair Dyer, Daytona Beach Frank B. Gummey, III, Daytona Beach Lester A. Lewis, Ponce Inlet Tance E. Roberts, St. Augustine (appt) Horace Smith, Jr., Ormond Beach (appt. Gov)	Appointed: Tance E. Roberts, Jr., St. Augustine May 13, 2011 Additional nominees rejected by Governor on October 2011 for 2nd seat	
December 2011	7th Circuit	2nd Seat	Resubmitted Nominees: 12/21/11 Katherine H. Miller, Daytona Beach Theodore W. Small, Jr., Deland Raven E. Sword, Palm Coast	Appointed: Raven E. Sword, Palm Coast July 11, 2012	
July 2013	9th Circuit	Weiss (resigned - 2014 term)	Nominees: 8/14/13 Tiffany M. Faddis, Orlando Warren W. Lindsey, Winter Park Cynthia G. Schmidt, Orlando	Rejected by Governor Sept. 12, 2013	In Process
October 2013	9th Circuit	Weiss (resigned - 2014 term)	Resubmitted Nominees: 10/30/13 John E. Fisher, Windemere Elizabeth F. McCausland, Orlando Melvin B. Wright, Windemere	Rejected by Governor April 25, 2014	In Process

<u>Date</u>	<u>DCA/Circuit</u>	<u>Seat</u>	<u>Nominated</u>	<u>Outcome</u>	<u>Notes</u>
<u>2011 - (1 seat) 2015 Terms</u>					
May 2011	4th DCA	Barnhart (2011 term)	2011 Nominees: 6/1/2011 Amy S. Rubin, N. Palm Beach Rebecca M. Vargas, Jupiter Louis B. Vocelle, Jr., Vero Beach	Rejected by Governor July 2011	
September 2011	4th DCA	Barnhart (2011 term)	Resubmitted Nominees: 9/21/2011 Michele K. Cummings, Boca Raton Debra A. Jenks, Palm Beach Gardens Patricia A. Leonard, Palm Bch Gardens	Appointed: Patricia A. Leonard, Palm Bch Gardens Oct. 14, 2011	
May 2011	1st Circuit	Pitre (2011 term)	Nominees: 6/1/2011 Brent F. Bradley, Pace Larry A. Matthews, Gulf Breeze Timothy M. O'Brien, Gulf Breeze	Rejected by Governor October 2011	
December 2011	1st Circuit	Pitre (2011 term)	Resubmitted Nominees: 12/21/2011 Thomas F. Gonzalez, Pensacola C. Jeffrey McInnis, Ft. Walton Beach Amy A. Perry, Miramar Beach	Appointed: Thomas F. Gonzalez, Pensacola July 31, 2012	
May 2011	2nd Circuit	Jennings (2011 term)	2011 Nominees: 6/1/2011 James C. Banks, Tallahassee Benjamin Crump, Tallahassee Bruce A. Leinback, Monticello	Rejected by Governor April 2013	
June 2013	2nd Circuit	Jennings (2011 term)	Resubmitted Nominees: 6/3/2013 Thomas M. Findley, Tallahassee Kelly O'Keefe, Tallahassee Chastity H. O'steen, Tallahassee	Appointed: Chastity H. O'steen, Tallahassee June 14, 2013	
May 2011	4th Circuit	Alexander (2011 term)	Nominees: 6/1/2011 C. Gary Pajcic, Jacksonville Matthew Posgay, Jacksonville William J. Scott, Jacksonville Beach	Rejected by Governor October 2011	
December 2011	4th Circuit	Alexander (2011 term)	Resubmitted Nominees: 12/21/2011 William C. Gentry, Jacksonville Robert E. O'Quinn, Jr., Jacksonville Cherry Alice Shaw, Jacksonville	Appointed: Robert E. O'Quinn, Jr. Jacksonville Sept. 6, 2012	
May 2011	7th Circuit	Jolley (2011 term)	Nominees: 6/1/2011 Raymond S. Constantino, Ponte Verde Beach Frank B. Gummey, III, Daytona Beach Lizzie L. Johnson, Debary	Rejected by Governor October 2011	
December 2011	7th Circuit	Jolley (2011 term)	Resubmitted Nominees: 12/21/2011 Robin A. Compton, Palm Coast Steven N. Gosney, Ormond Beach Phillippe M. Raymond Reid, Jr., Jacksonville	Appointed: Steven N. Gosney, Ormond Beach July 11, 2012	

<u>Date</u>	<u>DCA/Circuit</u>	<u>Seat</u>	<u>Nominated</u>	<u>Outcome</u>	<u>Notes</u>
January 2013	16th Circuit	Collins (death - 2015 term)	Nominees: 3/19/2013 Nathalia M. Abondano, Key West Pedro J. Mercado, Key West Loriellen K. Robertson, Key West	Appointed: Nathalia M. Abondano, Key West April 16, 2013	
May 2011	17th Circuit	Zaden (2011 term)	2011 Nominees: 6/1/11 Phillipa G. Hitchins, Ft. Lauderdale D. David Keller, Plantation Frank C. Walker, Ft. Lauderdale	Rejected by Governor July 2011	
September 2011	17th Circuit	Zaden (2011 term)	Resubmitted Nominees: 9/21/11 Michael E. Dutko, Sr., Davie Kevin P. Tynan, Pembroke Pines Linda Spaulding White, Ft. Lauderdale	Appointed: Kevin P. Tynan, Pembroke Pines Oct. 14, 2011	
<u>2012 - (1 seat) 2016 Terms</u>					
May 2012	1st DCA	Glazer (2012 term)	2012 Nominees: 5/31/12 Michael J. Glazer, Tallahassee Michale J. Korn, Jacksonville George T. Reeves, Madison	Rejected by Governor - April 2013	
June 2013	1st DCA	Glazer (2012 term)	Resubmitted Nominees: 6/3/13 Paul A. Donnelly, Gainesville James E. Messer, Jr., Tallahassee Gigi Rollini, Tallahassee	Rejected by Governor - July 2013	
August 2013	1st DCA	Glazer (2012 term)	Resubmitted Nominees 8/28/13: Sally B. Fox, Pensacola Gary K. Hunter, Jr., Tallahassee Herbert W.A. Thiele, Tallahassee	Appointed: Gary K. Hunter, Jr., Tallahassee Sept. 10, 2013	
May 2012	3rd Circuit	Cancio (2012 term)	Nominees: 5/31/12 Conrad C. Bishop, Jr. Perry Marlin M. Feagle, Lake City Jerry D. Marsee, Lake City	Rejected by Governor - May 2013	In Process
	3rd Circuit	Cancio (2012 term)	Resubmitted Nominees:		
May 2012	6th Circuit	Masterson (2012 term)	2012 Nominees: 5/31/12 Donald S. Crowell, Largo Kimberly J. Gustafson, St. Pete Beach Scott F. Schiltz, Clearwater	Rejected by Governor - January 2013	
March 2013	6th Circuit	Masterson (2012 term)	Resubmitted Nominees: 3/19/2013 Denis M. DeVlaming, Clearwater Kim L. Kaszuba, Clearwater Erik R. Matheney, St. Petersburg	Appointed: Kim L. Kazuba, Clearwater June 3, 2013	

<u>Date</u>	<u>DCA/Circuit</u>	<u>Seat</u>	<u>Nominated</u>	<u>Outcome</u>	<u>Notes</u>
May 2012	8th Circuit	Knellinger (2012 term)	2012 Nominees: 5/31/12 Paul A. Donnelly, Gainesville Richard M. Knellinger, Evinston Shannon M. Miller, Gainesville	Rejected by Governor - January 2013	
March 2013	8th Circuit	Knellinger (2012 term)	Resubmitted Nominees: 3/19/13 Mark Avera, Gainesville Stephanie M. Marchman, Gainesville Peggy-Ann O'Connor, Gainesville	Rejected by Governor - May 2013	
August 2013	8th Circuit	Knellinger (2012 term)	Resubmitted Nominees: 7/29/13 Leonard E. Ireland, Jr., Gainesville Kristine J. Van Vorst, Gainesville Stuart S. Walker, Gainesville	Appointed: Leonard E. Ireland, Jr. Aug. 7, 2013	
March 2013	19th Circuit	Forst - (resigned - 2016 term)	Nominees: 5/3/13 David B. Earle, Stuart Howard E. Googe, jr., Palm City Jason L. Odom, Vero Beach	Appointed: David B. Earle, Stuart June 3, 2013	

President's Task Force on Enhancement of the Judiciary and the JNC

Sub Committee Report

1. A multifaceted sustained outreach to potential JNC applicants and judicial applicants in ways that deepen and diversify JNC applicant pools:

The most recent application process proved to be successful in generating a diverse pool of applicants for JNC appointments. To ensure the trend continues the Florida Bar and the Board of Governors should engage in a targeted outreach program to ensure that prospective applicants are educated about the process. Specifically, we recommend as follows:

An announcement should be made in November about the number of appointments available, both through the Bar and directly through the Governor's Office. The announcement should include the requirements to serve and the BOG criteria for selection. Transparency at every level of the selection process is recommended.

The announcement should include the following and should be resent once a month until the application deadline.

- 1) A link to Chapter 43.291 so that there is an explanation about JNCs and the entire process;
- 2) A specific quote from Chapter 43.291(4) - "In making an appointment, the Governor shall seek to ensure that, to the extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered. The Governor shall also consider the adequacy of representation of each county within the judicial circuit."
- 3) Information not only about the Bar openings but also about applying directly to the Governor's office.
- 4) A list of current JNC members, or a link to the list of members, with a statement encouraging potential applicants to contact one or more current JNC members to learn about the potential time commitment and other aspects of service on the JNC.
- 5) Specific messages to Voluntary Bar presidents to encourage their members to apply.
- 6) At least one month before the application deadline; depending on the ability to determine whether there is a diverse pool, send specific messages to voluntary bars encouraging them to encourage diverse members of their Bar to apply.

A statement about keeping an open mind should be included in JNC member orientation and training. Many times JNC members do not know the applicants. They may be inundated with calls and letters of support for some applicants while receiving few calls or letters regarding other applicants. This is often simply a result of the applicants not understanding the appropriate protocols. Additionally, JNC members should be encouraged to reach out to potential applicants before the application process begins, and encouraged to meet with applicants.

2. Enlisting lawyers, former judges, and others as “coaches” to increase applicant preparedness for seeking appointment to the JNCs and the Bench, and to encourage them to persist in seeking appointment, even if they are not initially successful.

A. To meet this goal, each JNC could participate in an annual information session on the JNC process. The session could be conducted in conjunction with a voluntary bar association or as a standalone session presented by the JNC itself. The Bar could offer assistance in making the session carry sufficient substance to qualify for CLE credit.

The session would include the following.

- 1) Encouragement to begin thinking about the judicial application process early in one’s legal career
- 2) The importance of completing the application completely and carefully
- 3) Understanding the significance of providing references
- 4) The intricacies of the vetting process
 - o Relationships with current and former co-workers
 - o Relationships with opposing counsel
 - o Reputation for professionalism in the legal community
 - o Relationships with court personnel
 - o Relationships with judges
 - o The interview process / understanding the political realities (could include coaches as suggested by Frank)
- 5) What to do if your name is sent to the Governor and how to prepare for the next level.
- 6) How to respond to and learn from non-selection

B. Before an opening occurs, candidates who are interested and are ready to apply may complete the application for review by a group of JNC coaches. The coaches would review the application and provide feedback. The applicant could go through a mock interview with the coaches. The coaches would be persons familiar with the judicial appointment process including former JNC members, governor’s general counsel, active and retired judges as well as professional corporate coaches. The coaches could recommend areas needing additional development and/or improvement.

3. Eliciting the Florida Bar JNC Committee’s analysis of opportunities for improvements in JNC member orientation, training, decision-making practices, candidate evaluation procedures, candidate communication protocols and supplying your assessment of responses.

Each JNC member should:

1. Keep an open mind regarding the applicants and the process – don’t prejudge any candidate;
2. Send announcements of openings to diverse advertising outlets (newspapers, websites, etc.);
3. Not equate the numbers of references to the popularity of the candidate;

4. Reach out to potential applicants before the application process begins; and,
5. Invite voluntary bar representatives to attend candidate interviews.

Respectfully submitted this 28th day of April 2014.

Cynthia Angelos, Corali Lopez-Castro, Linda Bond Edwards

The Florida Bar
President's Special Task Force to Study Enhancement of Diversity
in the Judiciary and on the JNCs

**Sub Committee Report on Leadership Assistance for Newly Appointed Diverse Judges with
Their Initial Elections**

Enhancing diversity on Florida's bench can be thought of as having two components: recruiting and retaining. This report provides some thoughts regarding that second component: how does the Bar encourage or promote the retention of a diverse bench?

This inquiry fairly quickly focused on challenges faced by incumbent judges, rather than the question of races for an "open seat." The reason for this was based on anecdotal evidence presented to the committee regarding incumbent judges who were challenged in an election because their ethnicity (whether African-American, Hispanic, or white) – and not their competency as a jurist - was perceived as making them vulnerable in a general election.¹

In this context, the challenge faced by the Bar (both as a formal organization and as a generic term to encompass all of Florida's lawyers) is how to winnow out those elections that are based on merit from those that are not.

1. Local Leadership Is Key

Florida's constitution provides for an elected judiciary - whether in the form of retention election for our appellate bench or a nonpartisan election for our trial bench. The vast majority of judicial elections are local – and *all* of the trial bench elections are either county- or circuit-wide elections.

It was the general consensus of the committee that the impetus and the influence in retaining diversity on the bench in the context discussed above has to come from local Bar leaders, as opposed to a top-down approach centered in Tallahassee. This requires an effort by local Voluntary Bar Associations, the members of the Board of Governors who represent the lawyers in a particular geographic area, and other local lawyers who play a leadership role in their community. It also requires those groups to reach out to non-lawyers who play similar leadership roles in their respective professional communities, since winning a contested election requires broad support coming from outside the legal community. This is not to say that the Bar has no formal role to play – however, as an organization it is far less likely to have an effective voice in a local judicial election when compared to the voice and influence of local community leaders who care about this issue.

¹ This concern was voiced by one of the Florida JNC members who responded to the Brennan Center's 2008 survey regarding judicial diversity. *See Improving Judicial Diversity*, Brennan Center for Justice (2008) at p. 29.

2. Educate and Advocate.

Any successful effort to retain a diverse bench in this context requires sustained and multifaceted outreach, both within the legal community and outside of it. Some of these strategies are familiar – being an active member of a campaign committee, speaking out to peers, friends, family and strangers on the particular race, fundraising.

But broader strategies should be considered, such as education and advocacy efforts with local media (e.g., newspaper editorial boards, local talk radio programs), and reaching out to business and professional groups that typically do not focus on judicial elections. The committee recognizes that it is impossible to predetermine or list out particular strategies, since the reality of a race in this context will be driven by local conditions and perceptions – once again emphasizing the need for local leadership on this issue. To the extent the Florida Bar hopes to play a role in this, it falls upon the local members of the Board of Governors to work with other leaders in their community to help judges facing this issue in their election and re-election efforts.

DIVERSITY IN THE LEGAL PROFESSION

**Florida Bar Symposium
2004**

Final Report and Recommendations

**Presented to The Florida Bar Board of Governors
this 13th day of August 2004**

by Chair

MaryAnne Lukacs, Esquire

The Diversity in the Legal Profession Symposium was the brainchild of the Immediate Past President of the Florida Bar, Miles McGrane III.

The Symposium took shape when then President McGrane was invited to “sign the wall” at the St. Thomas University School of Law. During the orientation of the incoming class at St. Thomas, Dean Bob Butterworth invited the faculty and the students to express their commitments to teach, to coach, to lead and to learn by signing their names on the wall in the Moot Court Room. It was that day that Mr. McGrane asked, “What do you think about conducting a Symposium on diversity in the legal profession?” That question led to a Symposium with attendees and presenters from the Bar, voluntary bar associations, the bench, and universities and law schools from all over the state. The Diversity participants also “signed the wall” signifying their commitment to diversity in the legal profession by the year 2014.

The St. Thomas University School of Law, ranked in 2004 as the second most diverse law school in the country by U.S. News and World Report, hosted this 1 ½ day symposium.

The enthusiasm and commitment of the talented volunteers who came together these two historic days could never have been generated without the type of commitment demonstrated by then Bar President, Miles McGrane III, then President-Elect Kelly Overstreet Johnson and then President Elect Designate Alan Bookman.

THE MISSION

The Mission Statement, distributed to all panelists and participants, laid the foundation for the Symposium. It clearly directed us to look beyond aspirations to action. Our mission was as follows:

To develop a number of concrete proposals and recommendations that can be used by the law schools, The Florida Bar, the profession as a

whole and those responsible for selecting the judiciary to achieve the goal that the legal profession in the State of Florida, in all of its parts, will accurately reflect the makeup of society within ten years.

This goal, while simple to state, is to be achieved through the difficult, complex, and honest discourse begun at this first Symposium. The lessons learned from the inequities and mistakes of the past must guide, rather than control, our actions in shaping our future.

THE PLAN

The Symposium planners outlined five critical areas to be addressed:

Defining Diversity
Diversity in Legal Education
Diversity in Employment
Diversity in the Bar
Diversity in the Judiciary

The selection of these five issues was made on the assumption that work in one area of the system would only fail or flail unless all areas of the system were working toward the same goal.

The event was structured to allow the participants to hear from a panel of “experts” who had knowledge of the diverse landscape in Florida, as well as the problems and successes associated with attempts to diversify a relatively non-diverse landscape. Each panelist was asked to come prepared with meaningful input on the state of diversity in the Florida Bar and all of its parts. Their role was to put helpful information on the table so that a meaningful interactive dialogue could ensue.

The backdrop for much of the discussion was a power point presentation that laid out the statistical makeup [by ethnicity, gender, and race] of the following categories:

Population of Florida, according to the 2000 census
The Florida Bar, as a whole, according to voluntary member surveys
The Young Lawyer's Division
Florida Bar Committee Members
Florida Bar Section Members
The Judiciary

Copies of these slides are attached at Appendix A.

THE OUTCOME

The enthusiasm and commitment given by the volunteers was in response to the promise of commitment to action by the Bar. The result was a blueprint to transform the face of The Florida Bar to a mirror reflection of Florida's richly diverse population. Not in theory. Not as an aspiration. But with a firm commitment to achieve success in 10 years.

We have met the goal of creating concrete proposals and recommendations to increase diversity for consideration and implementation by the law schools, The Florida Bar, the profession as a whole and those responsible for selecting the Judiciary

We must continue to develop these programs and recommendations to effect change by the year 2014.

RESULTS AND RECOMMENDATIONS

The recommendations that follow are not road maps to implementation. They are recommendations which will require dedicated study, effort and commitment to achieve.

This will ultimately be the job of the **Diversity Affairs Officer**, committees and sub-committees that are appointed or selected to carry out some or all of these recommendations.

DEFINING DIVERSITY

Defining diversity was challenging, engaging and enlightening. Our conclusion was that the definition of diversity must include gender, race and ethnicity concerns as well as the unique issues related to sexual orientation and physical and mental disabilities. The greatest challenge to articulating a global definition and developing diversification strategies is that barriers to inclusion are similar in the different categories listed above, but the scope and breadth of moving beyond those barriers is so often very different. While an African American female may be recognized as a diverse member of the population, that may not be the case for a white male with a non-visible disability.

The barriers are both systemic and cultural, with the latter being more difficult to address. Both the cultural and systemic barrier must be dismantled for the successful inclusion of all. The tools to dismantling those barriers are communication, consistency and commitment to change.

Our Definition Of Diversity:

Diversity is the inclusion of differences that include gender, race, ethnicity, sexual orientation, and physical and mental disabilities.

Diversity in Legal Education

- I. Expand the pool of qualified diverse applicants in Law School*** by developing and using non-traditional criteria to evaluate potential successful students despite low traditional indicators. Summer conditional programs should be encouraged and expanded.

- A. Develop and use non-traditional criteria to evaluate potential successful candidates, to include performance in summer conditional programs, work or family responsibilities while attending college, community service, etc.
- B. Expand Summer Conditional programs to provide academic support to diverse students.

II. Expand the pool of qualified applicants with disabilities in Law School

By educating primary and secondary schools on opportunities for the disabled in law, an open door is created. By asking lawyers with disabilities to reach out to children and undergraduates with disabilities, the Florida Bar can be instrumental in attracting this diverse class of persons to explore law as a career and can inspire mentor relationships between these groups. By creating literature that can be used in different educational settings, the Bar can effectively reach out to students with disabilities.

- A. Identify attorneys with disabilities to educate primary and secondary schools on opportunities for the disabled in the legal profession.
- B. Expand and/or develop Law Day Programs for primary and secondary schools to include attorneys with disabilities.
- C. Reach out to non-traditional schools that have an emphasis on teaching students with disabilities.
- D. Develop mentoring programs for secondary and college level students.
- E. Coordinate these efforts through the **Diversity Affairs Officer** as well as Bar Sections and Committees such as the Equal Opportunities Law Section and the Center for Professionalism.

- F. Create publications in different formats such as large print, audio tapes, and Braille to be accessible to potential applicants with disabilities.

III. Support for minorities in bar exam preparation

Law Schools should offer programs to diverse students during the final year of law school aimed at improving the skills needed to pass the Bar exam. The Bar can assist in the creation of these programs and/or provide support for them. The Bar could sponsor bar preparation course scholarships to diverse students who would otherwise have to work during their preparation for the Bar examination. Funding is to be generated by the Bar and it was suggested that the Bar offer pro bono hours for attorneys who assist in this effort.

- A. Offer programs during the final year of law school to improve skills needed to pass the Bar exam.
- B. Assist students with disabilities to determine the accommodations required and available for the Bar exam.
 - 1. Bar preparation programs should provide instruction and test taking strategies for students with disabilities.
 - 2. The Bar, the Florida Board of Bar Examiners and law schools should work with the Bar Preparation companies to develop these programs.
- C. Sponsor Bar preparation course scholarships for diverse students with financial needs.
 - 1. Solicit members of voluntary Bar associations for Bar exam preparation assistance.

2. Approve pro bono hours for attorneys who assist in these efforts.

IV. Monitor the impact of changes in bar exam passage rates for diverse students

The Florida Bar has gradually increased its pass rate from a minimum score of 131 to 133 (in February 2004) to 136 (beginning July 2004). It is unknown at this time how the increase in scores will affect diverse test takers. Information that will help law schools identify which of their students pass the bar should be compiled and made available, on a confidential basis, to the law school where the student attended. The Florida Board of Bar Examiners should closely monitor the success rate of these test takers during this increased score period. Any impact should result in notification of those results to the law schools to allow them to make improvements and/or changes in existing programs.

- A. Compile performance data on individual students and release that data, on a confidential basis, to the law school where the student attended.
- B. Develop the format for information requests.
 1. Confidentiality and other privacy issues must be considered.
- C. Closely monitor the success rate of these test takers during this increased score period.
- D. Notify the law schools of the results.
- E. Make improvements and/or changes in existing programs if necessary.

- F. The **Diversity Affairs Officer** and the Florida Board of Bar Examiners should work closely together on this issue.

V. Increase Minority Job Placement

Mentor programs can facilitate the transition from law school to law firms. Firms should expand their outreach to look at students who have exhibited success in law school other than through law review. Career services in the law school should be personalized. There should also be an increased effort to place diverse students in internship positions so that firms have exposure to these students. The Florida Bar should keep the need to diversify the private sector in the forefront of its efforts by repeating it in its publications, seminars, and interactions with the private sector.

- A. Utilize mentor programs to facilitate the transition from law school to law firms.
- B. Open membership to Bar Sections and Committees to third year law students and waive any fees associated therewith.
- C. Increase the placement of diverse students in internship positions.
- D. Encourage attendance of and offer financial support to diverse students in all Bar activities.

VI. Financial Assistance

- A. Increase resources to provide financial assistance to eligible diverse students.

- B. Identify potential scholarship sources and encourage contributions from Florida Bar members and voluntary Bar associations to Florida law schools to support existing scholarships.
- C. Utilize the Young Lawyers Division and other Bar sections to assist the Bar and the law schools in identifying funding sources.

VII. Early Childhood Mentoring to Lead to Law School

- A. Create mentoring programs in secondary schools.
- B. Provide grants through the Florida Bar to support mentoring programs and activities such as mock trial and debate teams in the high schools.
- C. Approve pro bono hours for those attorneys who participate in these activities.

VIII. Create a Welcome Environment in Law Schools

- A. Increase diversity among the faculty, the student body, and in student activities.
- B. Conduct diversity-teaching workshops to improve the classroom experience for all students.
- C. Create a process for the Bar to assist law schools in searching for qualified candidates for open faculty and administrative positions.
- D. The **Diversity Affairs Officer** should create a survey to determine the makeup of the law schools' current faculty and students.

- E. The **Diversity Affairs Officer** together with various sections of the Bar should work with the law schools to create diversity teaching workshops.

IX. Create Academic Support Programs in Law Schools

Law schools should offer academic support programs that can be utilized to identify at risk students early enough to intervene on their behalf. Such programs should not be used to stigmatize, but should be offered to all students and incorporated into the curriculum in such a way that it encourages students to participate to the fullest.

- A. Create programs to identify at risk students.
- B. Develop programs to assist these students to succeed in law school.

DIVERSITY IN EMPLOYMENT

Barriers to broad based employment of diverse members of society include:

- Narrow hiring criteria
- Hiring primarily by the numbers [class rank, moot court, law review, etc.]
- Narrow definitions of “the qualified candidate”
- The economic structure of law firms
- Non-flexible work arrangements for the successful balance of work and family
- Disparity in pay/conditions/advancement
- High attrition rates
- Change of employment from private to public sectors
- Low percentage of minority partners resulting in few mentors or in-house role-models
- Failure to integrate lawyers into *all* aspects of the work place

- including social, hiring and management

The recommendations to increase diversity in legal employment include:

I. Pre-Employment Education for Students

During the pre-employment/law school phase of a minority lawyer's career, the Florida Bar should work with both law students and legal employers to prepare students for the hiring process. Programs can include preparation for interviews, hiring criteria, employment trends, etc.

- A. Create programs and provide training for interview and job search strategies, etc.
- B. Utilize the **Diversity Affairs Officer**, Young Lawyers Division as well as the various sections of the Florida Bar to assist in coordinating these programs.

II. Pre-Employment Education for Employers

The Florida Bar should encourage employers to broaden their hiring criteria to ensure that a broad pool of applicants is considered for employment and hired. Hiring partners /employers can be invited to present data from their practices to private and public employers on why hiring attorneys of diversity is profitable. Meetings of career services personnel and professional recruiters should be convened to provide local and regional perspectives on employment barriers. The Florida Bar News should include articles on hiring and other employment issues.

- A. Utilize various experts in the field to create broader hiring criteria.
- B. Develop a seminar to present data on the success of diverse law firms.

- C. Convene a meeting of career services personnel and professional recruiters to provide local and regional perspectives on employment barriers.
- D. Solicit articles for The Florida Bar News from voluntary Bar associations as well as sections and committees of the Bar.

III. Employers

Employers should be aware of and avoid selection criteria and standards that tend to screen out Attorneys of Diversity. Employers should ensure that their work policies do not exclude or limit Attorneys of Diversity because of a job structure or because of communication, procedural or attitudinal barriers.

- A. Encourage law firms to increase the number of clerkships and internships.
- B. Conduct diversity trainings and workshops for employers to create selection criteria.
- C. Conduct diversity trainings and seminars for employers to ensure that their work policies do not exclude or limit Attorneys of Diversity.
- D. Conduct diversity trainings and seminars for employers for development and implementation of job performance evaluations in order to establish objective criteria that would eliminate bias and recognize the value of diversity.

IV. Voluntary Bar Associations

- A. Implement summer internship programs through voluntary Bar associations.

V. *Florida Bar*

- A. Visit law schools and meet with minority student groups to promote participation in Bar programs and activities as a law student and after admission to the Florida Bar.
- B. Develop programs or conduct seminars that encourage employers to create programs for the placement and advancement of Attorneys of Diversity.
- C. Encourage fair and equitable treatment in all aspects of personnel management policies of employers without regard to race, color, national origin, gender, sexual orientation or disabilities.
- D. Enlighten employers and candidates through speeches, press releases, statistical data, workplace laws and any other related topics affecting Attorneys of Diversity.
- E. Educate The Florida Bar's work force regarding diversity issues.
- F. Encourage every attorney to join a voluntary minority bar association.

DIVERSITY IN THE BAR

Barriers to diversity in the Florida Bar and its membership included the following:

- A lack of successful communication between the Bar and its membership
- A lack of successful communication between the Bar and its sections/committees
- A lack of successful communication between the Bar and voluntary bar orgs
- A narrow definition of diversity
- Lack of diversity in leadership

- Lack of mentors for up and coming diverse leaders
- Lack of comprehensive statistical data on diversity in Bar leadership, sections, committees, Young Lawyer's Sections, and membership as a whole

The Recommendations of the Bar Panel include:

I. Diversity Affairs Officer

Designate a full time bar person as a Diversity Affairs Officer. This person would be the primary vehicle through which many of the recommendations in this report would be studied and achieved. The Diversity Affairs Officer would oversee the effort of the Bar to mirror society by 2014. The job of the Diversity Affairs Officer would include coordination and direction of items listed below as well as those highlighted throughout this report.

- A. Develop and implement regulations and policies for equal opportunity.
- B. Submit annual action programs and plans and accomplishment reports.
- C. Develop a heightened long-term focus of increasing employment opportunities for Attorneys of Diversity.
- D. Assist with out reach programs and education
- E. Provide information training to Attorneys of Diversity

A sample job description prepared by Wilhelmina Tribble, of Lowe Tribble & Associates, is attached as Exhibit 1.

II. Leadership Education

To increase awareness of the diversity issue and to assist in enhancing participation from diverse segments of the Bar, the Bar President (and other leadership) should:

- A. Write letters to minority bar newsletters;
- B. Meet with the minority bar associations statewide;
- C. Examine Bar staff composition and make recommendations for improvement.

III. Annual Diversity Symposium

- A. Hold the Diversity Symposium annually.
- B. Invite wider audiences.
- C. Encourage attendance by all members of the Board of Governors
- D. Create a long-term plan for the Symposiums so that the goal of the Florida Bar mirroring society by the year 2014 is met.
- E. Implement recommendations contained in this Final Report by including topics in future symposiums.

IV. Expand Mentor Programs

Currently, there are mentoring programs for law students. There is a need for mentoring programs for attorneys.

- A. Develop mentoring programs for Attorneys of Diversity to identify potential future Bar leadership and assist them in attaining leadership positions.

V. Minority Bar President

- A. Undertake a commitment to have a minority Bar president within the next ten years.

VI. Access for Persons with Disabilities

By ensuring that all law school and Bar used facilities are accessible to those with disabilities, the Bar can reduce barriers to participation.

- A. Ensure that all Bar meetings are fully accessible to people with mobility impairments.
- B. Utilize sign language interpreters at all Bar seminars and sessions.
- C. Utilize only facilities that fully comply with ADA standards.
- D. Modify registration forms to include accommodation requests.

VII. Bar Wide Diversity Survey

The Bar President should commission a diversity survey of all members of the Bar to determine its true makeup. It will be a difficult task to mirror society without knowing our current composition. This survey must include all categories of diversity identified at the Symposium. The survey should include a letter from Immediate Past President Miles McGrane III, President Kelley Overstreet

Johnson, and President Elect Alan Bookman emphasizing the importance of participation.

- A. Gather accurate and reliable statistical information on diversity in the Bar.
- B. Include all areas of diversity in the surveys including sexual orientation and disability status categories such as visual impairment, hearing impairment, mobility impairment, speech impairment, learning disability, other.
- C. Determine what obstacles exist that prevent or discourage minority lawyers from greater participation in all aspects of The Florida Bar.
- D. Request that the leadership of the minority Bar associations assist in the completion of the surveys.
- E. Coordinate survey completion and data collection with the Bar Association Leadership. The **Diversity Affairs Officer** would head this coordination.

VIII. Diversity Disciplinary Committees

- A. Solicit diverse participation in Bar discipline committees.
- B. Create a plan to notify all members of the Florida Bar of discipline committee openings.

IX. Diversity Web Page

- A. Include a diversity page on Bar's website.

- B. Develop a diversity pledge for law firms.
- C. Include links to minority Bar associations.

X. Diversity Resource Database

- A. Collect existing Bar diversity policies and studies in one place.
- B. Publicize the existence of the database.
- C. Create process for access to the database.

XI. The Florida Bar News

- A. Include more articles about the need for and benefits of diversity in the legal profession.

XII. Equal Opportunities Law Section

A concern was raised that the Equal Opportunity and Public Interest Law Sections may not always have enough members to maintain their existence under current rules.

- A. Waive some of the requirements of section membership so that these sections can continue to survive.

DIVERSITY IN THE JUDICIARY

Barriers to diversification on the bench included:

- Low percentage of diverse judges
- Low percentage of diverse JNC members
- Difficulty in raising campaign funds
- Higher percentage of opposition for minority incumbent judges
- Lack of control by the Bar in making diverse JNC appointments
- Lack of diverse leadership in the Bar leading to fewer diverse judicial applicants with connections and experience at a high Bar level
- Lack of clarity in the financial disclosure rules

The judicial panel recommended the following.

I. Education on Election Process

The Bar should fund seminars to be organized by the Equal Opportunity Law Section which should be aimed at educating minorities and minority bar leaders on the intricacies of the process. The seminars would provide information on fund-raising, campaign management as well as applications to the JNC.

- A. Hold seminars, to be organized by the **Diversity Affairs Officer** and the Equal Opportunity Law Section.

II. Encouraging Support

- A. Encourage leaders of minority Bar associations to support qualified diverse candidates from their associations.

III. JNC Applicants

- A. Increase the number of minority applicants to the JNC.
- B. Have contact between the Bar and the minority voluntary Bar association leaders to show the Bar's commitment to diversity.

IV. Board of Governors Support

- A. Meet with local minority Bar organizations about upcoming openings in both the elected and appointed seats in each judicial circuit.
- B. Encourage diverse attorneys to apply for and/or run for these openings.

V. Revision of JNC Application

- A. Revise the application for judicial appointment to mirror that of the Governor's application.

VI. Financial Disclosure Education

- A. Provide a more detailed description of the financial disclosure requirement when advertising vacancies.

VII. Statement to the Governor

- A. Communicate with the Governor the interest and commitment of the Florida Bar in seeing qualified diverse appointments to open judicial seats.

VIII. JNC Education

If the bench is to represent the local community which it serves, the JNC should have an understanding of the diversity of its local community.

- A. Educate the JNC of the importance of the diversity of community in which they sit
- B. The **Diversity Affairs Officer** can head this initiative.

IX. Minority Leadership Summit

The Bar should fund a Minority Leadership Summit to be organized by the Equal Opportunity Law Section with the goal of facilitating contacts between minorities and members of the Bar and JNC Committee members. This seminar may include insight from Bar leaders and JNC members on how to run a successful campaign and the appointment process.

CONCLUSION

The legal profession in Florida is at a crossroad. While we have made progress, we need to do more, we must do more. We must demand diversity in all aspects of the legal profession.

***DIVERSITY IN THE LEGAL PROFESSION
MUST BE OUR PRIORITY***

“Where the Injured Fly for Justice”

A Summary of the Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission

by Frank Scruggs and Deborah Hardin Wagner

On December 11, 1989, then-Chief Justice Raymond Ehrlich issued an order creating the Racial and Ethnic Bias Study Commission. His order recognized that Florida's judicial system is “founded upon the fundamental principle of the fair and equal application of the rule of law for all,” and charged the commission to assess these fundamental issues:

1) Does race or ethnicity affect the dispensation of justice, either through explicit bias or unfairness implicit in the way the civil and criminal justice systems operate?

2) What are the elements of a coherent, long-term strategy to eradicate the vestiges of any legally-prescribed discrimination?

3) Are there practical measures which can be taken to alleviate any underrepresentation of disadvantaged minorities from positions of responsibility in the justice system, including as judges and court employees?

4) What, if any, measure should be taken by the Supreme Court, law schools, the Board of Bar Examiners, the profession, and the legislature to accelerate the rate at which disadvantaged minorities enter the legal profession and ascend through its ranks in the public and private sectors?

5) What, if any, changes should be made in the manner of selecting judges to increase the racial and ethnic diversity of the bench?

The 27 members of the commission spent the last year listening to the people of Florida and conducting empirical studies in an effort to address the question of whether racial or ethnic considerations adversely affect the dispensation of justice to minority Floridians. On December 11, 1990—the one-year anniversary of the commission's creation—the commission formally presented its first report to the Supreme Court during a ceremonial session in the court's chambers.

The commission's first report addresses several aspects of the justice system which, if operated unfairly, could adversely impair the basic liberties of disadvantaged minorities: the dearth of minorities who serve as judges, bailiffs, managers in policy organizations, and administrators in Florida's courthouses; the treatment accorded minorities by law enforcement organizations; and the processing of delinquency cases of minority juvenile offenders. Other important issues will be addressed in future reports.

Reprinted below are the remarks made by the chairman of the

commission, Frank Scruggs, in his opening address to the Supreme Court during the ceremony at which the court received the commission's report. These remarks are followed by the findings and recommendations of the commission, as set forth in the Executive Summary of the report.

A swallow had built her nest under the eaves of a Court of Justice. Before her young ones could fly, a serpent gliding out of his hole ate them all up. When the poor bird returned to her nest and found it empty, she began a pitiable wailing. A neighbor suggested, by way of comfort, that she was not the first bird who had lost her young. "True," she replied, "but it is not only my little ones that I mourn but that I should have been wronged in that very place where the injured fly for justice."—Aesop, *Fables*

In one of Aesop's fables, a serpent devoured the young ones of a bird who had placed its nest under the eaves of a court of justice. The bird's grieving was particularly pitiable because it felt "wronged in that very place where the injured fly for justice."

The imagery of this fable is so powerful because Aesop tasted the bitterness of oppression in his own life. According to historian J.A. Rogers, Greek biographers described Aesop as having a flat nose and everted lips. The synonym for "Aesop"

was "Ethiopi". . . . He was a black slave whose African likeness was even depicted on a coin at Delphi in ancient Greece.

It is fitting, therefore, that the commission employs Aesop's timeless imagery in the title and on the cover of its report. Aesop's uninhibited commentary on Delphi—the economy of which was dependent upon visitors—led image-conscious authorities there to accuse him of stealing a sacred cup, which had been planted in his bag. He was pronounced guilty of sacrilege and thrown off a cliff into the sea.

Aesop's fable of the bird whose young ones were devoured by a serpent remains, however, a vivid reminder that we as a state cannot permit the serpents of hatred, bigotry, and bias to lurk within our temples of justice.

The reasons why are basic—but they are too rarely reiterated. George Washington said, "The due administration of Justice is the firmest pillar of good government." The foundation of all government—including the pillars which hold aloft the eaves of the courthouse—is the consent of the governed. America remains blessed with liberty because it continues its quest to provide justice . . . for all.

The practices that adversely affect the liberty interests of minorities affect all Floridians. So it is everyone's concern to assure that the rights of minorities are protected. Nothing is more central to the existence and vitality of a democratic society than justice—meted out fairly and equally. When justice is provided to some groups and not others, the quality of democracy itself is diminished. As Justice Kogan said so eloquently in a recent (dissenting) opinion:

The loss of liberty injures all. And when liberty finally has fallen, there will be nothing to protect us from a threat of a different kind—people who, as history teaches, sometimes abuse positions of authority in government and its agencies.

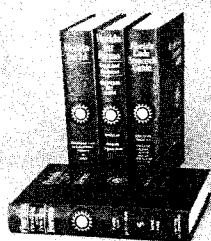
Everyone who holds a license conferred by this court swears or affirms to "maintain the respect due to Courts of Justice and judicial officers." In 1990, this must mean more than a pledge of individual deference. This oath ought to imply a responsibility to improve the system of justice so that it will engender still greater respect. The commission members accepted the call to service because we seek further to increase the respect due to courts of justice, *i.e.*, to improve the system, to reduce the extent to which it can be said that the dispensation of justice to minorities is impeded by racial or ethnic considerations.

Who are the members of your commission? They include seven judges, including the present chief justice of this court; three sitting legislators, and two former legislators, including a former speaker of the house and former president of the senate; a former chancellor of the state university system; a public defender; a chief prosecutor; a former chair of the Board of Bar Examiners; six laypersons who have achieved distinction in business, academe or public service.

How did the commission obtain the information which appears in the report and appendices? It held hearings in every region of the state, listened to an array of Floridians, retained leading researchers, and vigorously debated proposed findings and recommendations.

For what did the commission look in its search of bias? We decided early that ours was not primarily a search for serpentine behavior by individuals. On the cover, bias is not depicted as a copperhead, cottonmouth, coral snake or rattler. In this regard, the search for bias, like the search for faith, involves, in the words of Hebrews 11:1 a search for "evidence of things not seen." In a multi-cultural, secu-

You can't get closer to the issues than this.



At Lawyers Cooperative Publishing, we know our analytical legal research system is not complete without one vital link — our field representatives. They know what's of the greatest value to your practice, given your needs and market.

Right now, your local representative is ready to help you get the most from our integrated library for Florida practice — from Florida Supp to ALR, Florida Jur to Am Jur or Florida Pleading & Practice to Florida Code Guide.

If you want to be in charge, talk to a representative who's in touch with your needs. Contact your local representative directly, or call 1-800-444-1047.



Sam Cusumano
(407) 365-5570



Alan Finfer
(305) 583-4800



Art Frost
(813) 488-9211



Alex P. Llera
(305) 559-4978



Donald Rossi
(800) 444-1047



Jose A. Rodriguez
(305) 948-6015



Marilyn Seed
(305) 752-2705



Woolsey Serven
(904) 269-1999



Charles Walker
(813) 784-2542



Ed Dorgan
(205) 968-8365



Lawyers Cooperative Publishing
In depth. On point. In perspective.

lar society, neither prejudice nor faith ever will be proved to the satisfaction of those who doubt. The omissions of decent people acting without regard for the present effects of past inequities can have the same destructive effect as the intentional acts of dastardly individuals.

Very early in the process, we detected the skepticism of those who wondered aloud whether this report, like so many before it, would end up on a shelf, never to be widely discussed and never to be implemented. We were mindful, therefore, that the administrative order entered a year ago required that we report back not only to this court, but also to the branches of government based across the street in the Capitol building: to the executive and legislative branches. Hence, we also deliver it to the executive branch, represented by Attorney General Bob Butterworth. Before the legislature convenes in March, key recommendations will be in the bill form, awaiting consideration.

Hence, to those who ask, "Will this report merely collect dust on a shelf?" the answer is a resounding "no!" It is placed not on a shelf, but in the hands of state officials who have the responsibility and power under the law to etch its recommendations into the public policy of this state. By their presence before the court during presentation ceremonies, in front of citizens who have made long journeys to share this hopeful occasion, and in view of millions who will observe by television and listen on the radio — we know that they will keep it not on the shelf, but in the middle of their desks until its work is done.

The Judicial System Work Force: Its Complexion, Demeanor and Dialect

• Findings

Minorities are significantly underrepresented as judges in Florida in proportion to their numbers in the general population, comprising only 5.5 percent of the 723 judges in the state.

Minority females, at one percent of all judges, are particularly scarce on Florida's bench.

Minorities are virtually absent from the higher courts, serving primarily (92.5 percent) on the trial and limited jurisdiction courts. Four of the five district courts have no minority judges at all.

The judicial appointive system, as currently structured and implemented, has failed to achieve racial and ethnic diversity, in large measure because minorities

are not included in the selection process and are underrepresented in the pool from which judges are drawn. Only 5.6 percent and 3.6 percent of the membership of the judicial nominating commissions are, respectively, African-American and Hispanic. Almost half of the commissions have no minority members at all.

While over 63 percent of the membership of the judicial nominating commissions are attorneys, not a single African-American attorney serves as a member of any of the 22 judicial nominating commissions responding to the commission's survey. African-Americans hold only lay appointments.

Judicial nominating commissions with no minority members are less successful in obtaining minority applicants for judicial vacancies than commissions which include minority members.

The election process (for trial court judges) has not yielded significant representation of minorities in the judiciary in Florida.

As is the case with judges, minorities are underrepresented in the work force of Florida's state court system, constituting only nine percent of all state court employees. This is particularly true as it relates

to positions of greater responsibility and authority.

No African-American attorneys are employed in attorney positions by the Supreme Court.

No African-American attorneys or non-attorney professionals are employed by any district court of appeal.

African-Americans, Hispanics, and Native Americans continue to be poorly represented generally in the work force of the circuit and county courts, as officials and administrators in the clerk of the circuit courts' offices, some state attorneys' offices, and certain court-related executive agencies.

• Recommendations

1. The Florida Legislature should mandate representative minority attorney and citizen membership on each judicial nominating commission in Florida.

2. The Florida Supreme Court should instruct each judicial nominating commission to provide explicitly, by rule, that racial and ethnic diversity of Florida's bench is a desirable objective and, as such, an element which shall be considered by all judicial nominating commissions when making recommendations on appointments to the bench.

WE SPECIALIZE IN ASSISTING LAWYERS WHO SPECIALIZE IN INSURANCE.

Insurance litigation support once meant accountants and actuaries crunching numbers. Today Siver Insurance Management Consultants bring an entirely new meaning to litigation support for law firms involved in insurance cases.

Our staff contains a number of senior consultants with law degrees and experience in both legal and insurance matters. Their expertise allows us to furnish incisive insurance litigation support including expert witness, theories of recovery and damage, anticipation of defense, coverage interpretations and research. Therefore, we strongly suggest that you and your clients include Siver in the early stages of any case that involves complicated insurance matters.

We provide a variety of insurance consulting services that go beyond litigation support. For 20 years, our corporate and government clients have looked to us for sound advice and creative ideas to help solve problems and make the best choices for managing risks, buying insurance and providing benefits.

Siver Insurance Management Consultants provide clients with objective advice on insurance matters. We sell no insurance. We sell insurance expertise.

For more information contact:
Edward W. Siver, President
9400 Fourth Street North
St. Petersburg, FL 33702
1-813-577-2780

SIVER

Insurance Management Consultants

3. Each judicial nominating commission should, by rule, establish a model plan for recruiting qualified minority candidates for judicial appointment, updating the plan as appropriate to account for experience gained in the recruitment process. Particular attention should be paid to the recruitment of minority females for judicial appointment. Judicial nominating commissions should be required to provide to the governor a statement certifying compliance with the commission's minority recruitment plan when submitting recommendations for judicial appointments. In addition, the Florida Supreme Court should require the Judicial Nominating Procedures Committee of The Florida Bar and each judicial nominating commission to submit an annual report detailing each commission's record of increasing the number of minorities recommended for appointment to Florida's bench.

4. The governor should establish, as a top priority, the increase of minorities among his appointments to Florida's bench.

5. The Florida Bar, through the decisions of its Board of Governors and the efforts of its Judicial Nominating Procedures Committee, should expressly establish, as a top priority, the increase of minority representation among the Bar's appointees to the judicial nominating commissions.

6. The Florida Legislature should, in connection with its preparation for the upcoming session on reapportionment, fund and conduct computer-assisted analyses of the feasibility of devising judicial election subdistricts which would tend to increase minority representation while avoiding fragmentation and parochialism. Once concrete examples of the configuration of subdistricts are devised, the state will be in a better position to determine whether a change to single-member districts or subdistricts should be implemented through an amendment to the state constitution.

7. The Florida Supreme Court should adopt, by rule, an affirmative action plan for the Florida state court system, to be binding upon and administered by all components of the state court system. Under the authority provided by F.S. §25.382, the chief justice of the Florida Supreme Court should ensure system-wide compliance with the affirmative action plan.

8. The Florida Supreme Court should establish an office of equal employment opportunity and appoint a director experi-

African-Americans, Hispanics, and Native Americans continue to be poorly represented generally in the work force of the circuit and county courts

enced in personnel matters and in implementing affirmative actions programs. The director should be responsible for monitoring the implementation of an affirmative action plan that includes the recruitment of all court personnel, including judicial law clerks. The office should be provided with sufficient funding and support staff to carry out its assigned duties.

9. All chief judges, managers, and personnel officers within the state court system should receive training regarding the court's affirmative action plan. In addition, the Florida Supreme Court and each court and office within the state court system should develop specialized programs for managers to include incentive and awards programs for those who develop and implement successful, creative, and innovative minority hiring, promotion, and training programs pursuant to the affirmative action plan.

10. The chief justice of the Florida Supreme Court should promulgate, by order, a grievance procedure for the Florida state court system, to be utilized by any employee of the state court system who believes he or she has been the subject of an employment decision improperly influenced by race or ethnicity.

11. The legislature should mandate that each clerk of the court develop and implement an affirmative action plan, which shall establish annual goals for ensuring full utilization of minorities in the work force of county-level court-related employees. These plans should be submitted to and approved by the director of the office of equal employment opportunity of the state court system. The approval should

be certified to the appropriations committees of both houses of the legislature and to the executive branch officials who can ensure that state revenues normally transferred to counties may be withheld for nonapproval of or noncompliance with the locally-adopted affirmative action plans.

12. The governor, as well as the cabinet, should, by executive order or resolution, immediately require the executive agencies under their direction and having responsibilities relating to the judicial system to report on compliance with the provisions of the agency's affirmative action plan developed pursuant to F.S. §110.112. Furthermore, the governor should request from the Justice Administrative Commission a report on the compliance by state attorneys and public defenders with their affirmative action plans developed pursuant to F.S. §110.112.

Law Enforcement Interaction with Minorities

• Findings

Extensive evidence suggests that minorities are too often subjected to the threat of abuse and brutality by law enforcement organizations. Survey responses suggest that African-Americans and Hispanic individuals are stopped and detained more frequently than a nonminority would be under similar circumstances and are treated with less respect and more unnecessary force than are their white counterparts.

Relationships between police officers and minorities are adversely affected by cultural differences and misunderstandings.

African-Americans and Hispanics are underrepresented in Florida's police agencies, representing, respectively, only 8.7 percent and 5.6 percent of all law enforcement officers. Minorities appear to be losing ground in their representation in police agencies.

Minority police officers tend to receive fewer promotions than similarly situated whites and are disproportionately underrepresented in the management and supervisory ranks of police organizations in Florida.

Current training is not sufficient to demonstrate the state's commitment to ensuring appropriate and culturally sensitive law enforcement action toward racial and ethnic minorities.

• Recommendations

1. Law enforcement organizations should adopt plans to recruit, hire, retain,

and promote minorities.

2. The Florida Department of Law Enforcement and local law enforcement organizations should develop a minority career development program.

3. The legislature should create and fund a new division within the attorney general's office to be called the civil rights division. This division would be charged with the authority and responsibility to bring injunctive and compensatory suits against individuals and agencies, including law enforcement agencies, which engage in harassment or other inappropriate conduct on the basis of race or ethnicity.

4. The legislature should mandate that each law enforcement agency adopt a policy which regulates the use of force and domination on stops, recognizes that excessive force is an impediment to stable and effective law enforcement, and provides disciplinary action for violations of the policy.

5. The legislature should review the present structure of managing and funding the 40 centers which presently provide training to law enforcement officers throughout the state and determine whether program offerings can be improved through closer collaboration among the centers.

6. The legislature should, by statute, expand the responsibilities of the recently-created Criminal Justice Executive Institute to include the design and implementation of research projects which will combine the talents of community colleges and universities toward the end of improving law enforcement efforts with regard to the minority community.

7. The legislature should amend F.S. Ch. 943, to mandate the following improvements to law enforcement training in Florida: Cultural representation among police instructors; development of a "train the trainer" curriculum for Florida's law enforcement instructors and certification of all instructors by attending "train the trainer" classes, especially on racial and ethnic bias-related topics; specialized training for internal affairs officers in the area of ensuring equality and fairness in the investigation of internal affairs complaints; an increase in the number of hours designated for training on ethnic and cultural groups; integration of concepts relating to racial and ethnic bias into other courses in the criminal justice standards and training curriculum; reclassification of racial and ethnic relations topics as "proficiency" areas, subject to serious standardized testing; instruction in cross-

cultural awareness and communications for field training officers; the development of standardized, uniform, specific, and culturally sensitive lesson plans and instructors' guides in high risk/critical task areas identified as important because of their effect upon the minority community, as well as the monitoring and inspection of the classes covering these areas; the updating of videotapes and other materials used in race and ethnicity-related training; the initiation of community interaction sessions at each training center through interaction components in the training classes; and for chief executives, including sheriffs and police chiefs, training in areas relating to racial, ethnic and cultural awareness.

Juvenile Justice: The Need for Further Reform

• Findings

Minority juveniles are being treated more harshly than nonminority juveniles at almost all stages of the juvenile justice system, including arrest, referral for formal processing, transfer to the adult criminal justice system, secure detention prior to adjudication, and adjudication and commitment to traditional state-run facilities.

Opportunities for informal processing and diversion are not equally accessible to minority juveniles. The deeper the penetration of the juvenile justice system toward "deep-end" commitment, the greater the overrepresentation of minority juveniles.

The differential treatment of minority juveniles results, at least in part, from racial and ethnic bias on the part of enough individual police officers, intake workers, prosecutors, and judges, to make the system operate as if it intended to discriminate against minorities. It results as well from bias in institutional policies, structures, and practices.

Initiatives to eliminate disparities based on race and ethnicity must extend beyond the immediate crisis of harsh treatment of people who are in trouble today, to emphasize those more recently born who will be in even greater trouble tomorrow. Long-term strategies should involve improvements in education, income levels, employment training, economic development, health care, and the host of related considerations needed to elevate the status of minorities to true equality in society.

• Recommendations

1. The legislature should amend F.S. Ch. 39.023 to mandate minority representation among the membership of the seven-

The Professional's Choice • Designed by a professional for professionals

COMPUCAR

ALL AUTOS / TRUCKS DISCOUNTERS, INC.

• IMPORTS • CHRYSLER • FORD • GENERAL MOTORS

The Computerized New Car Purchasing & Leasing System

SATISFACTION GUARANTEED
SAVE TIME & MONEY WITHOUT AGGRAVATION

COMPUCAR has implemented a space-age 21st century cost cutting computerized purchasing and leasing system which enables us to obtain practically any vehicle for you with full factory warranty. COMPUCAR will provide complete information for an intelligent purchase or lease decision from the comfort of your home or office. We can save you hundreds, probably thousands of dollars the next time you buy or lease an auto by combining the incredible purchasing power of all professionals for their mutual benefit. COMPUCAR is the professional's car buying and leasing service.

Designed and managed by a Florida Bar Board Certified Tax and Estate Planning Attorney / CPA dedicated to the principles of full disclosure and truth in lending and leasing. Whether you lease or buy, with or without financing or a trade-in, let COMPUCAR act as your agent to help guide you to the right decision at the best price. Average cost of domestic vehicles is 15% below MSRP and 12% for imports with greater savings on leases. Immediate delivery through local new car dealers in South & Central Florida. Soon - statewide delivery. Contact COMPUCAR for complete information including dealer cost, MSRP and your cost.

The Professional's Choice • Designed by a professional for professionals

COMPUCAR

ALL AUTOS / TRUCKS DISCOUNTERS, INC.

(407) 220-8183 • (407) 220-8184 • FAX: (407) 221-9028

New Car Sales & Leasing
900 East Ocean Blvd.
Suite 240
Stuart, Florida 34994

member Commission on Juvenile Justice.

2. Police practices, including field adjustments, relating to law enforcement interaction with juveniles should be recorded for supervisory review and monitoring to determine whether and how race or ethnicity has entered into arrest and disposition decisions by Florida's law enforcement personnel.

3. The state should mandate the establishment of procedures, in each of the agencies comprising the juvenile justice system, to encourage and provide means for reporting, investigating, and responding to professionals whose decisions ap-

pear to have been influenced by racial or ethnic bias.

4. Policies and practices of the Department of Health and Rehabilitative Services should be altered so that youths referred to intake are not rendered ineligible for diversion programs if their parents or guardians (a) cannot be contacted, (b) are contacted but are unable to be present for an intake interview, or (c) exhibit attitudes and styles of behavior that are perceived as uncooperative or unfamiliar to intake staff.

5. To determine the necessity of 1) detention versus prehearing release, and 2) secure detention versus home detention, DHRS should promulgate criteria which are sensitive to racial, cultural, and ethnic differences in family structure and styles of childrearing and supervision.

6. In situations where persons with economic resources (e.g., income or insurance benefits) commonly arrange for private care outside of the juvenile justice system—i.e., for first offenders, and for those who engage in minor forms of misbehavior—treatment services of equal quality should be made available outside of the

juvenile justice system to serve the poor, especially poor minority youths.

7. The legislature should amend F.S. Ch. 39.024(2) to mandate minority representation among the membership of the 17-member Juvenile Justice Standards and Training Council.

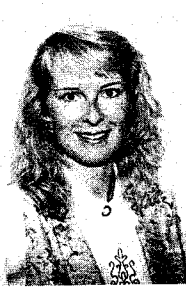
8. The Florida Legislature should mandate the development of a thorough race, ethnic, and cultural diversity curriculum which personnel at every level in Florida's juvenile justice system should be required to complete through continuing education credits. The curriculum should emphasize facts and myths about racial and ethnic minorities and the effect of bias in justice processing.

9. The state, through all appropriate agencies including, but not limited to, the Department of Health and Rehabilitative Services, the Department of Education, the state court system, state attorneys, and public defenders, should actively support, through financial and other means, the establishment and extension of local community programs and efforts aimed specifically at addressing the needs of Florida's minority juveniles. □

AUTHORS



SCRUGGS

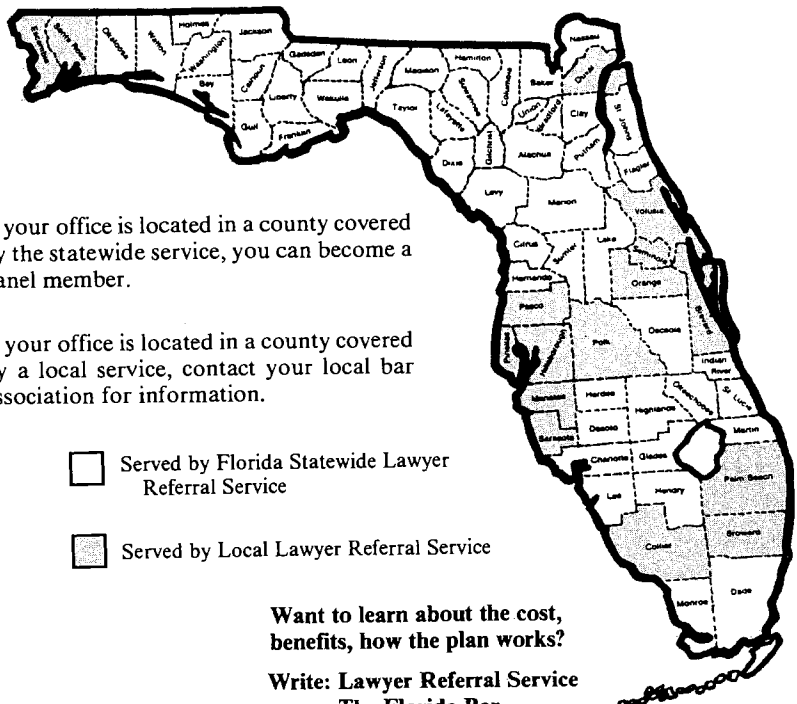


WAGNER

Frank Scruggs is chairman of the Racial and Ethnic Bias Study Commission. In December 1990, Governor Chiles appointed Scruggs to be secretary of the Florida Department of Labor and Employment Security. At that time, he was a partner in the Miami office of Steel Hector and Davis, practicing commercial litigation. He was a member of the Florida Board of Regents from 1982 to 1987, and chairman of the Governor's Advisory Council on Minority Enterprise Development from 1984 to 1985. Mr. Scruggs received his B.A. degree from Cornell University, his master's degree in public affairs from Princeton University, and his J.D. from Harvard Law School.

Deborah Hardin Wagner is executive director of the Racial and Ethnic Bias Study Commission. She served as assistant general counsel to Governor Bob Martinez from 1987 to 1989 and as legislative assistant to U.S. Senator Christopher J. Dodd in 1986. From 1983 to 1985, Ms. Wagner was a litigation associate with the Tampa office of Carlton, Fields, Ward, Emmanuel, Smith, and Cutler, P.A. She received her B.A. degree from Duke University and her J.D. from Florida State University College of Law.

Join The Florida Bar's Lawyer Referral Service



If your office is located in a county covered by the statewide service, you can become a panel member.

If your office is located in a county covered by a local service, contact your local bar association for information.

☐ Served by Florida Statewide Lawyer Referral Service

☒ Served by Local Lawyer Referral Service

Want to learn about the cost, benefits, how the plan works?

Write: Lawyer Referral Service
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
or call: (800) 342-8011

134 S.Ct. 1623
Supreme Court of the United States

Bill SCHUETTE, Attorney General of Michigan,
Petitioner

v.

COALITION TO DEFEND AFFIRMATIVE
ACTION, INTEGRATION AND IMMIGRANT
RIGHTS AND FIGHT FOR EQUALITY BY ANY
MEANS NECESSARY (BAMN), et al.

No. 12–682. | Argued Oct. 15, 2013. | Decided April
22, 2014.

Synopsis

Background: Organizations and others filed suits against Michigan state officials, universities, and others, bringing equal protection challenge to state constitutional amendment prohibiting affirmative action in public education, employment, and contracting. Following consolidation, the United States District Court for the Eastern District of Michigan, [David M. Lawson, J.](#), entered summary judgment in state's favor, [539 F.Supp.2d 924](#), and denied plaintiffs' motion to reconsider, [592 F.Supp.2d 948](#). Plaintiffs appealed. Sitting en banc, the United States Court of Appeals for the Sixth Circuit, [Ransey Guy Cole, Jr.](#), Circuit Judge, [701 F.3d 466](#), reversed. Certiorari was granted.

Holding: The Supreme Court, Justice [Kennedy](#), held that no authority in United States Constitution would allow Judiciary to set aside amendment to Michigan Constitution prohibiting affirmative action in public education, employment, and contracting.

Reversed.

Chief Justice [Roberts](#) filed concurring opinion.

Justice [Scalia](#) filed opinion concurring in judgment in which Justice [Thomas](#) joined.

Justice [Breyer](#) filed opinion concurring in judgment.

Justice [Sotomayor](#) filed dissenting opinion in which Justice [Ginsburg](#) joined.

Justice [Kagan](#) took no part in consideration or decision of case.

West Headnotes (1)

[1] **Constitutional Law**

🔑Matters subject to initiative or submission

Constitutional Law

🔑Post-election challenges or review

No authority in United States Constitution would allow Judiciary to set aside amendment to Michigan Constitution prohibiting affirmative action in public education, employment, and contracting, which had been adopted by Michigan voters through initiative following United States Supreme Court decisions in [Gratz v. Bollinger](#) and [Grutter v. Bollinger](#) concerning use of racial preferences in state university admissions; although deliberative debate on sensitive issues such as racial preferences all too often might shade into rancor, that did not justify removing certain court-determined issues from voters' reach. (Per Justice Kennedy, with the Chief Justice and another Justice concurring, and three Justices concurring in the judgment.) [M.C.L.A. Const. Art. 1, § 26](#).

[2 Cases that cite this headnote](#)

West Codenotes

Negative Treatment Vacated

[M.C.L.A. Const. Art. 1, § 26](#)

1623 Syllabus

After this Court decided that the University of Michigan's undergraduate admissions plan's use of race-based preferences violated the Equal Protection Clause, [Gratz v. Bollinger](#), 539 U.S. 244, 270, 123 S.Ct. 2411, 156 L.Ed.2d 257, but that the law school admission plan's more *1624 limited use did not, [Grutter v. Bollinger](#), 539 U.S. 306, 343, 123 S.Ct. 2325, 156 L.Ed.2d 304, Michigan voters adopted Proposal 2, now Art. I, § 26, of the State Constitution, which, as relevant here, prohibits the use of race-based preferences as part of the admissions process for state universities. In consolidated challenges, the District Court granted summary judgment to Michigan, thus upholding Proposal 2, but the Sixth Circuit reversed,

concluding that the proposal violated the principles of *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896.

*Held:*The judgment is reversed.

701 F.3d 466, reversed.

Justice KENNEDY, joined by THE CHIEF JUSTICE and Justice ALITO, concluded that there is no authority in the Federal Constitution or in this Court's precedents for the Judiciary to set aside Michigan laws that commit to the voters the determination whether racial preferences may be considered in governmental decisions, in particular with respect to school admissions. Pp. 1630 – 1638.

(a) This case is not about the constitutionality, or the merits, of race-conscious admissions policies in higher education. Here, the principle that the consideration of race in admissions is permissible when certain conditions are met is not being challenged. Rather, the question concerns whether, and in what manner, voters in the States may choose to prohibit the consideration of such racial preferences. Where States have prohibited race-conscious admissions policies, universities have responded by experimenting “with a wide variety of alternative approaches.” *Grutter, supra*, at 342, 123 S.Ct. 2325. The decision by Michigan voters reflects the ongoing national dialogue about such practices. Pp. 1630 – 1631.

(b) The Sixth Circuit's determination that *Seattle* controlled here extends *Seattle*'s holding in a case presenting quite different issues to reach a mistaken conclusion. Pp. 1630 – 1638.

(1) It is necessary to consider first the relevant cases preceding *Seattle* and the background against which *Seattle* arose. Both *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830, and *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616, involved demonstrated injuries on the basis of race that, by reasons of state encouragement or participation, became more aggravated. In *Mulkey*, a voter-enacted amendment to the California Constitution prohibiting state legislative interference with an owner's prerogative to decline to sell or rent residential property on any basis barred the challenging parties, on account of race, from invoking the protection of California's statutes, thus preventing them from leasing residential property. In *Hunter*, voters overturned an Akron ordinance that was enacted to address widespread racial discrimination in housing sales and rentals had forced many to live in “ ‘unhealthful, unsafe, unsanitary and overcrowded’ ” segregated housing, 393 U.S., at 391, 89 S.Ct. 557. In *Seattle*, after the school board

adopted a mandatory busing program to alleviate racial isolation of minority students in local schools, voters passed a state initiative that barred busing to desegregate. This Court found that the state initiative had the “practical effect” of removing “the authority to address a racial problem ... from the existing decisionmaking body, in such a way as to burden minority interests” of busing advocates who must now “seek relief from the state legislature, or from the statewide electorate.” 458 U.S., at 474, 102 S.Ct. 3187. Pp. 1630 – 1633.

(2) *Seattle* is best understood as a case in which the state action had the *1625 serious risk, if not purpose, of causing specific injuries on account of race as had been the case in *Mulkey* and *Hunter*. While there had been no judicial finding of *de jure* segregation with respect to Seattle's school district, a finding that would be required today, see *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 720–721, 127 S.Ct. 2738, 168 L.Ed.2d 508, *Seattle* must be understood as *Seattle* understood itself, as a case in which neither the State nor the United States “challenge[d] the propriety of race-conscious student assignments for the purpose of achieving integration, even absent a finding of prior *de jure* segregation.” 458 U.S. at 472, n. 15, 102 S.Ct. 3187.

Seattle's broad language, however, went well beyond the analysis needed to resolve the case. Seizing upon the statement in Justice Harlan's concurrence in *Hunter* that the procedural change in that case had “the clear purpose of making it more difficult for certain racial and religious minorities to achieve legislation that is in their interest,” 393 U.S., at 395, 89 S.Ct. 557, the *Seattle* Court established a new and far-reaching rationale: Where a government policy “inures primarily to the benefit of the minority” and “minorities ... consider” the policy to be “ ‘in their interest,’ ” then any state action that “place[s] effective decisionmaking authority over” that policy “at a different level of government” is subject to strict scrutiny. 458 U.S., at 472, 474, 102 S.Ct. 3187. Pp. 1632 – 1634.

(3) To the extent *Seattle* is read to require the Court to determine and declare which political policies serve the “interest” of a group defined in racial terms, that rationale was unnecessary to the decision in *Seattle* ; it has no support in precedent; and it raises serious equal protection concerns. In cautioning against “impermissible racial stereotypes,” this Court has rejected the assumption that all individuals of the same race think alike, see *Shaw v. Reno*, 509 U.S. 630, 647, 113 S.Ct. 2816, 125 L.Ed.2d 511, but that proposition would be a necessary beginning point were the *Seattle* formulation to control. And if it were deemed necessary to probe how some races define their own interest in political matters, still another beginning

point would be to define individuals according to race. Such a venture would be undertaken with no clear legal standards or accepted sources to guide judicial decision. It would also result in, or impose a high risk of, inquiries and categories dependent upon demeaning stereotypes, classifications of questionable constitutionality on their own terms. Assuming these steps could be taken, the court would next be required to determine the policy realms in which groups defined by race had a political interest. That undertaking, again without guidance from accepted legal standards, would risk the creation of incentives for those who support or oppose certain policies to cast the debate in terms of racial advantage or disadvantage. Adoption of the *Seattle* formulation could affect any number of laws or decisions, involving, *e.g.*, tax policy or housing subsidies. And racial division would be validated, not discouraged.

It can be argued that objections to the larger consequences of the *Seattle* formulation need not be confronted here, for race was an undoubted subject of the ballot issue. But other problems raised by *Seattle*, such as racial definitions, still apply. And the principal flaw in the Sixth Circuit's decision remains: Here there was no infliction of a specific injury of the kind at issue in *Mulkey* and *Hunter* and in the history of the Seattle schools, and there is no precedent for extending these cases to restrict the right of Michigan voters to determine that race-based preferences *1626 granted by state entities should be ended. The Sixth Circuit's judgment also calls into question other States' long-settled rulings on policies similar to Michigan's.

Unlike the injuries in *Mulkey*, *Hunter*, and *Seattle*, the question here is not how to address or prevent injury caused on account of race but whether voters may determine whether a policy of race-based preferences should be continued. By approving Proposal 2 and thereby adding § 26 to their State Constitution, Michigan voters exercised their privilege to enact laws as a basic exercise of their democratic power, bypassing public officials they deemed not responsive to their concerns about a policy of granting race-based preferences. The mandate for segregated schools, *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, and scores of other examples teach that individual liberty has constitutional protection. But this Nation's constitutional system also embraces the right of citizens to speak and debate and learn and then, as a matter of political will, to act through a lawful electoral process, as Michigan voters have done here. These precepts are not inconsistent with the well-established principle that when hurt or injury is inflicted on racial minorities by the encouragement or command of laws or other state action, the Constitution requires redress by the courts. Such circumstances were present in *Mulkey*, *Hunter*, and *Seattle*, but they are not

present here. Pp. 1634 – 1638.

Justice SCALIA, joined by Justice THOMAS, agreed that § 26 rightly stands, though not because it passes muster under the political-process doctrine. It likely does not, but the cases establishing that doctrine should be overruled. They are patently atextual, unadministrable, and contrary to this Court's traditional equal protection jurisprudence. The question here, as in every case in which neutral state action is said to deny equal protection on account of race, is whether the challenged action reflects a racially discriminatory purpose. It plainly does not. Pp. 1629 – 1638.

(a) The Court of Appeals for the Sixth Circuit held § 26 unconstitutional under the so-called political-process doctrine, derived from *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896, and *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616. In those cases, one level of government exercised borrowed authority over an apparently “racial issue” until a higher level of government called the loan. This Court deemed each revocation an equal-protection violation, without regard to whether there was evidence of an invidious purpose to discriminate. The relentless, radical logic of *Hunter* and *Seattle* would point to a similar conclusion here, as in so many other cases. Pp. 1629 – 1632.

(b) The problems with the political-process doctrine begin with its triggering prong, which assigns to a court the task of determining whether a law that reallocates policymaking authority concerns a “racial issue,” *Seattle*, 458 U.S., at 473, 102 S.Ct. 3187, *i.e.*, whether adopting one position on the question would “at bottom inur[e] primarily to the benefit of the minority, and is designed for that purpose,” *id.*, at 472, 102 S.Ct. 3187. Such freeform judicial musing into ethnic and racial “interests” involves judges in the dirty business of dividing the Nation “into racial blocs,” *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 603, 610, 110 S.Ct. 2997, 111 L.Ed.2d 445 (O'Connor, J., dissenting), and promotes racial stereotyping, see *Shaw v. Reno*, 509 U.S. 630, 647, 113 S.Ct. 2816, 125 L.Ed.2d 511. More fundamentally, the analysis misreads the Equal Protection Clause to protect particular groups, a construction that has been repudiated in a “long line of cases understanding equal *1627 protection as a personal right.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 224, 230, 115 S.Ct. 2097, 132 L.Ed.2d 158. Pp. 1632 – 1635.

(c) The second part of the *Hunter–Seattle* analysis directs a court to determine whether the challenged act “place[s] effective decisionmaking authority over [the] racial issue

at a different level of government,” *Seattle, supra*, at 474, 102 S.Ct. 3187; but, in another line of cases, the Court has emphasized the near-limitless sovereignty of each State to design its governing structure as it sees fit, see, e.g., *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 71, 99 S.Ct. 383, 58 L.Ed.2d 292. Taken to the limits of its logic, *Hunter–Seattle* is the gaping exception that nearly swallows the rule of structural state sovereignty, which would seem to permit a State to give certain powers to cities, later assign the same powers to counties, and even reclaim them for itself. Pp. 1634 – 1637.

(d) *Hunter* and *Seattle* also endorse a version of the proposition that a facially neutral law may deny equal protection solely because it has a disparate racial impact. That equal-protection theory has been squarely and soundly rejected by an “unwavering line of cases” holding “that a violation of the Equal Protection Clause requires state action motivated by discriminatory intent,” *Hernandez v. New York*, 500 U.S. 352, 372–373, 111 S.Ct. 1859, 114 L.Ed.2d 395 (O’Connor, J., concurring in judgment), and that “official action will not be held unconstitutional solely because it results in a racially disproportionate impact,” *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264–265, 97 S.Ct. 555, 50 L.Ed.2d 450. Respondents cannot prove that the action here reflects a racially discriminatory purpose, for any law expressly requiring state actors to afford all persons equal protection of the laws does not—cannot—deny “to any person ... equal protection of the laws,” U.S. Const., Amdt. 14, § 1. Pp. 1630 – 1638.

Justice BREYER agreed that the amendment is consistent with the Equal Protection Clause, but for different reasons. First, this case addresses the amendment only as it applies to, and forbids, race-conscious admissions programs that consider race solely in order to obtain the educational benefits of a diverse student body. Second, the Constitution permits, but does not require, the use of the kind of race-conscious programs now barred by the Michigan Constitution. It foresees the ballot box, not the courts, as the normal instrument for resolving debates about the merits of these programs. Third, *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616, and *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896, which reflect the important principle that an individual’s ability to participate meaningfully in the political process should be independent of his race, do not apply here. Those cases involved a restructuring of the political process that changed the political level at which policies were enacted, while this case involves an amendment that took decisionmaking authority away from unelected actors and

placed it in the hands of the voters. Hence, this case does not involve a diminution of the minority’s ability to participate in the political process. Extending the holding of *Hunter* and *Seattle* to situations where decisionmaking authority is moved from an administrative body to a political one would also create significant difficulties, given the nature of the administrative process. Furthermore, the principle underlying *Hunter* and *Seattle* runs up against a competing principle favoring decisionmaking through the democratic process. Pp. 1629 – 1632.

KENNEDY, J., announced the judgment of the Court and delivered an *1628 opinion, in which ROBERTS, C.J., and ALITO, J., joined. ROBERTS, C.J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined. BREYER, J., filed an opinion concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined. KAGAN, J., took no part in the consideration or decision of the case.

Attorneys and Law Firms

John J. Bursch, Solicitor General, Lansing, MI, for Petitioner.

Shanta Driver, Detroit, MI, for Respondents Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary, et al.

Mark D. Rosenbaum, for Respondents Chase Cantrell, et al.

B. Eric Restuccia, Deputy Solicitor General, Aaron D. Lindstrom, Assistant Solicitor General, Bill Schuette, Michigan Attorney General, John J. Bursch, Solicitor General, Counsel of Record, Lansing, MI, for Petitioner.

Winifred Kao, Asian Americans Advancing Justice–Asian Law Caucus, San Francisco, CA, Doyle G. O’Connor, Chicago, IL, George B. Washington, Counsel of Record, Shanta Driver, Eileen R. Scheff, Monica R. Smith, Joyce P. Schon, Ronald Cruz, Scheff, Washington & Driver, P.C., Detroit, MI, for Respondents Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary, et al.

Laurence H. Tribe, Cambridge, MA, Joshua I. Civin, NAACP Legal Defense & Educational Fund, Inc., Washington, DC, Mark D. Rosenbaum, Counsel of Record, David B. Sapp, ACLU Foundation of Southern California, Los Angeles, CA, Karin A. DeMasi, Nicole M.

Peles, Cravath, Swaine & Moore LLP, New York, NY, Erwin Chemerinsky, University of California, Irvine School of Law, Irvine, CA, Sherrilyn Ifill, Damon T. Hewitt, NAACP Legal Defense & Educational Fund, Inc., New York, NY, Steven R. Shapiro, Dennis D. Parker, ACLU Foundation, New York, NY, Melvin Butch Hollowell, Jr., Detroit Branch NAACP, Detroit, MI, Kary L. Moss, Michael J. Steinberg, Mark P. Fancher, ACLU Fund of Michigan, Detroit, MI, Jerome R. Watson, Miller, Canfield, Paddock and Stone, P.L.C., Detroit, MI, Daniel P. Tokaji, The Ohio State University, Moritz College of Law, Columbus, OH, for Respondents Chase Cantrell et al.

Stephanie R. Settingington, Varnum LLP, Grand Rapids, MI, for Respondents Board of Governors of Wayne State University and Irvin Reid.

Leonard M. Niehoff, Honigman Miller Schwartz and Cohn, LLP, Ann Arbor, MI, for Respondents Regents of the University of Michigan, the Board of Trustees of Michigan State University, Mary Sue Coleman, and Lou Anna K. Simon.

Michael E. Rosman, Center for Individual Rights, Washington, D.C., Alan K. Palmer, J.D. Taliaferro, Washington, D.C., Charles J. Cooper, Counsel of Record, David H. Thompson, Howard C. Nielson, Jr., Cooper & Kirk, PLLC, Washington, D.C., for Respondent Eric Russell.

Bill Schuetz, Attorney General, John J. Bursch, Michigan Solicitor General, Counsel of Record, Lansing, MI, B. Eric Restuccia, Deputy Solicitor General, Aaron D. Lindstrom, Assistant Solicitor General, for Petitioner.

Opinion

Justice KENNEDY announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE and Justice ALITO join.

The Court in this case must determine whether an amendment to the Constitution of the State of Michigan, approved and enacted by its voters, is invalid under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

In 2003 the Court reviewed the constitutionality of two admissions systems at the University of Michigan, one for its undergraduate class and one for its law school. The undergraduate admissions plan was addressed in *Gratz v. Bollinger*, 539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257. The law school admission plan was addressed in *Grutter v. Bollinger*, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304.

Each admissions process permitted the explicit consideration of an applicant's race. In *Gratz*, the Court invalidated the undergraduate plan as a violation of the Equal Protection Clause. 539 U.S., at 270, 123 S.Ct. 2411. In *Grutter*, the Court found no constitutional flaw in the law school admission plan's more limited use of race-based preferences. 539 U.S., at 343, 123 S.Ct. 2325.

In response to the Court's decision in *Gratz*, the university revised its undergraduate admissions process, but the revision still allowed limited use of race-based preferences. After a statewide debate on the question of racial preferences in the context of governmental decisionmaking, the voters, in 2006, adopted an amendment to the State Constitution prohibiting state and other governmental entities in Michigan from granting certain preferences, including race-based preferences, in a wide range of actions and decisions. Under the terms of the amendment, race-based preferences cannot be part of the admissions process for state universities. That particular prohibition is central to the instant case.

The ballot proposal was called Proposal 2 and, after it passed by a margin of 58 percent to 42 percent, the resulting enactment became Article I, § 26, of the Michigan Constitution. As noted, the amendment is in broad terms. Section 26 states, in relevant part, as follows:

“(1) The University of Michigan, Michigan State University, Wayne State University, and any other public college or university, community college, or school district shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

“(2) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

“(3) For the purposes of this section ‘state’ includes, but is not necessarily limited to, the state itself, any city, county, any public college, university, or community college, school district, or other political subdivision or governmental instrumentality of or within the State of Michigan not included in sub-section 1.”

Section 26 was challenged in two cases. Among the plaintiffs in the suits were the Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary *1630 (BAMN); students; faculty; and prospective applicants to

Michigan public universities. The named defendants included then-Governor Jennifer Granholm, the Board of Regents of the University of Michigan, the Board of Trustees of Michigan State University, and the Board of Governors of Wayne State University. The Michigan Attorney General was granted leave to intervene as a defendant. The United States District Court for the Eastern District of Michigan consolidated the cases.

In 2008, the District Court granted summary judgment to Michigan, thus upholding Proposal 2. *BAMN v. Regents of Univ. of Mich.*, 539 F.Supp.2d 924. The District Court denied a motion to reconsider the grant of summary judgment. 592 F.Supp.2d 948. A panel of the United States Court of Appeals for the Sixth Circuit reversed the grant of summary judgment. 652 F.3d 607 (2011). Judge Gibbons dissented from that holding. *Id.*, at 633–646. The panel majority held that Proposal 2 had violated the principles elaborated by this Court in *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982), and in the cases that *Seattle* relied upon.

The Court of Appeals, sitting en banc, agreed with the panel decision. 701 F.3d 466 (C.A.6 2012). The majority opinion determined that *Seattle* “mirrors the [case] before us.” *Id.*, at 475. Seven judges dissented in a number of opinions. The Court granted certiorari. 568 U.S. —, 133 S.Ct. 1633, 185 L.Ed.2d 615 (2013).

Before the Court addresses the question presented, it is important to note what this case is not about. It is not about the constitutionality, or the merits, of race-conscious admissions policies in higher education. The consideration of race in admissions presents complex questions, in part addressed last Term in *Fisher v. University of Texas at Austin*, 570 U.S. —, 133 S.Ct. 2411, 186 L.Ed.2d 474 (2013). In *Fisher*, the Court did not disturb the principle that the consideration of race in admissions is permissible, provided that certain conditions are met. In this case, as in *Fisher*, that principle is not challenged. The question here concerns not the permissibility of race-conscious admissions policies under the Constitution but whether, and in what manner, voters in the States may choose to prohibit the consideration of racial preferences in governmental decisions, in particular with respect to school admissions.

This Court has noted that some States have decided to prohibit race-conscious admissions policies. In *Grutter*, the Court noted: “Universities in California, Florida, and Washington State, where racial preferences in admissions are prohibited by state law, are currently engaged in experimenting with a wide variety of alternative approaches. Universities in other States can and should

draw on the most promising aspects of these race-neutral alternatives as they develop.” 539 U.S., at 342, 123 S.Ct. 2325 (citing *United States v. Lopez*, 514 U.S. 549, 581, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995) (KENNEDY, J., concurring) (“[T]he States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear”)). In this way, *Grutter* acknowledged the significance of a dialogue regarding this contested and complex policy question among and within States. There was recognition that our federal structure “permits ‘innovation and experimentation’ ” and “enables greater citizen ‘involvement in democratic processes.’ ” *Bond v. United States*, 564 U.S. —, —, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269 (2011) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 458, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991)). While this case *1631 arises in Michigan, the decision by the State’s voters reflects in part the national dialogue regarding the wisdom and practicality of race-conscious admissions policies in higher education. See, e.g., *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (C.A.9 1997).

In Michigan, the State Constitution invests independent boards of trustees with plenary authority over public universities, including admissions policies. *Mich. Const., Art. VIII, § 5*; see also *Federated Publications, Inc. v. Board of Trustees of Mich. State Univ.*, 460 Mich. 75, 86–87, 594 N.W.2d 491, 497 (1999). Although the members of the boards are elected, some evidence in the record suggests they delegated authority over admissions policy to the faculty. But whether the boards or the faculty set the specific policy, Michigan’s public universities did consider race as a factor in admissions decisions before 2006.

In holding § 26 invalid in the context of student admissions at state universities, the Court of Appeals relied in primary part on *Seattle, supra*, which it deemed to control the case. But that determination extends *Seattle*’s holding in a case presenting quite different issues to reach a conclusion that is mistaken here. Before explaining this further, it is necessary to consider the relevant cases that preceded *Seattle* and the background against which *Seattle* itself arose.

Though it has not been prominent in the arguments of the parties, this Court’s decision in *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967), is a proper beginning point for discussing the controlling decisions. In *Mulkey*, voters amended the California Constitution to prohibit any state legislative interference with an owner’s prerogative to decline to sell or rent residential property on any basis. Two different cases gave rise to *Mulkey*. In one a couple could not rent an apartment, and in the other a

couple were evicted from their apartment. Those adverse actions were on account of race. In both cases the complaining parties were barred, on account of race, from invoking the protection of California's statutes; and, as a result, they were unable to lease residential property. This Court concluded that the state constitutional provision was a denial of equal protection. The Court agreed with the California Supreme Court that the amendment operated to insinuate the State into the decision to discriminate by encouraging that practice. The Court noted the "immediate design and intent" of the amendment was to "establis[h] a purported constitutional right to privately discriminate." *Id.*, at 374, 87 S.Ct. 1627 (internal quotation marks omitted and emphasis deleted). The Court agreed that the amendment "expressly authorized and constitutionalized the private right to discriminate." *Id.*, at 376, 87 S.Ct. 1627. The effect of the state constitutional amendment was to "significantly encourage and involve the State in private racial discriminations." *Id.*, at 381, 87 S.Ct. 1627. In a dissent joined by three other Justices, Justice Harlan disagreed with the majority's holding. *Id.*, at 387, 87 S.Ct. 1627. The dissent reasoned that California, by the action of its voters, simply wanted the State to remain neutral in this area, so that the State was not a party to discrimination. *Id.*, at 389, 87 S.Ct. 1627. That dissenting voice did not prevail against the majority's conclusion that the state action in question encouraged discrimination, causing real and specific injury.

The next precedent of relevance, *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969), is central to the arguments the respondents make in the instant case. In *Hunter*, the Court for the first *1632 time elaborated what the Court of Appeals here styled the "political process" doctrine. There, the Akron City Council found that the citizens of Akron consisted of " 'people of different race[s], ... many of whom live in circumscribed and segregated areas, under sub-standard unhealthful, unsafe, unsanitary and overcrowded conditions, because of discrimination in the sale, lease, rental and financing of housing.' " *Id.*, at 391, 89 S.Ct. 557. To address the problem, Akron enacted a fair housing ordinance to prohibit that sort of discrimination. In response, voters amended the city charter to overturn the ordinance and to require that any additional antidiscrimination housing ordinance be approved by referendum. But most other ordinances "regulating the real property market" were not subject to those threshold requirements. *Id.*, at 390, 89 S.Ct. 557. The plaintiff, a black woman in Akron, Ohio, alleged that her real estate agent could not show her certain residences because the owners had specified they would not sell to black persons.

Central to the Court's reasoning in *Hunter* was that the

charter amendment was enacted in circumstances where widespread racial discrimination in the sale and rental of housing led to segregated housing, forcing many to live in " 'unhealthful, unsafe, unsanitary and overcrowded conditions.' " *Id.*, at 391, 89 S.Ct. 557. The Court stated: "It is against this background that the referendum required by [the charter amendment] must be assessed." *Ibid.* Akron attempted to characterize the charter amendment "simply as a public decision to move slowly in the delicate area of race relations" and as a means "to allow the people of Akron to participate" in the decision. *Id.*, at 392, 89 S.Ct. 557. The Court rejected Akron's flawed "justifications for its discrimination," justifications that by their own terms had the effect of acknowledging the targeted nature of the charter amendment. *Ibid.* The Court noted, furthermore, that the charter amendment was unnecessary as a general means of public control over the city council; for the people of Akron already were empowered to overturn ordinances by referendum. *Id.*, at 390, n. 6, 89 S.Ct. 557. The Court found that the city charter amendment, by singling out antidiscrimination ordinances, "places special burden on racial minorities within the governmental process," thus becoming as impermissible as any other government action taken with the invidious intent to injure a racial minority. *Id.*, at 391, 89 S.Ct. 557. Justice Harlan filed a concurrence. He argued the city charter amendment "has the clear purpose of making it more difficult for certain racial and religious minorities to achieve legislation that is in their interest." *Id.*, at 395, 89 S.Ct. 557. But without regard to the sentence just quoted, *Hunter* rests on the unremarkable principle that the State may not alter the procedures of government to target racial minorities. The facts in *Hunter* established that invidious discrimination would be the necessary result of the procedural restructuring. Thus, in *Mulkey* and *Hunter*, there was a demonstrated injury on the basis of race that, by reasons of state encouragement or participation, became more aggravated.

Seattle is the third case of principal relevance here. There, the school board adopted a mandatory busing program to alleviate racial isolation of minority students in local schools. Voters who opposed the school board's busing plan passed a state initiative that barred busing to desegregate. The Court first determined that, although "white as well as Negro children benefit from" diversity, the school board's plan "inures primarily to the benefit of the minority." 458 U.S., at 472, 102 S.Ct. 3187. The Court next found *1633 that "the practical effect" of the state initiative was to "remov[e] the authority to address a racial problem—and only a racial problem—from the existing decisionmaking body, in such a way as to burden minority interests" because advocates of busing "now must seek relief from the state legislature, or from the statewide

electorate.” *Id.*, at 474, 102 S.Ct. 3187. The Court therefore found that the initiative had “explicitly us[ed] the racial nature of a decision to determine the decisionmaking process.” *Id.*, at 470, 102 S.Ct. 3187 (emphasis deleted).

Seattle is best understood as a case in which the state action in question (the bar on busing enacted by the State’s voters) had the serious risk, if not purpose, of causing specific injuries on account of race, just as had been the case in *Mulkey* and *Hunter*. Although there had been no judicial finding of *de jure* segregation with respect to Seattle’s school district, it appears as though school segregation in the district in the 1940’s and 1950’s may have been the partial result of school board policies that “permitted white students to transfer out of black schools while restricting the transfer of black students into white schools.” *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 807–808, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007) (BREYER, J., dissenting). In 1977, the National Association for the Advancement of Colored People (NAACP) filed a complaint with the Office for Civil Rights, a federal agency. The NAACP alleged that the school board had maintained a system of *de jure* segregation. Specifically, the complaint alleged “that the Seattle School Board had created or perpetuated unlawful racial segregation through, e.g., certain school-transfer criteria, a construction program that needlessly built new schools in white areas, district line-drawing criteria, the maintenance of inferior facilities at black schools, the use of explicit racial criteria in the assignment of teachers and other staff, and a general pattern of delay in respect to the implementation of promised desegregation efforts.” *Id.*, at 810, 127 S.Ct. 2738. As part of a settlement with the Office for Civil Rights, the school board implemented the “Seattle Plan,” which used busing and mandatory reassignments between elementary schools to reduce racial imbalance and which was the subject of the state initiative at issue in *Seattle*. See 551 U.S., at 807–812, 127 S.Ct. 2738.

As this Court held in *Parents Involved*, the school board’s purported remedial action would not be permissible today absent a showing of *de jure* segregation. *Id.*, at 720–721, 127 S.Ct. 2738. That holding prompted Justice BREYER to observe in dissent, as noted above, that one permissible reading of the record was that the school board had maintained policies to perpetuate racial segregation in the schools. In all events we must understand *Seattle* as *Seattle* understood itself, as a case in which neither the State nor the United States “challenge[d] the propriety of race-conscious student assignments for the purpose of achieving integration, even absent a finding of prior *de jure* segregation.” 458 U.S. at 472, n. 15, 102 S.Ct. 3187. In other words the legitimacy and constitutionality of the

remedy in question (busing for desegregation) was assumed, and *Seattle* must be understood on that basis. *Ibid.* *Seattle* involved a state initiative that “was carefully tailored to interfere only with desegregative busing.” *Id.*, at 471, 102 S.Ct. 3187. The *Seattle* Court, accepting the validity of the school board’s busing remedy as a predicate to its analysis of the constitutional question, found that the State’s disapproval of the school board’s busing remedy was an aggravation of the very racial injury in which the State itself was complicit.

*1634 The broad language used in *Seattle*, however, went well beyond the analysis needed to resolve the case. The Court there seized upon the statement in Justice Harlan’s concurrence in *Hunter* that the procedural change in that case had “the clear purpose of making it more difficult for certain racial and religious minorities to achieve legislation that is in their interest.” 385 U.S., at 395, 87 S.Ct. 534. That language, taken in the context of the facts in *Hunter*, is best read simply to describe the necessity for finding an equal protection violation where specific injuries from hostile discrimination were at issue. The *Seattle* Court, however, used the language from the *Hunter* concurrence to establish a new and far-reaching rationale. *Seattle* stated that where a government policy “inures primarily to the benefit of the minority” and “minorities ... consider” the policy to be “‘in their interest,’” then any state action that “place[s] effective decisionmaking authority over” that policy “at a different level of government” must be reviewed under strict scrutiny. 458 U.S., at 472, 474, 102 S.Ct. 3187. In essence, according to the broad reading of *Seattle*, any state action with a “racial focus” that makes it “more difficult for certain racial minorities than for other groups” to “achieve legislation that is in their interest” is subject to strict scrutiny. It is this reading of *Seattle* that the Court of Appeals found to be controlling here. And that reading must be rejected.

The broad rationale that the Court of Appeals adopted goes beyond the necessary holding and the meaning of the precedents said to support it; and in the instant case neither the formulation of the general rule just set forth nor the precedents cited to authenticate it suffice to invalidate Proposal 2. The expansive reading of *Seattle* has no principled limitation and raises serious questions of compatibility with the Court’s settled equal protection jurisprudence. To the extent *Seattle* is read to require the Court to determine and declare which political policies serve the “interest” of a group defined in racial terms, that rationale was unnecessary to the decision in *Seattle*; it has no support in precedent; and it raises serious constitutional concerns. That expansive language does not provide a proper guide for decisions and should not be deemed authoritative or controlling. The rule that the Court of

Appeals elaborated and respondents seek to establish here would contradict central equal protection principles.

In cautioning against “impermissible racial stereotypes,” this Court has rejected the assumption that “members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls.” *Shaw v. Reno*, 509 U.S. 630, 647, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993); see also *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 636, 110 S.Ct. 2997, 111 L.Ed.2d 445 (1990) (KENNEDY, J., dissenting) (rejecting the “demeaning notion that members of ... defined racial groups ascribe to certain ‘minority views’ that must be different from those of other citizens”). It cannot be entertained as a serious proposition that all individuals of the same race think alike. Yet that proposition would be a necessary beginning point were the *Seattle* formulation to control, as the Court of Appeals held it did in this case. And if it were deemed necessary to probe how some races define their own interest in political matters, still another beginning point would be to define individuals according to race. But in a society in which those lines are becoming more blurred, the attempt to define race-based categories also raises serious questions of its own. Government action that classifies individuals on the basis *1635 of race is inherently suspect and carries the danger of perpetuating the very racial divisions the polity seeks to transcend. Cf. *Ho v. San Francisco Unified School Dist.*, 147 F.3d 854, 858 (C.A.9 1998) (school district delineating 13 racial categories for purposes of racial balancing). Were courts to embark upon this venture not only would it be undertaken with no clear legal standards or accepted sources to guide judicial decision but also it would result in, or at least impose a high risk of, inquiries and categories dependent upon demeaning stereotypes, classifications of questionable constitutionality on their own terms.

Even assuming these initial steps could be taken in a manner consistent with a sound analytic and judicial framework, the court would next be required to determine the policy realms in which certain groups—groups defined by race—have a political interest. That undertaking, again without guidance from any accepted legal standards, would risk, in turn, the creation of incentives for those who support or oppose certain policies to cast the debate in terms of racial advantage or disadvantage. Thus could racial antagonisms and conflict tend to arise in the context of judicial decisions as courts undertook to announce what particular issues of public policy should be classified as advantageous to some group defined by race. This risk is inherent in adopting the *Seattle* formulation.

There would be no apparent limiting standards defining what public policies should be included in what *Seattle* called policies that “inur[e] primarily to the benefit of the minority” and that “minorities ... consider” to be “‘in their interest.’ ” 458 U.S., at 472, 474, 102 S.Ct. 3187. Those who seek to represent the interests of particular racial groups could attempt to advance those aims by demanding an equal protection ruling that any number of matters be foreclosed from voter review or participation. In a nation in which governmental policies are wide ranging, those who seek to limit voter participation might be tempted, were this Court to adopt the *Seattle* formulation, to urge that a group they choose to define by race or racial stereotypes are advantaged or disadvantaged by any number of laws or decisions. Tax policy, housing subsidies, wage regulations, and even the naming of public schools, highways, and monuments are just a few examples of what could become a list of subjects that some organizations could insist should be beyond the power of voters to decide, or beyond the power of a legislature to decide when enacting limits on the power of local authorities or other governmental entities to address certain subjects. Racial division would be validated, not discouraged, were the *Seattle* formulation, and the reasoning of the Court of Appeals in this case, to remain in force.

Perhaps, when enacting policies as an exercise of democratic self-government, voters will determine that race-based preferences should be adopted. The constitutional validity of some of those choices regarding racial preferences is not at issue here. The holding in the instant case is simply that the courts may not disempower the voters from choosing which path to follow. In the realm of policy discussions the regular give-and-take of debate ought to be a context in which rancor or discord based on race are avoided, not invited. And if these factors are to be interjected, surely it ought not to be at the invitation or insistence of the courts.

One response to these concerns may be that objections to the larger consequences of the *Seattle* formulation need not be confronted in this case, for here race was an undoubted subject of the ballot issue. But a number of problems raised by *Seattle* *1636, such as racial definitions, still apply. And this principal flaw in the ruling of the Court of Appeals does remain: Here there was no infliction of a specific injury of the kind at issue in *Mulkey* and *Hunter* and in the history of the Seattle schools. Here there is no precedent for extending these cases to restrict the right of Michigan voters to determine that race-based preferences granted by Michigan governmental entities should be ended.

It should also be noted that the judgment of the Court of

Appeals in this case of necessity calls into question other long-settled rulings on similar state policies. The California Supreme Court has held that a California constitutional amendment prohibiting racial preferences in public contracting does not violate the rule set down by *Seattle. Coral Constr., Inc. v. City and County of San Francisco*, 50 Cal.4th 315, 113 Cal.Rptr.3d 279, 235 P.3d 947 (2010). The Court of Appeals for the Ninth Circuit has held that the same amendment, which also barred racial preferences in public education, does not violate the Equal Protection Clause. *Wilson*, 122 F.3d 692 (1997). If the Court were to affirm the essential rationale of the Court of Appeals in the instant case, those holdings would be invalidated, or at least would be put in serious question. The Court, by affirming the judgment now before it, in essence would announce a finding that the past 15 years of state public debate on this issue have been improper. And were the argument made that *Coral* might still stand because it involved racial preferences in public contracting while this case concerns racial preferences in university admissions, the implication would be that the constitutionality of laws forbidding racial preferences depends on the policy interest at stake, the concern that, as already explained, the voters deem it wise to avoid because of its divisive potential. The instant case presents the question involved in *Coral* and *Wilson* but not involved in *Mulkey*, *Hunter*, and *Seattle*. That question is not how to address or prevent injury caused on account of race but whether voters may determine whether a policy of race-based preferences should be continued.

By approving Proposal 2 and thereby adding § 26 to their State Constitution, the Michigan voters exercised their privilege to enact laws as a basic exercise of their democratic power. In the federal system States “respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times.” *Bond*, 564 U.S., at —, 131 S.Ct., at 2364. Michigan voters used the initiative system to bypass public officials who were deemed not responsive to the concerns of a majority of the voters with respect to a policy of granting race-based preferences that raises difficult and delicate issues.

The freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power. The mandate for segregated schools, *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); a wrongful invasion of the home, *Silverman v. United States*, 365 U.S. 505, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961); or punishing a protester whose views offend others, *Texas v. Johnson*, 491 U.S. 397, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989); and scores of other examples

teach that individual liberty has constitutional protection, and that liberty’s full extent and meaning may remain yet to be discovered and affirmed. Yet freedom does not stop with individual rights. Our constitutional system embraces, too, the right of citizens to debate so they can learn and decide and then, through the political process, act in concert to try to shape the *1637 course of their own times and the course of a nation that must strive always to make freedom ever greater and more secure. Here Michigan voters acted in concert and statewide to seek consensus and adopt a policy on a difficult subject against a historical background of race in America that has been a source of tragedy and persisting injustice. That history demands that we continue to learn, to listen, and to remain open to new approaches if we are to aspire always to a constitutional order in which all persons are treated with fairness and equal dignity. Were the Court to rule that the question addressed by Michigan voters is too sensitive or complex to be within the grasp of the electorate; or that the policies at issue remain too delicate to be resolved save by university officials or faculties, acting at some remove from immediate public scrutiny and control; or that these matters are so arcane that the electorate’s power must be limited because the people cannot prudently exercise that power even after a full debate, that holding would be an unprecedented restriction on the exercise of a fundamental right held not just by one person but by all in common. It is the right to speak and debate and learn and then, as a matter of political will, to act through a lawful electoral process.

The respondents in this case insist that a difficult question of public policy must be taken from the reach of the voters, and thus removed from the realm of public discussion, dialogue, and debate in an election campaign. Quite in addition to the serious First Amendment implications of that position with respect to any particular election, it is inconsistent with the underlying premises of a responsible, functioning democracy. One of those premises is that a democracy has the capacity—and the duty—to learn from its past mistakes; to discover and confront persisting biases; and by respectful, rationale deliberation to rise above those flaws and injustices. That process is impeded, not advanced, by court decrees based on the proposition that the public cannot have the requisite repose to discuss certain issues. It is demeaning to the democratic process to presume that the voters are not capable of deciding an issue of this sensitivity on decent and rational grounds. The process of public discourse and political debate should not be foreclosed even if there is a risk that during a public campaign there will be those, on both sides, who seek to use racial division and discord to their own political advantage. An informed public can, and must, rise above this. The idea of democracy is that it can, and must, mature. Freedom embraces the right, indeed the duty, to engage in

a rational, civic discourse in order to determine how best to form a consensus to shape the destiny of the Nation and its people. These First Amendment dynamics would be disserved if this Court were to say that the question here at issue is beyond the capacity of the voters to debate and then to determine.

These precepts are not inconsistent with the well-established principle that when hurt or injury is inflicted on racial minorities by the encouragement or command of laws or other state action, the Constitution requires redress by the courts. Cf. *Johnson v. California*, 543 U.S. 499, 511–512, 125 S.Ct. 1141, 160 L.Ed.2d 949 (2005) (“[S]earching judicial review ... is necessary to guard against invidious discrimination”); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991) (“Racial discrimination” is “invidious in all contexts”). As already noted, those were the circumstances that the Court found present in *Mulkey*, *Hunter*, and *Seattle*. But those circumstances are not present here.

For reasons already discussed, *Mulkey*, *Hunter*, and *Seattle* are not precedents *1638 that stand for the conclusion that Michigan’s voters must be disempowered from acting. Those cases were ones in which the political restriction in question was designed to be used, or was likely to be used, to encourage infliction of injury by reason of race. What is at stake here is not whether injury will be inflicted but whether government can be instructed not to follow a course that entails, first, the definition of racial categories and, second, the grant of favored status to persons in some racial categories and not others. The electorate’s instruction to governmental entities not to embark upon the course of race-defined and race-based preferences was adopted, we must assume, because the voters deemed a preference system to be unwise, on account of what voters may deem its latent potential to become itself a source of the very resentments and hostilities based on race that this Nation seeks to put behind it. Whether those adverse results would follow is, and should be, the subject of debate. Voters might likewise consider, after debate and reflection, that programs designed to increase diversity—consistent with the Constitution—are a necessary part of progress to transcend the stigma of past racism.

This case is not about how the debate about racial preferences should be resolved. It is about who may resolve it. There is no authority in the Constitution of the United States or in this Court’s precedents for the Judiciary to set aside Michigan laws that commit this policy determination to the voters. See *Sailors v. Board of Ed. of County of Kent*, 387 U.S. 105, 109, 87 S.Ct. 1549, 18

L.Ed.2d 650 (1967) (“Save and unless the state, county, or municipal government runs afoul of a federally protected right, it has vast leeway in the management of its internal affairs”). Deliberative debate on sensitive issues such as racial preferences all too often may shade into rancor. But that does not justify removing certain court-determined issues from the voters’ reach. Democracy does not presume that some subjects are either too divisive or too profound for public debate.

The judgment of the Court of Appeals for the Sixth Circuit is reversed.

It is so ordered.

Justice KAGAN took no part in the consideration or decision of this case.

Chief Justice ROBERTS, concurring.

The dissent devotes 11 pages to expounding its own policy preferences in favor of taking race into account in college admissions, while nonetheless concluding that it “do[es] not mean to suggest that the virtues of adopting race-sensitive admissions policies should inform the legal question before the Court.” *Post*, at 1682 – 1683 (opinion of SOTOMAYOR, J.). The dissent concedes that the governing boards of the State’s various universities could have implemented a policy making it illegal to “discriminate against, or grant preferential treatment to,” any individual on the basis of race. See *post*, at 1652 – 1653, 1669 – 1670. On the dissent’s view, if the governing boards conclude that drawing racial distinctions in university admissions is undesirable or counterproductive, they are permissibly exercising their policymaking authority. But others who might reach the same conclusion are failing to take race seriously.

The dissent states that “[t]he way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race.” *Post*, at 1676. And it urges that “[r]ace matters because of the slights, the snickers, the silent judgments that reinforce that most crippling of thoughts: ‘I do not belong here.’ ” *Ibid*. But it is not “out of touch with reality” to conclude that racial preferences may themselves have *1639 the debilitating effect of reinforcing precisely that doubt, and—if so—that the preferences do more harm than good. *Post*, at 1675 – 1676. To disagree with the dissent’s views on the costs and benefits of racial preferences is not to “wish away, rather than confront” racial inequality. *Post*, at 1676. People can disagree in good faith on this issue, but it similarly does more harm than good to question the openness and candor of those on either side of the debate.*

Justice [SCALIA](#), with whom Justice [THOMAS](#) joins, concurring in the judgment.

It has come to this. Called upon to explore the jurisprudential twilight zone between two errant lines of precedent, we confront a frighteningly bizarre question: Does the Equal Protection Clause of the Fourteenth Amendment *forbid* what its text plainly *requires*? Needless to say (except that this case obliges us to say it), the question answers itself. “The Constitution proscribes government discrimination on the basis of race, and state-provided education is no exception.” [Grutter v. Bollinger](#), 539 U.S. 306, 349, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003) (SCALIA, J., concurring in part and dissenting in part). It is precisely this understanding—the correct understanding—of the federal Equal Protection Clause that the people of the State of Michigan have adopted for their own fundamental law. By adopting it, they did not simultaneously *offend* it.

Even taking this Court’s sorry line of race-based-admissions cases as a given, I find the question presented only slightly less strange: Does the Equal Protection Clause forbid a State from banning a practice that the Clause barely—and only provisionally—permits? Reacting to those race-based-admissions decisions, some States—whether deterred by the prospect of costly litigation; aware that [Grutter](#)’s bell may soon toll, see 539 U.S., at 343, 123 S.Ct. 2325; or simply opposed in principle to the notion of “benign” racial discrimination—have gotten out of the racial-preferences business altogether. And with our express encouragement: “Universities in California, Florida, and Washington State, where racial preferences in admissions are prohibited by state law, are currently engaging in experimenting with a wide variety of alternative approaches. Universities in other States can *and should* draw on the most promising aspects of these race-neutral alternatives as they develop.” [Id.](#), at 342, 123 S.Ct. 2325 (emphasis added). Respondents seem to think this admonition was merely in jest.¹ The experiment, *1640 they maintain, is not only over; it never rightly began. Neither the people of the States nor their legislatures ever had the option of directing subordinate public-university officials to cease considering the race of applicants, since that would deny members of those minority groups the option of enacting a policy designed to further their interest, thus denying them the equal protection of the laws. Never mind that it is hotly disputed whether the practice of race-based admissions is *ever* in a racial minority’s interest. Cf. [id.](#), at 371–373, 123 S.Ct. 2325 (THOMAS, J., concurring in part and dissenting in part). And never mind that, were a public university to stake its defense of a race-based-admissions policy on the

ground that it was *designed* to benefit primarily minorities (as opposed to all students, regardless of color, by enhancing diversity), *we would hold the policy unconstitutional*. See [id.](#), at 322–325, 123 S.Ct. 2325.

But the battleground for this case is not the constitutionality of race-based admissions—at least, not quite. Rather, it is the so-called political-process doctrine, derived from this Court’s opinions in [Washington v. Seattle School Dist. No. 1](#), 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982), and [Hunter v. Erickson](#), 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969). I agree with those parts of the plurality opinion that repudiate this doctrine. But I do not agree with its reinterpretation of [Seattle](#) and [Hunter](#), which makes them stand in part for the cloudy and doctrinally anomalous proposition that whenever state action poses “the serious risk ... of causing specific injuries on account of race,” it denies equal protection. *Ante*, at 1633. I would instead reaffirm that the “ordinary principles of our law [and] of our democratic heritage” require “plaintiffs alleging equal protection violations” stemming from facially neutral acts to “prove intent and causation and not merely the existence of racial disparity.” [Freeman v. Pitts](#), 503 U.S. 467, 506, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992) (SCALIA, J., concurring) (citing [Washington v. Davis](#), 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976)). I would further hold that a law directing state actors to provide equal protection is (to say the least) facially neutral, and cannot violate the Constitution. Section 26 of the Michigan Constitution (formerly Proposal 2) rightly stands.

I

A

The political-process doctrine has its roots in two of our cases. The first is [Hunter](#). In 1964, the Akron City Council passed a fair-housing ordinance “ ‘assur[ing] equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, ancestry or national origin.’ ” 393 U.S., at 386, 89 S.Ct. 557. Soon after, the city’s voters passed an amendment to the Akron City Charter stating that any ordinance enacted by the council that “ ‘regulates’ ” commercial transactions in real property “ ‘on the basis of race, color, religion, national origin or ancestry’ ”—including the already enacted 1964 ordinance—“must first be approved by a majority of the electors voting on the question” at a later referendum. [Id.](#), at 387, 89 S.Ct. 557. The question was whether the charter amendment denied equal protection. Answering yes, the

Court explained that “although the law on its face treats Negro and white, Jew and gentile in an identical manner, the reality *1641 is that the law’s impact falls on the minority. The majority needs no protection against discrimination.” *Id.*, at 391, 89 S.Ct. 557. By placing a “special burden on racial minorities within the governmental processes,” the amendment “disadvantage[d]” a racial minority “by making it more difficult to enact legislation in its behalf.” *Id.*, at 391, 393, 89 S.Ct. 557.

The reasoning in *Seattle* is of a piece. Resolving to “eliminate all [racial] imbalance from the Seattle public schools,” the city school board passed a mandatory busing and pupil-reassignment plan of the sort typically imposed on districts guilty of *de jure* segregation. 458 U.S., at 460–461, 102 S.Ct. 3187. A year later, the citizens of the State of Washington passed Initiative 350, which directed (with exceptions) that “ ‘no school ... shall directly or indirectly require any student to attend a school other than the school which is geographically nearest or next nearest the student’s place of residence ... and which offers the course of study pursued by such student,’ ” permitting only court-ordered race-based busing. *Id.*, at 462, 102 S.Ct. 3187. The lower courts held Initiative 350 unconstitutional, and we affirmed, announcing in the prelude of our analysis—as though it were beyond debate—that the Equal Protection Clause forbade laws that “subtly distort[ed] governmental processes in such a way as to place special burdens on the ability of minority groups to achieve beneficial legislation.” *Id.*, at 467, 102 S.Ct. 3187.

The first question in *Seattle* was whether the subject matter of Initiative 350 was a “ ‘racial’ issue,” triggering *Hunter* and its process doctrine. 458 U.S., at 471–472, 102 S.Ct. 3187. It was “undoubtedly ... true” that whites and blacks were “counted among both the supporters and the opponents of Initiative 350.” *Id.*, at 472, 102 S.Ct. 3187. It was “equally clear” that both white and black children benefitted from desegregated schools. *Ibid.* Nonetheless, we concluded that desegregation “inures *primarily* to the benefit of the minority, and is designed for that purpose.” *Ibid.* (emphasis added). In any event, it was “enough that minorities may consider busing for integration to be ‘legislation that is in their interest.’ ” *Id.*, at 474, 102 S.Ct. 3187 (quoting *Hunter, supra*, at 395, 89 S.Ct. 557 (Harlan, J., concurring)).

So we proceeded to the heart of the political-process analysis. We held Initiative 350 unconstitutional, since it removed “the authority to address a racial problem—and only a racial problem—from the existing decisionmaking body, in such a way as to burden minority interests.” *Seattle*, 458 U.S., at 474, 102 S.Ct. 3187. Although school

boards in Washington retained authority over *other* student-assignment issues and over most matters of educational policy generally, under Initiative 350, minorities favoring race-based busing would have to “surmount a considerably higher hurdle” than the mere petitioning of a local assembly: They “now must seek relief from the state legislature, or from the statewide electorate,” a “different level of government.” *Ibid.*

The relentless logic of *Hunter* and *Seattle* would point to a similar conclusion in this case. In those cases, one level of government exercised borrowed authority over an apparently “racial issue,” until a higher level of government called the loan. So too here. In those cases, we deemed the revocation an equal-protection violation *regardless* of whether it facially classified according to race or reflected an invidious purpose to discriminate. Here, the Court of Appeals did the same.

The plurality sees it differently. Though it, too, disavows the political-process-doctrine basis on which *Hunter* and *1642 *Seattle* were decided, *ante*, at 1633 – 1636, it does not take the next step of overruling those cases. Rather, it reinterprets them beyond recognition. *Hunter*, the plurality suggests, was a case in which the challenged act had “target[ed] racial minorities.” *Ante*, at 1632 – 1633. Maybe, but the *Hunter* Court neither found that to be so nor considered it relevant, bypassing the question of intent entirely, satisfied that its newly minted political-process theory sufficed to invalidate the charter amendment.

As for *Seattle*, what was *really* going on, according to the plurality, was that Initiative 350 had the consequence (if not the purpose) of preserving the harms effected by prior *de jure* segregation. Thus, “the political restriction in question was designed to be used, or was likely to be used, to encourage infliction of injury by reason of race.” *Ante*, at 1638. That conclusion is derived not from the opinion but from recently discovered evidence that the city of Seattle had been a cause of its schools’ racial imbalance all along: “Although there had been no judicial finding of *de jure* segregation with respect to Seattle’s school district, it appears as though school segregation in the district in the 1940’s and 1950’s may have been the partial result of school board policies.” *Ante*, at 1633.² That the district’s effort to end racial imbalance had been stymied by Initiative 350 meant that the people, by passing it, somehow had become complicit in Seattle’s equal-protection-denying status quo, whether they knew it or not. Hence, there was in *Seattle* a government-furthered “infliction of a specific”—and, presumably, constitutional—“injury.” *Ante*, at 1635 – 1636.

Once again this describes what our opinion in *Seattle*

might have been, but assuredly not what it was. The opinion assumes throughout that Seattle's schools suffered at most from *de facto* segregation, see, e.g., 458 U.S., at 474, 475, 102 S.Ct. 3187—that is, segregation not the “product ... of state action but of private choices,” having no “constitutional implications,” *Freeman*, 503 U.S., at 495–496, 112 S.Ct. 1430. Nor did it anywhere state that the current racial imbalance was the (judicially remediable) effect of prior *de jure* segregation. Absence of *de jure* segregation or the effects of *de jure* segregation was a necessary premise of the *Seattle* opinion. That is what made the issue of busing and pupil reassignment a matter of political choice rather than judicial mandate.³ And precisely *because* it was a question for the political branches to decide, the manner—which is to say, the *process*—of its resolution implicated the Court's new process theory. The opinion itself says this: “[I]n the absence of a constitutional violation, the desirability and efficacy of school desegregation are matters to be resolved though the political process. For present purposes, it is enough [to hold reallocation of that political decision to a higher level unconstitutional] that minorities may consider *1643 busing for integration to be legislation that is in their interest.” 458 U.S., at 474, 102 S.Ct. 3187 (internal quotation marks omitted).

B

Patently atextual, unadministrable, and contrary to our traditional equal-protection jurisprudence, *Hunter* and *Seattle* should be overruled.

The problems with the political-process doctrine begin with its triggering prong, which assigns to a court the task of determining whether a law that reallocates policymaking authority concerns a “racial issue.” *Seattle*, 458 U.S., at 473, 102 S.Ct. 3187. *Seattle* takes a couple of dissatisfying cracks at defining this crucial term. It suggests that an issue is racial if adopting one position on the question would “at bottom inur[e] primarily to the benefit of the minority, and is designed for that purpose.” *Id.*, at 472, 102 S.Ct. 3187. It is irrelevant that, as in *Hunter* and *Seattle*, 458 U.S., at 472, 102 S.Ct. 3187, both the racial minority and the racial majority benefit from the policy in question, and members of both groups favor it. Judges should instead focus their guesswork on their own juridical sense of what is primarily for the benefit of minorities. Cf. *ibid.* (regarding as dispositive what “our cases” suggest is beneficial to minorities). On second thought, maybe judges need only ask this question: Is it possible “that minorities may consider” the policy in question to be “in their interest”? *Id.*, at 474, 102 S.Ct.

3187. If so, you can be sure that you are dealing with a “racial issue.”⁴

No good can come of such random judicial musing. The plurality gives two convincing reasons why. For one thing, it involves judges in the dirty business of dividing the Nation “into racial blocs,” *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 603, 610, 110 S.Ct. 2997, 111 L.Ed.2d 445 (1990) (O'Connor, J., dissenting); *ante*, at 1634 – 1635. That task is as difficult as it is unappealing. (Does a half-Latino, half-American Indian have Latino interests, American-Indian interests, both, half of both?) What is worse, the exercise promotes the noxious fiction that, knowing only a person's color or ethnicity, we can be sure that he has a predetermined set of policy “interests,” thus “reinforc[ing] the perception that members of the same racial *1644 group—regardless of their age, education, economic status, or the community in which they live—think alike, [and] share the same political interests.”⁶ *Shaw v. Reno*, 509 U.S. 630, 647, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993). Whether done by a judge or a school board, such “racial stereotyping [is] at odds with equal protection mandates.” *Miller v. Johnson*, 515 U.S. 900, 920, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995).

But that is not the “racial issue” prong's only defect. More fundamentally, it misreads the Equal Protection Clause to protect “particular group[s],” a construction that we have tirelessly repudiated in a “long line of cases understanding equal protection as a personal right.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 224, 230, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995). It is a “basic principle that the Fifth and Fourteenth Amendments to the Constitution protect *persons*, not *groups*.” *Id.*, at 227, 115 S.Ct. 2097; *Metro Broadcasting*, *supra*, at 636, 110 S.Ct. 2997 (KENNEDY, J., dissenting).⁷ Yet *Seattle* insists that only those political-process alterations that burden racial *minorities* deny equal protection. “The majority,” after all, “needs no protection against discrimination.” 458 U.S., at 468, 102 S.Ct. 3187 (quoting *Hunter*, 393 U.S., at 391, 89 S.Ct. 557). In the years since *Seattle*, we have repeatedly rejected “a reading of the guarantee of equal protection under which the level of scrutiny varies according to the ability of different groups to defend their interests in the representative process.” *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 495, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989). Meant to obliterate rather than endorse the practice of racial classifications, the Fourteenth Amendment's guarantees “obtai[n] with equal force regardless of ‘the race of those burdened or benefitted.’ ” *Miller*, *supra*, at 904, 115 S.Ct. 2475 (quoting *Croson*, *supra*, at 494, 109 S.Ct. 706 (plurality opinion)); *Adarand*, *supra*, at 223, 227, 115 S.Ct. 2097. The Equal Protection Clause “cannot mean one thing when applied to one individual and something

else when applied to a person of another color. If both are not accorded the same protection it is not equal.” *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 289–290, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978) (opinion of Powell, J.).

The dissent trots out the old saw, derived from dictum in a footnote, that legislation motivated by “ ‘prejudice against discrete and insular minorities’ ” merits “ ‘more exacting judicial scrutiny.’ ” *Post*, at 1668 (quoting *United States v. Carolene Products*, 304 U.S. 144, 152–153, n. 4, 58 S.Ct. 778, 82 L.Ed. 1234). I say derived from that dictum (expressed by the four-Justice majority of a seven-Justice Court) because the dictum itself merely said “[n]or need we enquire ... whether prejudice against discrete and insular minorities may be a special condition,” *id.*, at 153, n. 4, 58 S.Ct. 778 (emphasis added). The *1645 dissent does not argue, of course, that such “prejudice” produced § 26. Nor does it explain why certain racial minorities in Michigan qualify as “ ‘insular,’ ” meaning that “other groups will not form coalitions with them—and, critically, not because of lack of common interests but because of ‘prejudice.’ ” Strauss, *Is Carolene Products Obsolete?* 2010 U. Ill. L.Rev. 1251, 1257. Nor does it even make the case that a group’s “discreteness” and “insularity” are political *liabilities* rather than political *strengths**—a serious question that alone demonstrates the prudence of the *Carolene Products* dictumizers in leaving the “enquir[y]” for another day. As for the question whether “legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation ... is to be subjected to more exacting judicial scrutiny,” the *Carolene Products* Court found it “unnecessary to consider [that] now.” 304 U.S., at 152, n. 4, 58 S.Ct. 778. If the dissent thinks that worth considering today, it should explain why the election of a university’s governing board is a “political process which can ordinarily be expected to bring about repeal of undesirable legislation,” but Michigan voters’ ability to amend their Constitution is not. It seems to me quite the opposite. Amending the Constitution requires the approval of only “a majority of the electors voting on the question.” *Mich. Const., Art. XII, § 2*. By contrast, voting in a favorable board (each of which has eight members) at the three major public universities requires electing by majority vote at least 15 different candidates, several of whom would be running during different election cycles. See *BAMN v. Regents of Univ. of Mich.*, 701 F.3d 466, 508 (C.A.6 2012) (Sutton, J., dissenting). So if Michigan voters, instead of amending their Constitution, had pursued the dissent’s preferred path of electing board members promising to “abolish race-sensitive admissions policies,” *post*, at 1653, it would have been *harder*, not easier, for racial minorities favoring affirmative action to overturn that decision. But the more important point is that we

should not design our jurisprudence to conform to dictum in a footnote in a four-Justice opinion.

C

Moving from the appalling to the absurd, I turn now to the second part of the *Hunter–Seattle* analysis—which is apparently no more administrable than the first, compare *post*, at 1650 – 1651 (BREYER, J., concurring in judgment) (“This case ... does not involve a reordering of the *political* process”), with *post*, at 1664 – 1667 (SOTOMAYOR, J., dissenting) (yes, it does). This part of the inquiry directs a court to determine whether the challenged act “place[s] effective decisionmaking authority over [the] racial issue at a different level of government.” *Seattle*, 458 U.S., at 474, 102 S.Ct. 3187. The laws in both *Hunter* and *Seattle* were thought to fail this test. In both cases, “the effect of the challenged action was to redraw decisionmaking authority over racial matters—and only over racial matters—in such a way as to place comparative burdens on minorities.” 458 U.S., at 475, n. 17, 102 S.Ct. 3187. This, we said, a State may not do.

*1646 By contrast, in another line of cases, we have emphasized the near-limitless sovereignty of each State to design its governing structure as it sees fit. Generally, “a State is afforded wide leeway when experimenting with the appropriate allocation of state legislative power” and may create “political subdivisions such as cities and counties ... ‘as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them.’ ” *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 71, 99 S.Ct. 383, 58 L.Ed.2d 292 (1978) (quoting *Hunter v. Pittsburgh*, 207 U.S. 161, 178, 28 S.Ct. 40, 52 L.Ed. 151 (1907)). Accordingly, States have “absolute discretion” to determine the “number, nature and duration of the powers conferred upon [municipal] corporations and the territory over which they shall be exercised.” *Holt Civic Club*, *supra*, at 71, 99 S.Ct. 383. So it would seem to go without saying that a State may give certain powers to cities, later assign the same powers to counties, and even reclaim them for itself.

Taken to the limits of its logic, *Hunter–Seattle* is the gaping exception that nearly swallows the rule of structural state sovereignty. If indeed the Fourteenth Amendment forbids States to “place effective decisionmaking authority over” racial issues at “different level[s] of government,” then it must be true that the Amendment’s ratification in 1868 worked a partial ossification of each State’s governing structure, rendering basically irrevocable the

power of any subordinate state official who, the day *before* the Fourteenth Amendment's passage, happened to enjoy legislatively conferred authority over a "racial issue." Under the Fourteenth Amendment, that subordinate entity (suppose it is a city council) could itself take action on the issue, action either favorable or unfavorable to minorities. It could even reverse itself later. What it could not do, however, is redelegate its power to an even lower level of state government (such as a city-council committee) without forfeiting it, since the necessary effect of wresting it back would be to put an additional obstacle in the path of minorities. Likewise, no entity or official higher up the state chain (*e.g.*, a county board) could exercise authority over the issue. Nor, even, could the state legislature, or the people by constitutional amendment, revoke the legislative conferral of power to the subordinate, whether the city council, its subcommittee, or the county board. *Seattle*'s logic would create affirmative-action safe havens wherever subordinate officials in public universities (1) traditionally have enjoyed "effective decisionmaking authority" over admissions policy but (2) have not yet used that authority to prohibit race-conscious admissions decisions. The mere existence of a subordinate's discretion over the matter would work a kind of reverse pre-emption. It is "a strange notion—alien to our system—that local governmental bodies can forever pre-empt the ability of a State—the sovereign power—to address a matter of compelling concern to the State." 458 U.S., at 495, 102 S.Ct. 3187 (Powell, J., dissenting). But that is precisely what the political-process doctrine contemplates.

Perhaps the spirit of *Seattle* is especially disquieted by enactments of constitutional amendments. That appears to be the dissent's position. The problem with § 26, it suggests, is that amending Michigan's Constitution is simply not a part of that State's "existing" political process. *E.g.*, *post*, at 1653, 1673 – 1674. What a peculiar notion: that a revision of a State's fundamental law, made in precisely the manner that law prescribes, by the very people who are the source of that law's authority, is not part of the "political process" which, but for those people and that law, would not exist. This will surely come as news to *1647 the people of Michigan, who, since 1914, have amended their Constitution 20 times. Brief for Gary Segura et al. as *Amici Curiae* 12. Even so, the dissent concludes that the amendment attacked here worked an illicit "chang[ing] [of] the basic rules of the political process in that State" in "the middle of the game." *Post*, at 1652, 1653. Why, one might ask, is not the amendment provision of the Michigan Constitution one (perhaps the most basic one) of the rules of the State's political process? And why does democratic invocation of that provision not qualify as working through the "existing political process," *post*, at 1673 – 1674?⁹

II

I part ways with *Hunter*, *Seattle*, and (I think) the plurality for an additional reason: Each endorses a version of the proposition that a facially neutral law may deny equal protection solely because it has a disparate racial impact. Few equal-protection theories have been so squarely and soundly rejected. "An unwavering line of cases from this Court holds that a violation of the Equal Protection Clause requires state action motivated by discriminatory intent," *Hernandez v. New York*, 500 U.S. 352, 372–373, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991) (O'Connor, J., concurring in judgment), and that "official action will not be held unconstitutional solely because it results in a racially disproportionate impact," *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264–265, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). Indeed, we affirmed this principle the same day we decided *Seattle*: "[E]ven when a neutral law has a disproportionately adverse effect on a racial minority, the Fourteenth Amendment is violated only if a discriminatory purpose can be shown." *Crawford v. Board of Ed. of Los Angeles*, 458 U.S. 527, 537–538, 102 S.Ct. 3211, 73 L.Ed.2d 948 (1982).

Notwithstanding our dozens of cases confirming the exceptionless nature of the *Washington v. Davis* rule, the plurality opinion leaves ajar an effects-test escape hatch modeled after *Hunter* and *Seattle*, suggesting that state action denies equal protection when it "ha[s] the *serious risk*, if not purpose, of causing specific injuries on account of race," or is either "designed to be used, or ... *likely to be used*, to encourage infliction of injury by reason of race." *Ante*, at 1633, 1637 – 1638 (emphasis added). Since these formulations enable a determination of an equal-protection violation where there is no discriminatory intent, they are inconsistent with the long *Washington v. Davis* line of cases.¹⁰

Respondents argue that we need not bother with the discriminatory-purpose test, since § 26 may be struck more straightforwardly as a racial "classification." *1648 Admitting (as they must) that § 26 does not on its face "distribut[e] burdens or benefits on the basis of individual racial classifications," *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 720, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007), respondents rely on *Seattle*'s statement that "when the political process or the decisionmaking mechanism used to address racially conscious legislation—and only such legislation—is singled out for peculiar and disadvantageous treatment,"

then that “singling out” is a racial classification. 458 U.S., at 485, 486, n. 30, 102 S.Ct. 3187. But this is just the political-process theory bedecked in different doctrinal dress. A law that “neither says nor implies that persons are to be treated differently on account of their race” is not a racial classification. *Crawford, supra*, at 537, 102 S.Ct. 3211. That is particularly true of statutes mandating equal treatment. “[A] law that prohibits the State from classifying individuals by race ... *a fortiori* does not classify individuals by race.” *Coalition for Economic Equity v. Wilson*, 122 F.3d 692, 702 (C.A.9 1997) (O’Scannlain, J.).

Thus, the question in this case, as in every case in which neutral state action is said to deny equal protection on account of race, is whether the action reflects a racially discriminatory purpose. *Seattle* stresses that “singling out the political processes affecting racial issues for uniquely disadvantageous treatment inevitably raises dangers of impermissible motivation.” 458 U.S., at 486, n. 30, 102 S.Ct. 3187. True enough, but that motivation must be proved. And respondents do not have a prayer of proving it here. The District Court noted that, under “conventional equal protection” doctrine, the suit was “doomed.” 539 F.Supp.2d 924, 951 (E.D.Mich.2008). Though the Court of Appeals did not opine on this question, I would not leave it for them on remand. In my view, any law expressly requiring state actors to afford all persons equal protection of the laws (such as Initiative 350 in *Seattle*, though not the charter amendment in *Hunter*) does not—cannot—deny “to any person ... equal protection of the laws,” U.S. Const., Amdt. 14, § 1, regardless of whatever evidence of seemingly foul purposes plaintiffs may cook up in the trial court.

* * *

As Justice Harlan observed over a century ago, “[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens.” *Plessy v. Ferguson*, 163 U.S. 537, 559, 16 S.Ct. 1138, 41 L.Ed. 256 (1896) (dissenting opinion). The people of Michigan wish the same for their governing charter. It would be shameful for us to stand in their way.¹¹

Justice BREYER, concurring in the judgment.

Michigan has amended its Constitution to forbid state universities and colleges to “discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” Mich. Const., Art. I, § 26. We here focus on the prohibition of “grant[ing] ... preferential

treatment ... on the basis of race ... in ... public education.” I agree with the plurality that the amendment is consistent with the Federal Equal Protection Clause. U.S. Const., Amdt. 14. But I believe this for different reasons.

*1649 First, we do not address the amendment insofar as it forbids the use of race-conscious admissions programs designed to remedy past exclusionary racial discrimination or the direct effects of that discrimination. Application of the amendment in that context would present different questions which may demand different answers. Rather, we here address the amendment only as it applies to, and forbids, programs that, as in *Grutter v. Bollinger*, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003), rest upon “one justification”: using “race in the admissions process” solely in order to “obtai[n] the educational benefits that flow from a diverse student body,” *id.*, at 328, 123 S.Ct. 2325 (internal quotation marks omitted).

Second, dissenting in *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007), I explained why I believe race-conscious programs of this kind are constitutional, whether implemented by law schools, universities, high schools, or elementary schools. I concluded that the Constitution does not “authorize judges” either to forbid or to require the adoption of diversity-seeking race-conscious “solutions” (of the kind at issue here) to such serious problems as “how best to administer America’s schools” to help “create a society that includes all Americans.” *Id.*, at 862, 127 S.Ct. 2738.

I continue to believe that the Constitution permits, though it does not require, the use of the kind of race-conscious programs that are now barred by the Michigan Constitution. The serious educational problems that faced Americans at the time this Court decided *Grutter* endure. See, e.g., I. Mullis, M. Martin, P. Foy, & K. Drucker, Progress in International Reading Literacy Study, 2011 International Results in Reading 38, Exh. 1.1 (2012) (elementary-school students in numerous other countries outperform their counterparts in the United States in reading); I. Mullis, M. Martin, P. Foy, & A. Arora, Trends in International Mathematics and Science Study (TIMSS), 2011 International Results in Mathematics 40, Exh. 1.1 (2012) (same in mathematics); M. Martin, I. Mullis, P. Foy, & G. Stanco, TIMSS, 2011 International Results in Science, 38, Exh. 1.1 (2012) (same in science); Organisation of Economic Co-operation Development (OECD), Education at a Glance 2013: OECD Indicators 50 (Table A2.1a) (secondary-school graduation rate lower in the United States than in numerous other countries); McKinsey & Co., The Economic Impact of the Achievement Gap in America’s Schools 8 (Apr. 2009)

(same; United States ranks 18th of 24 industrialized nations). And low educational achievement continues to be correlated with income and race. See, e.g., National Center for Education Statistics, Digest of Education Statistics, Advance Release of Selected 2013 Digest Tables (Table 104.20) (White Americans more likely to have completed high school than African-Americans or Hispanic-Americans), online at <http://nces.ed.gov/programs/digest> (as visited Apr. 15, 2014, and available in Clerk of Court's case file); *id.*, Table 219.75 (Americans in bottom quartile of income most likely to drop out of high school); *id.*, Table 302.60 (White Americans more likely to enroll in college than African-Americans or Hispanic-Americans); *id.*, Table 302.30 (middle- and high-income Americans more likely to enroll in college than low-income Americans).

The Constitution allows local, state, and national communities to adopt narrowly tailored race-conscious programs designed to bring about greater inclusion and diversity. But the Constitution foresees the ballot box, not the courts, as the normal instrument for resolving differences and debates about the merits of these programs. *1650 Compare *Parents Involved*, 551 U.S., at 839, 127 S.Ct. 2738 (BREYER, J., dissenting) (identifying studies showing the benefits of racially integrated education), with *id.*, at 761–763, 127 S.Ct. 2738 (THOMAS, J., concurring) (identifying studies suggesting racially integrated schools may not confer educational benefits). In short, the “Constitution creates a democratic political system through which the people themselves must together find answers” to disagreements of this kind. *Id.*, at 862, 127 S.Ct. 2738 (BREYER, J., dissenting).

Third, cases such as *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969), and *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982), reflect an important principle, namely, that an individual's ability to participate meaningfully in the political process should be independent of his race. Although racial minorities, like other political minorities, will not always succeed at the polls, they must have the same opportunity as others to secure through the ballot box policies that reflect their preferences. In my view, however, neither *Hunter* nor *Seattle* applies here. And the parties do not here suggest that the amendment violates the Equal Protection Clause if not under the *Hunter-Seattle* doctrine.

Hunter and *Seattle* involved efforts to manipulate the political process in a way not here at issue. Both cases involved a restructuring of the political process that changed the political level at which policies were enacted. In *Hunter*, decisionmaking was moved from the elected

city council to the local electorate at large. 393 U.S., at 389–390, 89 S.Ct. 557. And in *Seattle*, decisionmaking by an elected school board was replaced with decisionmaking by the state legislature and electorate at large. 458 U.S., at 466, 102 S.Ct. 3187.

This case, in contrast, does not involve a reordering of the *political* process; it does not in fact involve the movement of decisionmaking from one political level to another. Rather, here, Michigan law delegated broad policymaking authority to elected university boards, see *Mich. Const., Art. VIII, § 5*, but those boards delegated admissions-related decisionmaking authority to unelected university faculty members and administrators, see, e.g., Bylaws of Univ. of Mich. Bd. of Regents § 8.01; Mich. State Univ. Bylaws of Bd. of Trustees, Preamble; Mich. State Univ. Bylaws for Academic Governance § 4.4.3; Wayne State Univ. Stat. §§ 2–34–09, 2–34–12. Although the boards unquestionably retained the *power* to set policy regarding race-conscious admissions, see *post*, at 1664 – 1667 (SOTOMAYOR, J., dissenting), in *fact* faculty members and administrators set the race-conscious admissions policies in question. (It is often true that elected bodies—including, for example, school boards, city councils, and state legislatures—have the power to enact policies, but in fact delegate that power to administrators.) Although at limited times the university boards were advised of the content of their race-conscious admissions policies, see 701 F.3d 466, 481–482 (C.A.6 2012), to my knowledge no board voted to accept or reject any of those policies. Thus, unelected faculty members and administrators, not voters or their elected representatives, adopted the race-conscious admissions programs affected by Michigan's constitutional amendment. The amendment took decisionmaking authority away from these unelected actors and placed it in the hands of the voters.

Why does this matter? For one thing, considered conceptually, the doctrine set forth in *Hunter* and *Seattle* does not easily fit this case. In those cases minorities had participated in the political process and *1651 they had won. The majority's subsequent reordering of the political process repealed the minority's successes and made it more difficult for the minority to succeed in the future. The majority thereby diminished the minority's ability to participate meaningfully in the electoral process. But one cannot as easily characterize the movement of the decisionmaking mechanism at issue here—from an administrative process to an electoral process—as diminishing the minority's ability to participate meaningfully in the *political* process. There is no prior electoral process in which the minority participated.

For another thing, to extend the holding of *Hunter* and

Seattle to reach situations in which decisionmaking authority is moved from an administrative body to a political one would pose significant difficulties. The administrative process encompasses vast numbers of decisionmakers answering numerous policy questions in hosts of different fields. See *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U.S. 477, —, 130 S.Ct. 3138, 3174, 177 L.Ed.2d 706 (2010) (BREYER, J., dissenting). Administrative bodies modify programs in detail, and decisionmaking authority within the administrative process frequently moves around—due to amendments to statutes, new administrative rules, and evolving agency practice. It is thus particularly difficult in this context for judges to determine when a change in the locus of decisionmaking authority places a comparative structural burden on a racial minority. And to apply *Hunter* and *Seattle* to the administrative process would, by tending to hinder change, risk discouraging experimentation, interfering with efforts to see when and how race-conscious policies work.

Finally, the principle that underlies *Hunter* and *Seattle* runs up against a competing principle, discussed above. This competing principle favors decisionmaking through the democratic process. Just as this principle strongly supports the right of the people, or their elected representatives, to adopt race-conscious policies for reasons of inclusion, so must it give them the right to vote not to do so.

As I have said, my discussion here is limited to circumstances in which decisionmaking is moved from an unelected administrative body to a politically responsive one, and in which the targeted race-conscious admissions programs consider race solely in order to obtain the educational benefits of a diverse student body. We need now decide no more than whether the Federal Constitution permits Michigan to apply its constitutional amendment in those circumstances. I would hold that it does. Therefore, I concur in the judgment of the Court.

Justice SOTOMAYOR, with whom Justice GINSBURG joins, dissenting.

We are fortunate to live in a democratic society. But without checks, democratically approved legislation can oppress minority groups. For that reason, our Constitution places limits on what a majority of the people may do. This case implicates one such limit: the guarantee of equal protection of the laws. Although that guarantee is traditionally understood to prohibit intentional discrimination under existing laws, equal protection does not end there. Another fundamental strand of our equal protection jurisprudence focuses on process, securing to all

citizens the right to participate meaningfully and equally in self-government. That right is the bedrock of our democracy, for it preserves all other rights.

Yet to know the history of our Nation is to understand its long and lamentable record of stymieing the right of racial minorities to participate in the political process. *1652 At first, the majority acted with an open, invidious purpose. Notwithstanding the command of the Fifteenth Amendment, certain States shut racial minorities out of the political process altogether by withholding the right to vote. This Court intervened to preserve that right. The majority tried again, replacing outright bans on voting with literacy tests, good character requirements, poll taxes, and gerrymandering. The Court was not fooled; it invalidated those measures, too. The majority persisted. This time, although it allowed the minority access to the political process, the majority changed the ground rules of the process so as to make it more difficult for the minority, and the minority alone, to obtain policies designed to foster racial integration. Although these political restructurings may not have been discriminatory in purpose, the Court reaffirmed the right of minority members of our society to participate meaningfully and equally in the political process.

This case involves this last chapter of discrimination: A majority of the Michigan electorate changed the basic rules of the political process in that State in a manner that uniquely disadvantaged racial minorities.¹ Prior to the enactment of the constitutional initiative at issue here, all of the admissions policies of Michigan's public colleges and universities—including race-sensitive admissions policies²—were in the hands of each institution's governing board. The members of those boards are nominated by political parties and elected by the citizenry in statewide elections. After over a century of being shut out of Michigan's institutions of higher education, racial minorities in Michigan had succeeded in persuading the elected board representatives to adopt admissions policies that took into account the benefits of racial diversity. And this Court twice blessed such efforts—first in *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978), and again in *Grutter v. Bollinger*, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003), a case that itself concerned a Michigan admissions policy.

*1653 In the wake of *Grutter*, some voters in Michigan set out to eliminate the use of race-sensitive admissions policies. Those voters were of course free to pursue this end in any number of ways. For example, they could have persuaded existing board members to change their minds through individual or grassroots lobbying efforts, or through general public awareness campaigns. Or they

could have mobilized efforts to vote uncooperative board members out of office, replacing them with members who would share their desire to abolish race-sensitive admissions policies. When this Court holds that the Constitution permits a particular policy, nothing prevents a majority of a State's voters from choosing not to adopt that policy. Our system of government encourages—and indeed, depends on—that type of democratic action.

But instead, the majority of Michigan voters changed the rules in the middle of the game, reconfiguring the existing political process in Michigan in a manner that burdened racial minorities. They did so in the 2006 election by amending the Michigan Constitution to enact [Art. I, § 26](#), which provides in relevant part that Michigan's public universities "shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

As a result of [§ 26](#), there are now two very different processes through which a Michigan citizen is permitted to influence the admissions policies of the State's universities: one for persons interested in race-sensitive admissions policies and one for everyone else. A citizen who is a University of Michigan alumnus, for instance, can advocate for an admissions policy that considers an applicant's legacy status by meeting individually with members of the Board of Regents to convince them of her views, by joining with other legacy parents to lobby the Board, or by voting for and supporting Board candidates who share her position. The same options are available to a citizen who wants the Board to adopt admissions policies that consider athleticism, geography, area of study, and so on. The one and only policy a Michigan citizen may not seek through this long-established process is a race-sensitive admissions policy that considers race in an individualized manner when it is clear that race-neutral alternatives are not adequate to achieve diversity. For that policy alone, the citizens of Michigan must undertake the daunting task of amending the State Constitution.

Our precedents do not permit political restructurings that create one process for racial minorities and a separate, less burdensome process for everyone else. This Court has held that the Fourteenth Amendment does not tolerate "a political structure that treats all individuals as equals, yet more subtly distorts governmental processes in such a way as to place special burdens on the ability of minority groups to achieve beneficial legislation." [Washington v. Seattle School Dist. No. 1](#), 458 U.S. 457, 467, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982) (internal quotation marks omitted). Such restructuring, the Court explained, "is no

more permissible than denying [the minority] the [right to] vote, on an equal basis with others." [Hunter v. Erickson](#), 393 U.S. 385, 391, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969). In those cases—[Hunter](#) and [Seattle](#)—the Court recognized what is now known as the "political-process doctrine": When the majority reconfigures the political process in a manner that burdens only a racial minority, that alteration triggers strict judicial scrutiny.

***1654** Today, disregarding *stare decisis*, a majority of the Court effectively discards those precedents. The plurality does so, it tells us, because the freedom actually secured by the Constitution is the freedom of self-government—because the majority of Michigan citizens "exercised their privilege to enact laws as a basic exercise of their democratic power." *Ante*, at 1636. It would be "demeaning to the democratic process," the plurality concludes, to disturb that decision in any way. *Ante*, at 1637 – 1638. This logic embraces majority rule without an important constitutional limit.

The plurality's decision fundamentally misunderstands the nature of the injustice worked by [§ 26](#). This case is not, as the plurality imagines, about "who may resolve" the debate over the use of race in higher education admissions. *Ante*, at 1638. I agree wholeheartedly that nothing vests the resolution of that debate exclusively in the courts or requires that we remove it from the reach of the electorate. Rather, this case is about *how* the debate over the use of race-sensitive admissions policies may be resolved, *contra, ibid.*—that is, it must be resolved in constitutionally permissible ways. While our Constitution does not guarantee minority groups victory in the political process, it does guarantee them meaningful and equal access to that process. It guarantees that the majority may not win by stacking the political process against minority groups permanently, forcing the minority alone to surmount unique obstacles in pursuit of its goals—here, educational diversity that cannot reasonably be accomplished through race-neutral measures. Today, by permitting a majority of the voters in Michigan to do what our Constitution forbids, the Court ends the debate over race-sensitive admissions policies in Michigan in a manner that contravenes constitutional protections long recognized in our precedents.

Like the plurality, I have faith that our citizenry will continue to learn from this Nation's regrettable history; that it will strive to move beyond those injustices towards a future of equality. And I, too, believe in the importance of public discourse on matters of public policy. But I part ways with the plurality when it suggests that judicial intervention in this case "impede[s]" rather than "advance[s]" the democratic process and the ultimate hope

of equality. *Ante*, at 1637. I firmly believe that our role as judges includes policing the process of self-government and stepping in when necessary to secure the constitutional guarantee of equal protection. Because I would do so here, I respectfully dissent.

I

For much of its history, our Nation has denied to many of its citizens the right to participate meaningfully and equally in its politics. This is a history we strive to put behind us. But it is a history that still informs the society we live in, and so it is one we must address with candor. Because the political-process doctrine is best understood against the backdrop of this history, I will briefly trace its course.

The Fifteenth Amendment, ratified after the Civil War, promised to racial minorities the right to vote. But many States ignored this promise. In addition to outright tactics of fraud, intimidation, and violence, there are countless examples of States categorically denying to racial minorities access to the political process. Consider Texas; there, a 1923 statute prevented racial minorities from participating in primary elections. After this Court declared that statute unconstitutional, *Nixon v. Herndon*, 273 U.S. 536, 540–541, 47 S.Ct. 446, 71 L.Ed. 759 (1927), Texas responded by changing the rules. It enacted *1655 a new statute that gave political parties themselves the right to determine who could participate in their primaries. Predictably, the Democratic Party specified that only white Democrats could participate in its primaries. *Nixon v. Condon*, 286 U.S. 73, 81–82, 52 S.Ct. 484, 76 L.Ed. 984 (1932). The Court invalidated that scheme, too. *Id.*, at 89, 52 S.Ct. 484; see also *Smith v. Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944); *Terry v. Adams*, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953).

Some States were less direct. Oklahoma was one of many that required all voters to pass a literacy test. But the test did not apply equally to all voters. Under a “grandfather clause,” voters were exempt if their grandfathers had been voters or had served as soldiers before 1866. This meant, of course, that black voters had to pass the test, but many white voters did not. The Court held the scheme unconstitutional. *Guinn v. United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340 (1915). In response, Oklahoma changed the rules. It enacted a new statute under which all voters who were qualified to vote in 1914 (under the unconstitutional grandfather clause) remained qualified, and the remaining voters had to apply for registration within a 12-day period. *Lane v. Wilson*, 307 U.S. 268,

270–271, 59 S.Ct. 872, 83 L.Ed. 1281 (1939). The Court struck down that statute as well. *Id.*, at 275, 59 S.Ct. 872.

Racial minorities were occasionally able to surmount the hurdles to their political participation. Indeed, in some States, minority citizens were even able to win elective office. But just as many States responded to the Fifteenth Amendment by subverting minorities’ access to the polls, many States responded to the prospect of elected minority officials by undermining the ability of minorities to win and hold elective office. Some States blatantly removed black officials from local offices. See, e.g., H. Rabinowitz, *Race Relations in the Urban South, 1865–1890*, pp. 267, 269–270 (1978) (describing events in Tennessee and Virginia). Others changed the processes by which local officials were elected. See, e.g., Extension of the Voting Rights Act, Hearings before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 97th Cong., 1st Sess., pt. 1, pp. 2016–2017 (1981) (hereinafter 1981 Hearings) (statement of Professor J. Morgan Kousser) (after a black judge refused to resign in Alabama, the legislature abolished the court on which he served and replaced it with one whose judges were appointed by the Governor); Rabinowitz, *supra*, at 269–270 (the North Carolina Legislature divested voters of the right to elect justices of the peace and county commissioners, then arrogated to itself the authority to select justices of the peace and gave them the power to select commissioners).

This Court did not stand idly by. In Alabama, for example, the legislature responded to increased black voter registration in the city of Tuskegee by amending the State Constitution to authorize legislative abolition of the county in which Tuskegee was located, Ala. Const. Amdt. 132 (1957), repealed by Ala. Const. Amdt. 406 (1982), and by redrawing the city’s boundaries to remove all the black voters “while not removing a single white voter,” *Gomillion v. Lightfoot*, 364 U.S. 339, 341, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960). The Court intervened, finding it “inconceivable that guaranties embedded in the Constitution” could be “manipulated out of existence” by being “cloaked in the garb of [political] realignment.” *Id.*, at 345, 81 S.Ct. 125 (internal quotation marks omitted).

*1656 This Court’s landmark ruling in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), triggered a new era of political restructuring, this time in the context of education. In Virginia, the General Assembly transferred control of student assignment from local school districts to a State Pupil Placement Board. See B. Muse, *Virginia’s Massive Resistance* 34, 74 (1961). And when the legislature learned that the Arlington County school board had prepared a desegregation plan, the

General Assembly “swiftly retaliated” by stripping the county of its right to elect its school board by popular vote and instead making the board an appointed body. *Id.*, at 24; see also B. Smith, *They Closed Their Schools* 142–143 (1965).

Other States similarly disregarded this Court’s mandate by changing their political process. See, e.g., *Bush v. Orleans Parish School Bd.*, 187 F.Supp. 42, 44–45 (E.D.La.1960) (the Louisiana Legislature gave the Governor the authority to supersede any school board’s decision to integrate); Extension of the Voting Rights Act, Hearings on H.R. 4249 et al. before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong., 1st Sess., 146–149 (1969) (statement of Thomas E. Harris, Assoc. Gen. Counsel, American Federation of Labor and Congress of Industrial Organizations) (the Mississippi Legislature removed from the people the right to elect superintendents of education in 11 counties and instead made those positions appointive).

The Court remained true to its command in *Brown*. In Arkansas, for example, it enforced a desegregation order against the Little Rock school board. *Cooper v. Aaron*, 358 U.S. 1, 5, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958). On the very day the Court announced that ruling, the Arkansas Legislature responded by changing the rules. It enacted a law permitting the Governor to close any public school in the State, and stripping local school districts of their decisionmaking authority so long as the Governor determined that local officials could not maintain “ ‘a general, suitable, and efficient educational system.’ ” *Aaron v. Cooper*, 261 F.2d 97, 99 (C.A.8 1958) (*per curiam*) (quoting Arkansas statute). The then-Governor immediately closed all of Little Rock’s high schools. *Id.*, at 99–100; see also S. Breyer, *Making Our Democracy Work* 49–67 (2010) (discussing the events in Little Rock).

The States’ political restructuring efforts in the 1960’s and 1970’s went beyond the context of education. Many States tried to suppress the political voice of racial minorities more generally by reconfiguring the manner in which they filled vacancies in local offices, often transferring authority from the electorate (where minority citizens had a voice at the local level) to the States’ executive branch (where minorities wielded little if any influence). See, e.g., 1981 Hearings, pt. 1, at 815 (report of J. Cox & A. Turner) (the Alabama Legislature changed all municipal judgeships from elective to appointive offices); *id.*, at 1955 (report of R. Hudlin & K. Brimah, Voter Educ. Project, Inc.) (the Georgia Legislature eliminated some elective offices and made others appointive when it appeared that a minority candidate would be victorious); *id.*, at 501 (statement of Frank R. Parker, Director, Lawyers’ Comm.

for Civil Rights Under Law) (the Mississippi Legislature changed the manner of filling vacancies for various public offices from election to appointment).

II

It was in this historical context that the Court intervened in *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969), and *1657 *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982). Together, *Hunter* and *Seattle* recognized a fundamental strand of this Court’s equal protection jurisprudence: the political-process doctrine. To understand that doctrine fully, it is necessary to set forth in detail precisely what the Court had before it, and precisely what it said. For to understand *Hunter* and *Seattle* is to understand why those cases straightforwardly resolve this one.

A

In *Hunter*, the City Council of Akron, Ohio, enacted a fair housing ordinance to “assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, ancestry, or national origin.” 393 U.S., at 386, 89 S.Ct. 557 (internal quotation marks omitted). A majority of the citizens of Akron disagreed with the ordinance and overturned it. But the majority did not stop there; it also amended the city charter to prevent the City Council from implementing any future ordinance dealing with racial, religious, or ancestral discrimination in housing without the approval of the majority of the Akron electorate. *Ibid.* That amendment changed the rules of the political process in Akron. The Court described the result of the change as follows:

“[T]o enact an ordinance barring housing discrimination on the basis of race or religion, proponents had to obtain the approval of the City Council and of a majority of the voters citywide. To enact an ordinance preventing housing discrimination on other grounds, or to enact any other type of housing ordinance, proponents needed the support of only the City Council.” *Seattle*, 458 U.S., at 468, 102 S.Ct. 3187 (describing *Hunter* ; emphasis deleted).

The Court invalidated the Akron charter amendment under the Equal Protection Clause. It concluded that the amendment unjustifiably “place[d] special burdens on

racial minorities within the governmental process,” thus effecting “a real, substantial, and invidious denial of the equal protection of the laws.” *Hunter*, 393 U.S., at 391, 393, 89 S.Ct. 557. The Court characterized the amendment as “no more permissible” than denying racial minorities the right to vote on an equal basis with the majority. *Id.*, at 391, 89 S.Ct. 557. For a “State may no more disadvantage any particular group by making it more difficult to enact legislation in its behalf than it may dilute any person’s vote or give any group a smaller representation than another of comparable size.” *Id.*, at 392–393, 89 S.Ct. 557. The vehicle for the change—a popular referendum—did not move the Court: “The sovereignty of the people,” it explained, “is itself subject to ... constitutional limitations.” *Id.*, at 392, 89 S.Ct. 557.

Justice Harlan, joined by Justice Stewart, wrote in his concurrence that although a State can normally allocate political power according to any general principle, it bears a “far heavier burden of justification” when it reallocates political power based on race, because the selective reallocation necessarily makes it far more difficult for racial minorities to “achieve legislation that is in their interest.” *Id.*, at 395, 89 S.Ct. 557 (internal quotation marks omitted).

In *Seattle*, a case that mirrors the one before us, the Court applied *Hunter* to invalidate a statute, enacted by a majority of Washington State’s citizens, that prohibited racially integrative busing in the wake of *Brown*. As early as 1963, Seattle’s School District No. 1 began taking steps to cure the *de facto* racial segregation in its schools. 458 U.S., at 460–461, 102 S.Ct. 3187. Among other measures, it enacted a desegregation plan that made extensive use of busing and mandatory assignments. *1658 *Id.*, at 461, 102 S.Ct. 3187. The district was under no obligation to adopt the plan; *Brown* charged school boards with a duty to integrate schools that were segregated because of *de jure* racial discrimination, but there had been no finding that the *de facto* segregation in Seattle’s schools was the product of *de jure* discrimination. 458 U.S., at 472, n. 15, 102 S.Ct. 3187. Several residents who opposed the desegregation efforts formed a committee and sued to enjoin implementation of the plan. *Id.*, at 461, 102 S.Ct. 3187. When these efforts failed, the committee sought to change the rules of the political process. It drafted a statewide initiative “designed to terminate the use of mandatory busing for purposes of racial integration.” *Id.*, at 462, 102 S.Ct. 3187. A majority of the State’s citizens approved the initiative. *Id.*, at 463–464, 102 S.Ct. 3187.

The Court invalidated the initiative under the Equal Protection Clause. It began by observing that equal protection of the laws “guarantees racial minorities the

right to full participation in the political life of the community.” *Id.*, at 467, 102 S.Ct. 3187. “It is beyond dispute,” the Court explained, “that given racial or ethnic groups may not be denied the franchise, or precluded from entering into the political process in a reliable and meaningful manner.” *Ibid.* But the Equal Protection Clause reaches further, the Court stated, reaffirming the principle espoused in *Hunter*—that while “laws structuring political institutions or allocating political power according to neutral principles” do not violate the Constitution, “a different analysis is required when the State allocates governmental power nonneutrally, by explicitly using the *racial* nature of a decision to determine the decisionmaking process.” 458 U.S., at 470, 102 S.Ct. 3187. That kind of state action, it observed, “places *special* burdens on racial minorities within the governmental process,” by making it “*more* difficult for certain racial and religious minorities” than for other members of the community “to achieve legislation ... in their interest.” *Ibid.*

Rejecting the argument that the initiative had no racial focus, the Court found that the desegregation of public schools, like the Akron housing ordinance, “inure[d] primarily to the benefit of the minority, and [was] designed for that purpose.” *Id.*, at 472, 102 S.Ct. 3187. Because minorities had good reason to “consider busing for integration to be ‘legislation that is in their interest,’ ” the Court concluded that the “racial focus of [the initiative] ... suffice[d] to trigger application of the *Hunter* doctrine.” *Id.*, at 474, 102 S.Ct. 3187 (quoting *Hunter*, 393 U.S., at 395, 89 S.Ct. 557 (Harlan, J. concurring)).

The Court next concluded that “the practical effect of [the initiative was] to work a reallocation of power of the kind condemned in *Hunter*.” *Seattle*, 458 U.S., at 474, 102 S.Ct. 3187. It explained: “Those favoring the elimination of *de facto* school segregation now must seek relief from the state legislature, or from the statewide electorate. Yet authority over all other student assignment decisions, as well as over most other areas of educational policy, remains vested in the local school board.” *Ibid.* Thus, the initiative required those in favor of racial integration in public schools to “surmount a considerably higher hurdle than persons seeking comparable legislative action” in different contexts. *Ibid.*

The Court reaffirmed that the “ ‘simple repeal or modification of desegregation or antidiscrimination laws, without more, never has been viewed as embodying a presumptively invalid racial classification.’ ” *Id.*, at 483, 102 S.Ct. 3187 (quoting *1659 *Crawford v. Board of Ed. of Los Angeles*, 458 U.S. 527, 539, 102 S.Ct. 3211, 73 L.Ed.2d 948 (1982)). But because the initiative burdened

future attempts to integrate by lodging the decisionmaking authority at a “new and remote level of government,” it was more than a “mere repeal”; it was an unconstitutionally discriminatory change to the political process.³ *Seattle*, 458 U.S., at 483–484, 102 S.Ct. 3187.

B

Hunter and *Seattle* vindicated a principle that is as elementary to our equal protection jurisprudence as it is essential: The majority may not suppress the minority’s right to participate on equal terms in the political process. Under this doctrine, governmental action deprives minority groups of equal protection when it (1) has a racial focus, targeting a policy or program that “inures primarily to the benefit of the minority,” *Seattle*, 458 U.S., at 472, 102 S.Ct. 3187; and (2) alters the political process in a manner that uniquely burdens racial minorities’ ability to achieve their goals through that process. A faithful application of the doctrine resoundingly resolves this case in respondents’ favor.

1

Section 26 has a “racial focus.” *Seattle*, 458 U.S., at 474, 102 S.Ct. 3187. That is clear from its text, which prohibits Michigan’s public colleges and universities from “grant[ing] preferential treatment to any individual or group on the basis of race.” *Mich. Const., Art. I, § 26*. Like desegregation of public schools, race-sensitive admissions policies “inur[e] primarily to the benefit of the minority,” 458 U.S., at 472, 102 S.Ct. 3187, as they are designed to increase minorities’ access to institutions of higher education.⁴

***1660** Petitioner argues that race-sensitive admissions policies cannot “inur[e] primarily to the benefit of the minority,” *ibid.*, as the Court has upheld such policies only insofar as they further “the educational benefits that flow from a diverse student body,” *Grutter*, 539 U.S., at 343, 123 S.Ct. 2325. But there is no conflict between this Court’s pronouncement in *Grutter* and the common-sense reality that race-sensitive admissions policies benefit minorities. Rather, race-sensitive admissions policies further a compelling state interest in achieving a diverse student body precisely because they increase minority enrollment, which necessarily benefits minority groups. In other words, constitutionally permissible race-sensitive admissions policies can both serve the compelling interest

of obtaining the educational benefits that flow from a diverse student body, and inure to the benefit of racial minorities. There is nothing mutually exclusive about the two. Cf. *Seattle*, 458 U.S., at 472, 102 S.Ct. 3187 (concluding that the desegregation plan had a racial focus even though “white as well as Negro children benefit from exposure to ‘ethnic and racial diversity in the classroom’”).

It is worth emphasizing, moreover, that § 26 is relevant only to admissions policies that have survived strict scrutiny under *Grutter*; other policies, under this Court’s rulings, would be forbidden with or without § 26. A *Grutter*-compliant admissions policy must use race flexibly, not maintain a quota; must be limited in time; and must be employed only after “serious, good faith consideration of workable race-neutral alternatives,” 539 U.S., at 339, 123 S.Ct. 2325. The policies banned by § 26 meet all these requirements and thus already constitute the least restrictive ways to advance Michigan’s compelling interest in diversity in higher education.

2

Section 26 restructures the political process in Michigan in a manner that places unique burdens on racial minorities. It establishes a distinct and more burdensome political process for the enactment of admissions plans that consider racial diversity.

Long before the enactment of § 26, the Michigan Constitution granted plenary authority over all matters relating to Michigan’s public universities, including admissions criteria, to each university’s eight-member governing board. See *Mich. Const., Art. VIII, § 5* (establishing the Board of Regents of the University of Michigan, the Board of Trustees of Michigan State University, and the Board of Governors of Wayne State University). The boards have the “power to enact ordinances, by-laws and regulations for the government of the university.” *Mich. Comp. Laws Ann. § 390.5* (West 2010); see also § 390.3 (“The government of the university is vested in the board of regents”). They are “‘constitutional corporation[s] of independent authority, which, within the scope of [their] functions, [are] co-ordinate with and equal to ... the legislature.’” *Federated Publications, Inc. v. Board of Trustees of Mich. State Univ.*, 460 Mich. 75, 84, n. 8, 594 N.W.2d 491, 496, n. 8 (1999).

The boards are indisputably a part of the political process in Michigan. Each political party nominates two

candidates for membership to each board, and board members are elected to 8-year terms in the general statewide election. See *1661 Mich. Comp. Laws Ann. §§ 168.282, 168.286 (West 2008); Mich. Const., Art. VIII, § 5. Prior to § 26, board candidates frequently included their views on race-sensitive admissions in their campaigns. For example, in 2005, one candidate pledged to “work to end so-called ‘Affirmative–Action,’ a racist, degrading system.” See League of Women Voters, 2005 General Election Voter Guide, online at <http://www.lwvka.org/guide04/regents/html> (all Internet materials as visited Apr. 18, 2014, and available in Clerk of Court’s case file); see also George, U–M Regents Race Tests Policy, Detroit Free Press, Oct. 26, 2000, p. 2B (noting that one candidate “opposes affirmative action admissions policies” because they “‘basically sa[y] minority students are not qualified’”).

Before the enactment of § 26, Michigan’s political structure permitted both supporters and opponents of race-sensitive admissions policies to vote for their candidates of choice and to lobby the elected and politically accountable boards. Section 26 reconfigured that structure. After § 26, the boards retain plenary authority over all admissions criteria *except* for race-sensitive admissions policies.⁵ To change admissions policies on this one issue, a Michigan citizen must instead amend the Michigan Constitution. That is no small task. To place a proposed constitutional amendment on the ballot requires either the support of two-thirds of both Houses of the Michigan Legislature or a vast number of signatures from Michigan voters—10 percent of the total number of votes cast in the preceding gubernatorial election. See Mich. Const., Art. XII, §§ 1, 2. Since more than 3.2 million votes were cast in the 2010 election for Governor, more than 320,000 signatures are currently needed to win a ballot spot. See Brief for Gary Segura et al. as *Amici Curiae* 9 (hereinafter Segura Brief). Moreover, “[t]o account for invalid and duplicative signatures, initiative sponsors ‘need to obtain substantially more than the actual required number of signatures, typically by a 25% to 50% margin.’” *Id.*, at 10 (quoting Tolbert, Lowenstein, & Donovan, Election Law and Rules for Using Initiatives, in *Citizens as Legislators: Direct Democracy in the United States* 27, 37 (S. Bowler, T. Donovan, & C. Tolbert eds., 1998)).

And the costs of qualifying an amendment are significant. For example, “[t]he vast majority of petition efforts ... require initiative sponsors to hire paid petition circulators, at significant expense.” Segura Brief 10; see also T. Donovan, C. Mooney, & D. Smith, *State and Local Politics: Institutions and Reform* 96 (2012) (hereinafter Donovan) (“In many states, it is difficult to place a

measure on the ballot unless professional petition firms are paid to collect some or all the signatures required for qualification”); Tolbert, *supra*, at 35 (“‘Qualifying an initiative for the statewide ballot is ... no longer so much a measure of general citizen interest as it is a test of fundraising ability’”). In addition to the cost of collecting signatures, campaigning for a majority of votes is an expensive endeavor, and “organizations advocating on behalf of marginalized groups remain ... outmoneyed by corporate, business, and professional organizations.” Strolovitch & Forrest, Social and Economic Justice Movements and Organizations, *1662 in *The Oxford Handbook of American Political Parties and Interest Groups* 468, 471 (L. Maisel & J. Berry eds., 2010). In 2008, for instance, over \$800 million was spent nationally on state-level initiative and referendum campaigns, nearly \$300 million more than was spent in the 2006 cycle. Donovan 98. “In several states, more money [is] spent on ballot initiative campaigns than for all other races for political office combined.” *Ibid.* Indeed, the amount spent on state-level initiative and referendum campaigns in 2008 eclipsed the \$740.6 million spent by President Obama in his 2008 presidential campaign, Salant, Spending Doubled as Obama Led Billion–Dollar Campaign, Bloomberg News, Dec. 27, 2008, online at <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=anLDS9WQPQW8>.

Michigan’s Constitution has only rarely been amended through the initiative process. Between 1914 and 2000, voters have placed only 60 statewide initiatives on the Michigan ballot, of which only 20 have passed. See Segura Brief 12. Minority groups face an especially uphill battle. See Donovan 106 (“[O]n issues dealing with racial and ethnic matters, studies show that racial and ethnic minorities do end up more on the losing side of the popular vote”). In fact, “[i]t is difficult to find even a single statewide initiative in any State in which voters approved policies that explicitly favor racial or ethnic minority groups.”⁶ Segura Brief 13.

This is the onerous task that § 26 forces a Michigan citizen to complete in order to change the admissions policies of Michigan’s public colleges and universities with respect to racial sensitivity. While substantially less grueling paths remain open to those advocating for any other admissions policies, a constitutional amendment is the only avenue by which race-sensitive admissions policies may be obtained. The effect of § 26 is that a white graduate of a public Michigan university who wishes to pass his historical privilege on to his children may freely lobby the board of that university in favor of an expanded legacy admissions policy, whereas a black Michigander who was denied the opportunity to attend that very university cannot lobby the

board in favor of a policy that might give his children a chance that he never had and that they might never have absent that policy.

Such reordering of the political process contravenes *Hunter* and *Seattle*.⁷ See *Seattle*, *1663 458 U.S., at 467, 102 S.Ct. 3187 (the Equal Protection Clause prohibits “a political structure that treats all individuals as equals,” yet more subtly distorts governmental processes in such a way as to place special burdens on the ability of minority groups to achieve beneficial legislation” (citation omitted)). Where, as here, the majority alters the political process to the detriment of a racial minority, the governmental action is subject to strict scrutiny. See *id.*, at 485, n. 28, 102 S.Ct. 3187. Michigan does not assert that § 26 satisfies a compelling state interest. That should settle the matter.

C

1

The plurality sees it differently. Disregarding the language used in *Hunter*, the plurality asks us to contort that case into one that “rests on the unremarkable principle that the State may not alter the procedures of government to target racial minorities.” *Ante*, at 1632. And the plurality recasts *Seattle* “as a case in which the state action in question ... had the serious risk, if not purpose, of causing specific injuries on account of race.” *Ante*, at 1633. According to the plurality, the *Hunter* and *Seattle* Courts were not concerned with efforts to reconfigure the political process to the detriment of racial minorities; rather, those cases invalidated governmental actions merely because they reflected an invidious purpose to discriminate. This is not a tenable reading of those cases.

The plurality identifies “invidious discrimination” as the “necessary result” of the restructuring in *Hunter*. *Ante*, at 1632 – 1633. It is impossible to assess whether the housing amendment in *Hunter* was motivated by discriminatory purpose, for the opinion does not discuss the question of intent.⁸ What is obvious, however, is that the possibility of invidious discrimination played no role in the Court’s reasoning. We ordinarily understand our precedents to mean what they actually say, not what we later think they could or should have said. The *Hunter* Court was clear about why it invalidated the Akron charter amendment: It was impermissible as a restructuring of the political process, not as an action motivated by discriminatory intent. See 393 U.S., at 391, 89 S.Ct. 557 (striking down

the Akron charter amendment because it “places a special burden on racial minorities within the governmental process”).

Similarly, the plurality disregards what *Seattle* actually says and instead opines that “the political restriction in question was designed to be used, or was likely to be used, to encourage infliction of injury by reason of race.” *Ante*, at 1638. Here, the plurality derives its conclusion not from *Seattle* itself, but from evidence unearthed more than a quarter-century later in *1664 *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007): “Although there had been no judicial finding of *de jure* segregation with respect to Seattle’s school district, it appears as though school desegregation in the district in the 1940’s and 1950’s may have been the partial result of school board policies that ‘permitted white students to transfer out of black schools while restricting the transfer of black students into white schools.’ ”⁹ *Ante*, at 1633 (quoting *Parents Involved*, 551 U.S., at 807–808, 127 S.Ct. 2738 (BREYER, J., dissenting) (emphasis added)). It follows, according to the plurality, that Seattle’s desegregation plan was constitutionally required, so that the initiative halting the plan was an instance of invidious discrimination aimed at inflicting a racial injury.

Again, the plurality might prefer that the *Seattle* Court had said that, but it plainly did not. Not once did the Court suggest the presence of *de jure* segregation in Seattle. Quite the opposite: The opinion explicitly suggested the desegregation plan was adopted to remedy *de facto* rather than *de jure* segregation. See 458 U.S., at 472, n. 15, 102 S.Ct. 3187 (referring to the “absent[ce]” of “a finding of prior *de jure* segregation”). The Court, moreover, assumed that no “constitutional violation” through *de jure* segregation had occurred. *Id.*, at 474, 102 S.Ct. 3187. And it unmistakably rested its decision on *Hunter*, holding Seattle’s initiative invalid because it “use[d] the racial nature of an issue to define the governmental decisionmaking structure, and thus impose[d] substantial and unique burdens on racial minorities.” 458 U.S., at 470, 102 S.Ct. 3187.

It is nothing short of baffling, then, for the plurality to insist—in the face of clear language in *Hunter* and *Seattle* saying otherwise—that those cases were about nothing more than the intentional and invidious infliction of a racial injury. *Ante*, at 1632 (describing the injury in *Hunter* as “a demonstrated injury on the basis of race”); *ante*, at 1632 – 1633 (describing the injury in *Seattle* as an “injur[y] on account of race”). The plurality’s attempt to rewrite *Hunter* and *Seattle* so as to cast aside the political-process doctrine *sub silentio* is impermissible as a matter of *stare*

decisis. Under the doctrine of *stare decisis*, we usually stand by our decisions, even if we disagree with them, because people rely on what we say, and they believe they can take us at our word.

And what now of the political-process doctrine? After the plurality's revision of *Hunter* and *Seattle*, it is unclear what is left. The plurality certainly does not tell us. On this point, and this point only, I agree with Justice SCALIA that the plurality has rewritten those precedents beyond recognition. See *ante*, at 1641 – 1643 (opinion concurring in judgment).

2

Justice BREYER concludes that *Hunter* and *Seattle* do not apply. Section 26, he reasons, did not move the relevant decisionmaking authority from one political level to another; rather, it removed that authority from “unelected actors and placed it in the hands of the voters.” *Ante*, at 1650 (opinion concurring in judgment). He bases this conclusion on the premise that Michigan’s elected boards “delegated admissions-related decisionmaking authority to unelected university *1665 faculty members and administrators.” *Ibid*. But this premise is simply incorrect.

For one thing, it is undeniable that prior to § 26, board candidates often pledged to end or carry on the use of race-sensitive admissions policies at Michigan’s public universities. See *supra*, at 1660 – 1661. Surely those were not empty promises. Indeed, the issue of race-sensitive admissions policies often dominated board elections. See, e.g., George, Detroit Free Press, at 2B (observing that “[t]he race for the University of Michigan Board of Regents could determine ... the future of [the University’s] affirmative action policies”); Kosseff, UM Policy May Hang On Election, Crain’s Detroit Business, Sept. 18, 2000, p. 1 (noting that an upcoming election could determine whether the University would continue to defend its affirmative action policies); University of Michigan’s Admissions Policy Still an Issue for Regents’ Election, Black Issues in Higher Education, Oct. 21, 2004, p. 17 (commenting that although “the Supreme Court struck down the University of Michigan’s undergraduate admissions policy as too formulaic,” the issue “remains an important [one] to several people running” in an upcoming election for the Board of Regents).

Moreover, a careful examination of the boards and their governing structure reveals that they remain actively involved in setting admissions policies and procedures. Take Wayne State University, for example. Its Board of

Governors has enacted university statutes that govern the day-to-day running of the institution. See Wayne State Univ. Stat., online at <http://bog.wayne.edu/code>. A number of those statutes establish general admissions procedures, see § 2.34.09 (establishing undergraduate admissions procedures); § 2.34.12 (establishing graduate admissions procedures), and some set out more specific instructions for university officials, see, e.g., § 2.34.09.030 (“Admissions decisions will be based on a full evaluation of each student’s academic record, and on empirical data reflecting the characteristics of students who have successfully graduated from [the university] within the four years prior to the year in which the student applies”); §§ 2.34.12.080, 2.34.12.090 (setting the requisite grade point average for graduate applicants).

The Board of Governors does give primary responsibility over day-to-day admissions matters to the university’s President. § 2.34.09.080. But the President is “elected by and answerable to the Board.” Brief for Respondent Board of Governors of Wayne State University et al. 15. And while university officials and faculty members “serv[e] an important advisory role in recommending educational policy,” *id.*, at 14, the Board alone ultimately controls educational policy and decides whether to adopt (or reject) program-specific admissions recommendations. For example, the Board has voted on recommendations “to revise guidelines for establishment of honors curricula, including admissions criteria”; “to modify the honor point criteria for graduate admission”; and “to modify the maximum number of transfer credits that the university would allow in certain cases where articulation agreements rendered modification appropriate.” *Id.*, at 17; see also *id.*, at 18–20 (providing examples of the Board’s “review[ing] and pass[ing] upon admissions requirements in the course of voting on broader issues, such as the implementation of new academic programs”). The Board also “engages in robust and regular review of administrative actions involving admissions policy and related matters.” *Id.*, at 16.

Other public universities more clearly entrust admissions policy to university officials. The Board of Regents of the University of Michigan, for example, gives primary *1666 responsibility for admissions to the Associate Vice Provost, Executive Director of Undergraduate Admissions, and Directors of Admissions. Bylaws § 8.01, online at <http://www.regents.umich.edu/bylaws>. And the Board of Trustees of Michigan State University relies on the President to make recommendations regarding admissions policies. Bylaws, Art. 8, online at <http://www.trustees.msu.edu/bylaws>. But the bylaws of the Board of Regents and the Board of Trustees “make clear that all university operations remain subject to their

control.” Brief for Respondents Regents of the University of Michigan, the Board of Trustees of Michigan State University et al. 13–14.

The boards retain ultimate authority to adopt or reject admissions policies in at least three ways. First, they routinely meet with university officials to review admissions policies, including race-sensitive admissions policies. For example, shortly after this Court’s decisions in *Gratz v. Bollinger*, 539 U.S. 244, 123 S.Ct. 2411, 156 L.Ed.2d 257 (2003), and *Grutter*, 539 U.S., at 306, 123 S.Ct. 2325, the President of the University of Michigan appeared before the University’s Board of Regents to discuss the impact of those decisions on the University. See Proceedings 2003–2004, pp. 10–12 (July 2003), online at <http://name.umdl.umich.edu/ACW7513.2003.001>. Six members of the Board voiced strong support for the University’s use of race as a factor in admissions. *Id.*, at 11–12. In June 2004, the President again appeared before the Board to discuss changes to undergraduate admissions policies. *Id.*, at 301 (June 2004). And in March 2007, the University’s Provost appeared before the Board of Regents to present strategies to increase diversity in light of the passage of Proposal 2. Proceedings 2006–2007, pp. 264–265 (Mar. 2007), online at <http://name.umdl.umich.edu/ACW7513.2006.001>.

Second, the boards may enact bylaws with respect to specific admissions policies and may alter any admissions policies set by university officials. The Board of Regents may amend any bylaw “at any regular meeting of the board, or at any special meeting, provided notice is given to each regent one week in advance.” Bylaws § 14.03. And Michigan State University’s Board of Trustees may, “[u]pon the recommendation of the President[,] ... determine and establish the qualifications of students for admissions at any level.” Bylaws, Art. 8. The boards may also permanently remove certain admissions decisions from university officials.¹⁰ This authority is not merely theoretical. Between 2008 and 2012, the University of Michigan’s Board of Regents “revised more than two dozen of its bylaws, two of which fall within Chapter VIII, the section regulating admissions practices.” App. to Pet. for Cert. 30a.

Finally, the boards may appoint university officials who share their admissions goals, and they may remove those officials if the officials’ goals diverge from those of the boards. The University of Michigan’s Board of Regents “directly appoints [the University’s] Associate Vice Provost and Executive Director of Undergraduate Admissions,” and Michigan State University’s Board of Trustees elects that institution’s President. Brief for Respondents Regents of the University of Michigan, the

Board of *1667 Trustees of Michigan State University et al. 14.

The salient point is this: Although the elected and politically accountable boards may well entrust university officials with certain day-to-day admissions responsibilities, they often weigh in on admissions policies themselves and, at all times, they retain complete supervisory authority over university officials and over all admissions decisions.

There is no question, then, that the elected boards in Michigan had the power to eliminate or adopt race-sensitive admissions policies prior to § 26. There is also no question that § 26 worked an impermissible reordering of the political process; it removed that power from the elected boards and placed it instead at a higher level of the political process in Michigan. See *supra*, at 1660 – 1663. This case is no different from *Hunter* and *Seattle* in that respect. Just as in *Hunter* and *Seattle*, minorities in Michigan “participated in the political process and won.” *Ante*, at 1650 – 1651 (BREYER, J., concurring in judgment). And just as in *Hunter* and *Seattle*, “the majority’s subsequent reordering of the political process repealed the minority’s successes and made it more difficult for the minority to succeed in the future,” thereby “diminish[ing] the minority’s ability to participate meaningfully in the electoral process.” *Ibid*. There is therefore no need to consider “extend[ing] the holding of *Hunter* and *Seattle* to reach situations in which decisionmaking authority is moved from an administrative body to a political one,” *ibid*. Such a scenario is not before us.

III

The political-process doctrine not only resolves this case as a matter of *stare decisis* ; it is correct as a matter of first principles.

A

Under our Constitution, majority rule is not without limit. Our system of government is predicated on an equilibrium between the notion that a majority of citizens may determine governmental policy through legislation enacted by their elected representatives, and the overriding principle that there are nonetheless some things the Constitution forbids even a majority of citizens to do. The

political-process doctrine, grounded in the Fourteenth Amendment, is a central check on majority rule.

The Fourteenth Amendment instructs that all who act for the government may not “deny to any person ... the equal protection of the laws.” We often think of equal protection as a guarantee that the government will apply the law in an equal fashion—that it will not intentionally discriminate against minority groups. But equal protection of the laws means more than that; it also secures the right of all citizens to participate meaningfully and equally in the process through which laws are created.

Few rights are as fundamental as the right to participate meaningfully and equally in the process of government. See *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886) (political rights are “fundamental” because they are “preservative of all rights”). That right is the bedrock of our democracy, recognized from its very inception. See J. Ely, *Democracy and Distrust* 87 (1980) (the Constitution “is overwhelmingly concerned, on the one hand, with procedural fairness in the resolution of individual disputes,” and on the other, “with ensuring broad participation in the processes and distributions of government”).

This should come as no surprise. The political process is the channel of change. *1668 *Id.*, at 103 (describing the importance of the judiciary in policing the “channels of political change”). It is the means by which citizens may both obtain desirable legislation and repeal undesirable legislation. Of course, we do not expect minority members of our society to obtain every single result they seek through the political process—not, at least, when their views conflict with those of the majority. The minority plainly does not have a right to prevail over majority groups in any given political contest. But the minority does have a right to play by the same rules as the majority. It is this right that *Hunter* and *Seattle* so boldly vindicated.

This right was hardly novel at the time of *Hunter* and *Seattle*. For example, this Court focused on the vital importance of safeguarding minority groups’ access to the political process in *United States v. Carolene Products Co.*, 304 U.S. 144, 58 S.Ct. 778, 82 L.Ed. 1234 (1938), a case that predated *Hunter* by 30 years. In a now-famous footnote, the Court explained that while ordinary social and economic legislation carries a presumption of constitutionality, the same may not be true of legislation that offends fundamental rights or targets minority groups. Citing cases involving restrictions on the right to vote, restraints on the dissemination of information, interferences with political organizations, and prohibition of peaceable assembly, the Court recognized that

“legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation” could be worthy of “more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.” *Id.*, at 152, n. 4, 58 S.Ct. 778; see also Ely, *supra*, at 76 (explaining that “[p]aragraph two [of *Carolene Products* footnote 4] suggests that it is an appropriate function of the Court to keep the machinery of democratic government running as it should, to make sure the channels of political participation and communication are kept open”). The Court also noted that “prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.” *Carolene Products*, 304 U.S., at 153, n. 4, 58 S.Ct. 778, see also Ely, *supra*, at 76 (explaining that “[p]aragraph three [of *Carolene Products* footnote 4] suggests that the Court should also concern itself with what majorities do to minorities, particularly mentioning laws ‘directed at’ religious, national and racial minorities and those infected by prejudice against them”).

The values identified in *Carolene Products* lie at the heart of the political-process doctrine. Indeed, *Seattle* explicitly relied on *Carolene Products*. See 458 U.S., at 486, 102 S.Ct. 3187 (“[W]hen the State’s allocation of power places unusual burdens on the ability of racial groups to enact legislation specifically designed to overcome the ‘special condition’ of prejudice, the governmental action seriously ‘curtail[s] the operation of those political processes ordinarily to be relied upon to protect minorities’ ” (quoting *Carolene Products*, 304 U.S., at 153, n. 4, 58 S.Ct. 778)). These values are central tenets of our equal protection jurisprudence.

Our cases recognize at least three features of the right to meaningful participation in the political process. Two of them, thankfully, are uncontroversial. First, every eligible citizen has a right to vote. See *Shaw v. Reno*, 509 U.S. 630, 639, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993). This, woefully, has not always been the case. But it is a right no one would take issue with today. Second, the majority may not make it more difficult for *1669 the minority to exercise the right to vote. This, too, is widely accepted. After all, the Court has invalidated grandfather clauses, good character requirements, poll taxes, and gerrymandering provisions.¹¹ The third feature, the one the plurality dismantles today, is that a majority may not reconfigure the existing political process in a manner that creates a two-tiered system of political change, subjecting laws designed to protect or benefit discrete and insular

minorities to a more burdensome political process than all other laws. This is the political-process doctrine of *Hunter* and *Seattle*.

My colleagues would stop at the second. The plurality embraces the freedom of “self-government” without limits. See *ante*, at 1645 – 1646. And Justice SCALIA values a “near-limitless” notion of state sovereignty. See *ante*, at 1645 – 1646 (opinion concurring in judgment). The wrong sought to be corrected by the political-process doctrine, they say, is not one that should concern us and is in any event beyond the reach of the Fourteenth Amendment. As they see it, the Court’s role in protecting the political process ends once we have removed certain barriers to the minority’s participation in that process. Then, they say, we must sit back and let the majority rule without the key constitutional limit recognized in *Hunter* and *Seattle*.

That view drains the Fourteenth Amendment of one of its core teachings. Contrary to today’s decision, protecting the right to meaningful participation in the political process must mean more than simply removing barriers to participation. It must mean vigilantly policing the political process to ensure that the majority does not use other methods to prevent minority groups from partaking in that process on equal footing. Why? For the same reason we guard the right of every citizen to vote. If “[e]fforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot,” were “‘second-generation barriers’ ” to minority voting, *Shelby County v. Holder*, 570 U.S. —, —, 133 S.Ct. 2612, 2634, 186 L.Ed.2d 651 (2013) (GINSBURG, J., dissenting), efforts to reconfigure the political process in ways that uniquely disadvantage minority groups who have already long been disadvantaged are third-generation barriers. For as the Court recognized in *Seattle*, “minorities are no less powerless with the vote than without it when a racial criterion is used to assign governmental power in such a way as to exclude particular racial groups ‘from effective participation in the political proces[s].’ ”¹² 458 U.S., at 486, 102 S.Ct. 3187.

***1670** To accept the first two features of the right to meaningful participation in the political process, while renouncing the third, paves the way for the majority to do what it has done time and again throughout our Nation’s history: afford the minority the opportunity to participate, yet manipulate the ground rules so as to ensure the minority’s defeat. This is entirely at odds with our idea of equality under the law.

To reiterate, none of this is to say that the political-process doctrine prohibits the exercise of democratic self-government. Nothing prevents a majority of citizens

from pursuing or obtaining its preferred outcome in a political contest. Here, for instance, I agree with the plurality that Michiganders who were unhappy with *Grutter* were free to pursue an end to race-sensitive admissions policies in their State. See *ante*, at 1647 – 1648. They were free to elect governing boards that opposed race-sensitive admissions policies or, through public discourse and dialogue, to lobby the existing boards toward that end. They were also free to remove from the boards the authority to make any decisions with respect to admissions policies, as opposed to only decisions concerning race-sensitive admissions policies. But what the majority could not do, consistent with the Constitution, is change the ground rules of the political process in a manner that makes it more difficult for racial minorities alone to achieve their goals. In doing so, the majority effectively rigs the contest to guarantee a particular outcome. That is the very wrong the political-process doctrine seeks to remedy. The doctrine “hews to the unremarkable notion that when two competitors are running a race, one may not require the other to run twice as far or to scale obstacles not present in the first runner’s course.” *BAMN v. Regents of Univ. of Michigan*, 701 F.3d 466, 474 (C.A.6 2012).

B

The political-process doctrine also follows from the rest of our equal protection jurisprudence—in particular, our reapportionment and vote dilution cases. In those cases, the Court described the right to vote as “ ‘the essence of a democratic society.’ ” *Shaw*, 509 U.S., at 639, 113 S.Ct. 2816. It rejected States’ use of ostensibly race-neutral measures to prevent minorities from exercising their political rights. See *id.*, at 639–640, 113 S.Ct. 2816. And it invalidated practices such as at-large electoral systems that reduce or nullify a minority group’s ability to vote as a cohesive unit, when those practices were adopted with a discriminatory purpose. *Id.*, at 641, 113 S.Ct. 2816. These cases, like the political-process doctrine, all sought to preserve the political rights of the minority.

Two more recent cases involving discriminatory restructurings of the political process are also worthy of mention: *Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996), and *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006) (*LULAC*).

Romer involved a Colorado constitutional amendment that removed from the local political process an issue primarily affecting gay and lesbian citizens. The amendment,

enacted in response to a number of local ordinances prohibiting discrimination against gay citizens, repealed these ordinances and effectively prohibited the adoption *1671 of similar ordinances in the future without another amendment to the State Constitution. 517 U.S., at 623–624, 116 S.Ct. 1620. Although the Court did not apply the political-process doctrine in *Romer*,¹³ the case resonates with the principles undergirding the political-process doctrine. The Court rejected an attempt by the majority to transfer decisionmaking authority from localities (where the targeted minority group could influence the process) to state government (where it had less ability to participate effectively). See *id.*, at 632, 116 S.Ct. 1620 (describing this type of political restructuring as a “disability” on the minority group). Rather than being able to appeal to municipalities for policy changes, the Court commented, the minority was forced to “enlis[t] the citizenry of Colorado to amend the State Constitution,” *id.*, at 631, 116 S.Ct. 1620—just as in this case.

LULAC, a Voting Rights Act case, involved an enactment by the Texas Legislature that redrew district lines for a number of Texas seats in the House of Representatives. 548 U.S., at 409, 126 S.Ct. 2594 (plurality opinion). In striking down the enactment, the Court acknowledged the “ ‘long, well-documented history of discrimination’ ” in Texas that “ ‘touched upon the rights of ... Hispanics to register, to vote, or to participate otherwise in the electoral process,’ ” *id.*, at 439, 126 S.Ct. 2594, and it observed that that the “ ‘political, social, and economic legacy of past discrimination’ ... may well [have] ‘hinder[ed] their ability to participate effectively in the political process,’ ” *id.*, at 440, 126 S.Ct. 2594. Against this backdrop, the Court found that just as “Latino voters were poised to elect their candidate of choice,” *id.*, at 438, 126 S.Ct. 2594, the State’s enactment “took away [their] opportunity because [they] were about to exercise it,” *id.*, at 440, 126 S.Ct. 2594. The Court refused to sustain “the resulting vote dilution of a group that was beginning to achieve [the] goal of overcoming prior electoral discrimination.” *Id.*, at 442, 126 S.Ct. 2594.

As in *Romer*, the *LULAC* Court—while using a different analytic framework—applied the core teaching of *Hunter* and *Seattle*: The political process cannot be restructured in a manner that makes it more difficult for a traditionally excluded group to work through the existing process to seek beneficial policies. And the events giving rise to *LULAC* are strikingly similar to those here. Just as redistricting prevented Latinos in Texas from attaining a benefit they had fought for and were poised to enjoy, § 26 prevents racial minorities in Michigan from enjoying a last-resort benefit that they, too, had fought for through the existing political processes.

IV

My colleagues claim that the political-process doctrine is unadministrable and contrary to our more recent equal protection precedents. See *ante*, at 1644 – 1647 (plurality opinion); *ante*, at 1642 – 1648 (SCALIA, J., concurring in judgment). It is only by not acknowledging certain strands of our jurisprudence that they can reach such a conclusion.

A

Start with the claim that *Hunter* and *Seattle* are no longer viable because of *1672 the cases that have come after them. I note that in the view of many, it is those precedents that have departed from the mandate of the Equal Protection Clause in the first place, by applying strict scrutiny to actions designed to benefit rather than burden the minority. See *Gratz*, 539 U.S., at 301, 123 S.Ct. 2411 (GINSBURG, J., dissenting) (“[A]s I see it, government decisionmakers may properly distinguish between policies of exclusion and inclusion. Actions designed to burden groups long denied full citizenship stature are not sensibly ranked with measures taken to hasten the day when entrenched discrimination and its aftereffects have been extirpated” (citation omitted)); *id.*, at 282, 123 S.Ct. 2411 (BREYER, J., concurring in judgment) (“I agree ... that, in implementing the Constitution’s equality instruction, government decisionmakers may properly distinguish between policies of inclusion and exclusion, for the former are more likely to prove consistent with the basic constitutional obligation that the law respect each individual equally” (citation omitted)); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 243, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995) (Stevens, J., dissenting) (“There is no moral or constitutional equivalence between a policy that is designed to perpetuate a caste system and one that seeks to eradicate racial subordination. Invidious discrimination is an engine of oppression, subjugating a disfavored group to enhance or maintain the power of the majority. Remedial race-based preferences reflect the opposite impulse: a desire to foster equality in society”); *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 301–302, 106 S.Ct. 1842, 90 L.Ed.2d 260 (1986) (Marshall, J., dissenting) (when dealing with an action to eliminate “pernicious vestiges of past discrimination,” a “less exacting standard of review is appropriate”); *Fullilove v. Klutznick*, 448 U.S. 448, 518–519, 100 S.Ct. 2758, 65 L.Ed.2d 902 (1980) (Marshall, J., concurring in judgment).

(race-based governmental action designed to “remed[y] the continuing effects of past racial discrimination ... should not be subjected to conventional ‘strict scrutiny’ ”); *Bakke*, 438 U.S., at 359, 98 S.Ct. 2733 (Brennan, White, Marshall, and Blackmun, JJ., concurring in judgment in part and dissenting in part) (“racial classifications designed to further remedial purposes” should be subjected only to intermediate scrutiny).

But even assuming that strict scrutiny should apply to policies designed to benefit racial minorities, that view is not inconsistent with *Hunter* and *Seattle*. For nothing the Court has said in the last 32 years undermines the principles announced in those cases.

1

Justice SCALIA first argues that the political-process doctrine “misreads the Equal Protection Clause to protect ‘particular group[s],’ ” running counter to a line of cases that treat “ ‘equal protection as a personal right.’ ” *Ante*, at 1644 (opinion concurring in judgment) (quoting *Adarand*, 515 U.S., at 230, 115 S.Ct. 2097). Equal protection, he says, protects “ ‘persons, not groups.’ ” *Ante*, at 1644 (quoting *Adarand*, 515 U.S., at 227, 115 S.Ct. 2097). This criticism ignores the obvious: Discrimination against an individual occurs because of that individual’s membership in a particular group. Yes, equal protection is a personal right, but there can be no equal protection violation unless the injured individual is a member of a protected group or a class of individuals. It is membership in the group—here the racial minority—that gives rise to an equal protection violation.

Relatedly, Justice SCALIA argues that the political-process doctrine is inconsistent *1673 with our precedents because it protects only the minority from political restructurings. This aspect of the doctrine, he says, cannot be tolerated because our precedents have rejected “ ‘a reading of the guarantee of equal protection under which the level of scrutiny varies according to the ability of different groups to defend their interests in the representative process.’ ” *Ante*, at 1644 (quoting *Richmond v. J.A. Croson Co.*, 488 U.S., 469, 495, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (plurality opinion)). Equal protection, he continues, “ ‘cannot mean one thing when applied to one individual and something else when applied to a person of another color.’ ” *Ante*, at 1644 (quoting *Bakke*, 438 U.S., at 289–290, 98 S.Ct. 2733) (opinion of Powell, J.).

Justice SCALIA is troubled that the political-process

doctrine has not been applied to trigger strict scrutiny for political restructurings that burden the majority. But the doctrine is inapplicable to the majority. The minority cannot achieve such restructurings against the majority, for the majority is, well, the majority. As the *Seattle* Court explained, “ ‘[t]he majority needs no protection against discriminat[ory restructurings], and if it did, a referendum, [for instance], might be bothersome but no more than that.’ ” 458 U.S., at 468, 102 S.Ct. 3187. Stated differently, the doctrine protects only the minority because it implicates a problem that affects only the minority. Nothing in my opinion suggests, as Justice SCALIA says, that under the political-process doctrine, “the Constitution prohibits discrimination against minority groups, but not against majority groups.” *Ante*, at 1644, n. 7. If the minority somehow managed to effectuate a political restructuring that burdened only the majority, we could decide then whether to apply the political-process doctrine to safeguard the political right of the majority. But such a restructuring is not before us, and I cannot fathom how it could be achieved.

2

Justice SCALIA next invokes state sovereignty, arguing that “we have emphasized the near-limitless sovereignty of each State to design its governing structure as it sees fit.” *Ante*, at 1646 (opinion concurring in judgment). But state sovereignty is not absolute; it is subject to constitutional limits. The Court surely did not offend state sovereignty by barring States from changing their voting procedures to exclude racial minorities. So why does the political-process doctrine offend state sovereignty? The doctrine takes nothing away from state sovereignty that the Equal Protection Clause does not require. All it says is that a State may not reconfigure its existing political processes in a manner that establishes a distinct and more burdensome process for minority members of our society alone to obtain legislation in their interests.

More broadly, Justice SCALIA is troubled that the political-process doctrine would create supposed “affirmative-action safe havens” in places where the ordinary political process has thus far produced race-sensitive admissions policies. *Ante*, at 1645 – 1647. It would not. As explained previously, the voters in Michigan who opposed race-sensitive admissions policies had any number of options available to them to challenge those policies. See *supra*, at 1669 – 1670. And in States where decisions regarding race-sensitive admissions policies are not subject to the political process in the first place, voters are entirely free to eliminate such policies via a

constitutional amendment because that action would not reallocate power in the manner condemned in *Hunter* and *Seattle* (and, of course, present here). The *Seattle* Court recognized this careful balance *1674 between state sovereignty and constitutional protections:

“[W]e do not undervalue the magnitude of the State’s interest in its system of education. Washington could have reserved to state officials the right to make all decisions in the areas of education and student assignment. It has chosen, however, to use a more elaborate system; having done so, the State is obligated to operate that system within the confines of the Fourteenth Amendment.” 458 U.S., at 487, 102 S.Ct. 3187.

The same is true of Michigan.

3

Finally, Justice SCALIA disagrees with “the proposition that a facially neutral law may deny equal protection solely because it has a disparate racial impact.” *Ante*, at 1647 (opinion concurring in judgment). He would acknowledge, however, that an act that draws racial distinctions or makes racial classifications triggers strict scrutiny regardless of whether discriminatory intent is shown. See *Adarand*, 515 U.S., at 213, 115 S.Ct. 2097. That should settle the matter: Section 26 draws a racial distinction. As the *Seattle* Court explained, “when the political process or the decisionmaking mechanism used to address racially conscious legislation—and only such legislation—is singled out for peculiar and disadvantageous treatment, the governmental action plainly rests on ‘distinctions based on race.’ ” 458 U.S., at 485, 102 S.Ct. 3187 (some internal quotation marks omitted); see also *id.*, at 470, 102 S.Ct. 3187 (noting that although a State may “‘allocate governmental power on the basis of any general principle,’ ” it may not use racial considerations “to define the governmental decisionmaking structure”).

But in Justice SCALIA’s view, cases like *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), and *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), call *Seattle* into question. It is odd to suggest that prior precedents call into question a later one. *Seattle* (decided in 1982) postdated both *Washington v. Davis* (1976) and *Arlington Heights* (1977). Justice SCALIA’s suggestion that *Seattle* runs afoul of the principles established in *Washington v. Davis* and *Arlington Heights* would come as a surprise to Justice

Blackmun, who joined the majority opinions in all three cases. Indeed, the *Seattle* Court explicitly rejected the argument that *Hunter* had been effectively overruled by *Washington v. Davis* and *Arlington Heights* :

“There is one immediate and crucial difference between *Hunter* and [those cases]. While decisions such as *Washington v. Davis* and *Arlington Heights* considered classifications facially unrelated to race, the charter amendment at issue in *Hunter* dealt in explicitly racial terms with legislation designed to benefit minorities ‘as minorities,’ not legislation intended to benefit some larger group of underprivileged citizens among whom minorities were disproportionately represented.” 458 U.S., at 485, 102 S.Ct. 3187.

And it concluded that both the *Hunter* amendment and the *Seattle* initiative rested on distinctions based on race. 458 U.S., at 485, 102 S.Ct. 3187. So does § 26.¹⁴

*1675 B

My colleagues also attack the first prong of the doctrine as “rais[ing] serious constitutional concerns,” *ante*, at 1634 (plurality opinion), and being “unadministrable,” *ante*, at 1642 – 1643 (SCALIA, J., concurring in judgment). Justice SCALIA wonders whether judges are equipped to weigh in on what constitutes a “racial issue.” See *ante*, at 1643. The plurality, too, thinks courts would be “with no clear legal standards or accepted sources to guide judicial decision.” *Ante*, at 1635. Yet as Justice SCALIA recognizes, *Hunter* and *Seattle* provide a standard: Does the public policy at issue “inur[e] primarily to the benefit of the minority, and [was it] designed for that purpose”? *Seattle*, 458 U.S., at 472, 102 S.Ct. 3187; see *ante*, at 1643. Surely this is the kind of factual inquiry that judges are capable of making. Justice SCALIA, for instance, accepts the standard announced in *Washington v. Davis*, which requires judges to determine whether discrimination is intentional or whether it merely has a discriminatory effect. Such an inquiry is at least as difficult for judges as the one called for by *Hunter* and *Seattle*. In any event, it is clear that the constitutional amendment in this case has a racial focus; it is facially race-based and, by operation of law, disadvantages only minorities. See *supra*, at 1659 – 1660.

“No good can come” from these inquiries, Justice SCALIA responds, because they divide the Nation along racial lines and perpetuate racial stereotypes. *Ante*, at 1643 – 1644. The plurality shares that view; it tells us that we must not assume all individuals of the same race think alike. See *ante*, at 1644 – 1645. The same could have been said about

desegregation: Not all members of a racial minority in *Seattle* necessarily regarded the integration of public schools as good policy. Yet the *Seattle* Court had little difficulty saying that school integration as a general matter “inure[d] ... to the benefit of” the minority. 458 U.S., at 472, 102 S.Ct. 3187.

My colleagues are of the view that we should leave race out of the picture entirely and let the voters sort it out. See *ante*, at 1645 – 1646 (plurality opinion) (“Racial division would be validated, not discouraged, were the *Seattle* formulation ... to remain in force”); *ante*, at 1643 – 1644 (SCALIA, J., concurring in judgment) (“[R]acial stereotyping [is] at odds with equal protection mandates”). We have seen this reasoning before. See *Parents Involved*, 551 U.S., at 748, 127 S.Ct. 2738 (“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race”). It is a sentiment out of touch with reality, one not required by our Constitution, and one that has properly been rejected as “not sufficient” to resolve cases of this nature. *Id.*, at 788, 127 S.Ct. 2738 (KENNEDY, J., concurring in part and concurring in judgment). While “[t]he enduring hope is that race should not matter[,] the reality is that too often it does.” *Id.*, at 787, 127 S.Ct. 2738. “[R]acial discrimination ... [is] not ancient history.” *Bartlett v. Strickland*, 556 U.S. 1, 25, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009) (plurality opinion).

*1676 Race matters. Race matters in part because of the long history of racial minorities’ being denied access to the political process. See Part I, *supra* ; see also *South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966) (describing racial discrimination in voting as “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution”). And although we have made great strides, “voting discrimination still exists; no one doubts that.” *Shelby County*, 570 U.S., at —, 133 S.Ct., at 2619.

Race also matters because of persistent racial inequality in society—inequality that cannot be ignored and that has produced stark socioeconomic disparities. See *Gratz*, 539 U.S., at 298–300, 123 S.Ct. 2411 (GINSBURG, J., dissenting) (cataloging the many ways in which “the effects of centuries of law-sanctioned inequality remain painfully evident in our communities and schools,” in areas like employment, poverty, access to health care, housing, consumer transactions, and education); *Adarand*, 515 U.S., at 273, 115 S.Ct. 2097 (GINSBURG, J., dissenting) (recognizing that the “lingering effects” of discrimination, “reflective of a system of racial caste only recently ended, are evident in our workplaces, markets, and neighborhoods”).

And race matters for reasons that really are only skin deep, that cannot be discussed any other way, and that cannot be wished away. Race matters to a young man’s view of society when he spends his teenage years watching others tense up as he passes, no matter the neighborhood where he grew up. Race matters to a young woman’s sense of self when she states her hometown, and then is pressed, “No, where are you *really* from?”, regardless of how many generations her family has been in the country. Race matters to a young person addressed by a stranger in a foreign language, which he does not understand because only English was spoken at home. Race matters because of the slights, the snickers, the silent judgments that reinforce that most crippling of thoughts: “I do not belong here.”

In my colleagues’ view, examining the racial impact of legislation only perpetuates racial discrimination. This refusal to accept the stark reality that race matters is regrettable. The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination. As members of the judiciary tasked with intervening to carry out the guarantee of equal protection, we ought not sit back and wish away, rather than confront, the racial inequality that exists in our society. It is this view that works harm, by perpetuating the facile notion that what makes race matter is acknowledging the simple truth that race *does* matter.

V

Although the only constitutional rights at stake in this case are process-based rights, the substantive policy at issue is undeniably of some relevance to my colleagues. See *ante*, at 1648 (plurality opinion) (suggesting that race-sensitive admissions policies have the “potential to become ... the source of the very resentments and hostilities based on race that this Nation seeks to put behind it”). I will therefore speak in response.

A

For over a century, racial minorities in Michigan fought to bring diversity to their State’s public colleges and universities. Before the advent of race-sensitive admissions policies, those institutions, like others *1677 around the country, were essentially segregated. In 1868, two black students were admitted to the University of

Michigan, the first of their race. See Expert Report of James D. Anderson 4, in *Gratz v. Bollinger*, No. 97-75231 (E.D.Mich.). In 1935, over six decades later, there were still only 35 black students at the University. *Ibid.* By 1954, this number had risen to slightly below 200. *Ibid.* And by 1966, to around 400, among a total student population of roughly 32,500—barely over 1 percent. *Ibid.* The numbers at the University of Michigan Law School are even more telling. During the 1960's, the Law School produced 9 black graduates among a total of 3,041—less than three-tenths of 1 percent. See App. in *Grutter v. Bollinger*, O.T. 2002, No. 02-241, p. 204.

The housing and extracurricular policies at these institutions also perpetuated open segregation. For instance, incoming students were permitted to opt out of rooming with black students. Anderson, *supra*, at 7-8. And some fraternities and sororities excluded black students from membership. *Id.*, at 6-7.

In 1966, the Defense Department conducted an investigation into the University's compliance with Title VI of the Civil Rights Act, and made 25 recommendations for increasing opportunities for minority students. *Id.*, at 9. In 1970, a student group launched a number of protests, including a strike, demanding that the University increase its minority enrollment. *Id.*, at 16-23. The University's Board of Regents responded, adopting a goal of 10 percent black admissions by the fall of 1973. *Id.*, at 23.

During the 1970's, the University continued to improve its admissions policies,¹⁵ encouraged by this Court's 1978 decision in *Bakke*. In that case, the Court told our Nation's colleges and universities that they could consider race in admissions as part of a broader goal to create a diverse student body, in which students of different backgrounds would learn together, and thereby learn to live together. A little more than a decade ago, in *Grutter*, the Court reaffirmed this understanding. In upholding the admissions policy of the Law School, the Court laid to rest any doubt whether student body diversity is a compelling interest that may justify the use of race.

Race-sensitive admissions policies are now a thing of the past in Michigan after § 26, even though—as experts agree and as research shows—those policies were making a difference in achieving educational diversity. In *Grutter*, Michigan's Law School spoke candidly about the strides the institution had taken successfully because of race-sensitive admissions. One expert retained by the Law School opined that a race-blind admissions system would have a “very dramatic, negative effect on underrepresented minority admissions.” *Grutter*, 539 U.S., at 320, 123 S.Ct. 2325 (internal quotation marks omitted). He testified that

the school had admitted 35 percent of underrepresented minority students who had applied in 2000, as opposed to only 10 percent who would have been admitted had race not been considered. *Ibid.* Underrepresented minority students would thus have constituted 4 percent, as opposed to the actual 14.5 percent, of the class that entered in 2000. *Ibid.*

*1678 Michigan's public colleges and universities tell us the same today. The Board of Regents of the University of Michigan and the Board of Trustees of Michigan State University inform us that those institutions cannot achieve the benefits of a diverse student body without race-sensitive admissions plans. See Brief for Respondents Regents of the University of Michigan, the Board of Trustees of Michigan State University et al. 18-25. During proceedings before the lower courts, several university officials testified that § 26 would depress minority enrollment at Michigan's public universities. The Director of Undergraduate Admissions at the University of Michigan “expressed doubts over the ability to maintain minority enrollment through the use of a proxy, like socioeconomic status.” Supp. App. to Pet. for Cert. 285a. He explained that university officials in States with laws similar to § 26 had not “‘achieve [d] the same sort of racial and ethnic diversity that they had prior to such measures ... without considering race.’” *Ibid.* Similarly, the Law School's Dean of Admissions testified that she expected “a decline in minority admissions because, in her view, it is impossible ‘to get a critical mass of underrepresented minorities ... without considering race.’” *Ibid.* And the Dean of Wayne State University Law School stated that “although some creative approaches might mitigate the effects of [§ 26], he ‘did not think that any one of these proposals or any combination of these proposals was reasonably likely to result in the admission of a class that had the same or similar or higher numbers of African Americans, Latinos and Native Americans as the prior policy.’” *Ibid.*

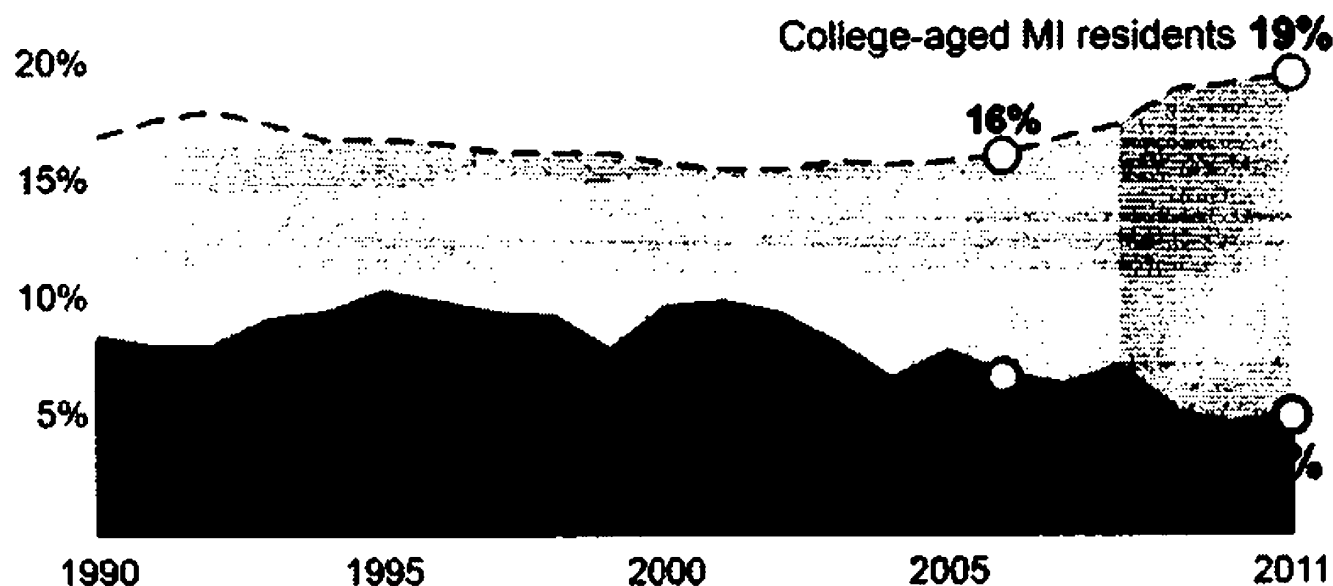
Michigan tells a different story. It asserts that although the statistics are difficult to track, “the number of underrepresented minorities ... [in] the entering freshman class at Michigan as a percentage changed very little” after § 26. Tr. of Oral Arg. 15. It also claims that “the statistics in California across the 17 campuses in the University of California system show that today the underrepresented minority percentage is better on 16 out of those 17 campuses”—all except Berkeley—than before California's equivalent initiative took effect. *Id.*, at 16. As it turns out, these statistics weren't “‘even good enough to be wrong.’” Reference Manual on Scientific Evidence 4 (2d ed. 2000) (Introduction by Stephen G. Breyer (quoting Wolfgang Pauli)).

Section 26 has already led to decreased minority enrollment at Michigan's public colleges and universities. In 2006 (before § 26 took effect), underrepresented minorities made up 12.15 percent of the University of Michigan's freshman class, compared to 9.54 percent in 2012—a roughly 25 percent decline. See University of Michigan—New Freshman Enrollment Overview, Office of the Registrar, online at [http://www.ro.umich.edu/report/10enroll overview.pdf](http://www.ro.umich.edu/report/10enroll%20overview.pdf) and <http://www.ro.umich.edu/report/12enrollmentssummary.pdf>.¹⁶ Moreover, the total number of college-aged underrepresented minorities in Michigan has *increased* even as the number of underrepresented minorities

admitted to the University has *decreased*. For example, between 2006 and 2011, the proportion of black freshmen among those enrolled at the University of Michigan declined from 7 percent to 5 percent, even though the proportion of black college-aged persons in Michigan increased from 16 to 19 percent. *1679 See Fessenden and Keller, How Minorities Have Fared in States with Affirmative Action Bans, N.Y. Times, June 24, 2013, online at <http://www.nytimes.com/interactive/2013/06/24/us/affirmative-action-bans.html>.

UNIVERSITY OF MICHIGAN Black Students¹⁷

BLACK



Editor's Note: The preceding image contains the reference for footnote¹⁷.

A recent study also confirms that § 26 has decreased minority degree attainment in Michigan. The University of Michigan's graduating class of 2012, the first admitted after § 26 took effect, is quite different from previous

classes. The proportion of black students among those attaining bachelor's degrees was 4.4 percent, the lowest since 1991; the proportion of black students among those attaining master's degrees was 5.1 percent, the lowest since 1989; the proportion of black students among those attaining doctoral degrees was 3.9 percent, the lowest since 1993; and the proportion of black students among those attaining professional school degrees was 3.5 percent, the lowest since the mid-1970's. See Kidder, Restructuring Higher Education Opportunity?: African American Degree

Attainment After Michigan's Ban on Affirmative Action, p. 1 (Aug. 2013), online at <http://papers.ssrn.com/sol3/abstract=2318523>.

The President and Chancellors of the University of California (which has 10 campuses, not 17) inform us that “[t]he abandonment of race-conscious admissions policies resulted in an immediate and precipitous decline in the rates at which underrepresented-minority students applied to, were admitted to, and enrolled at” the university. Brief for President and Chancellors of the University of California as *Amici Curiae* 10 (hereinafter President and Chancellors Brief). At the University of California, Los Angeles (UCLA), for example, admission rates for underrepresented minorities plummeted from 52.4 percent in 1995 (before California’s ban took effect) to 24 percent in 1998. *Id.*, at 12. As a result, the percentage of underrepresented minorities fell by more than half: from 30.1 percent of the entering class in 1995 to 14.3 percent in 1998. *Ibid.* The admissions rate for underrepresented *1680 minorities at UCLA reached a new low of 13.6 percent in 2012. See Brief for California Social Science Researchers and Admissions Experts as *Amici Curiae* 28.

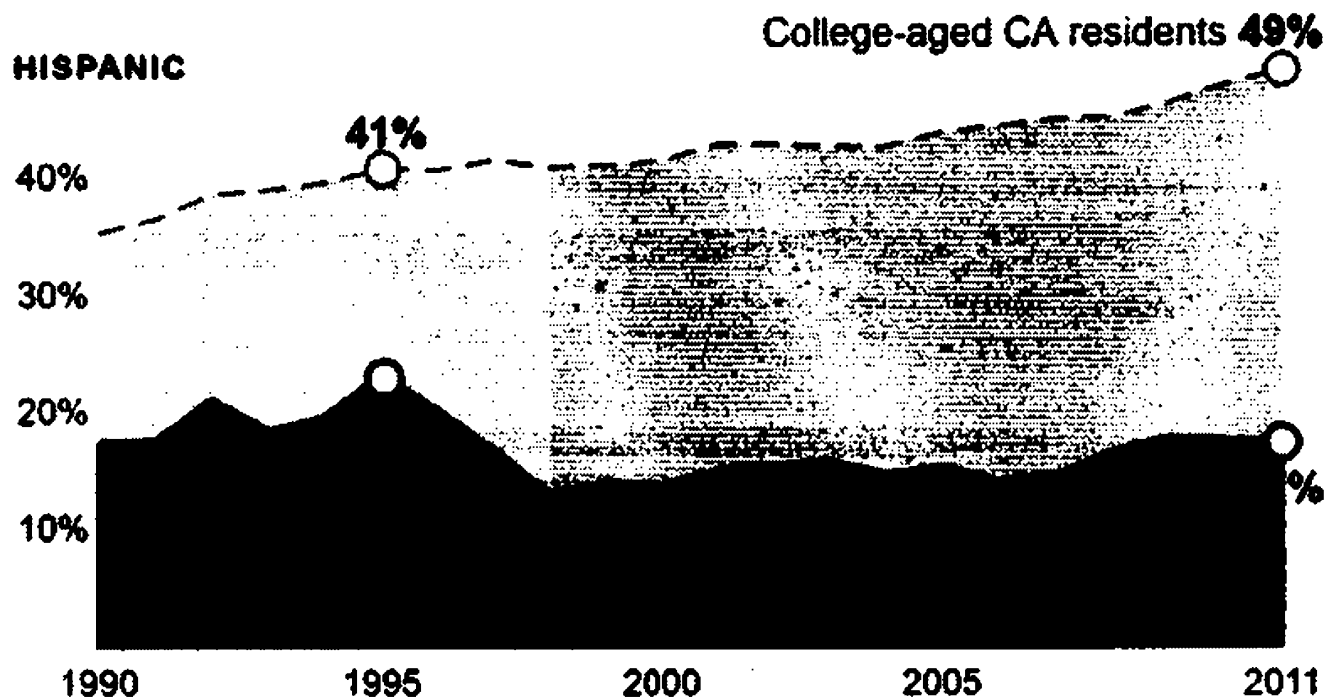
The elimination of race-sensitive admissions policies in California has been especially harmful to black students. In 2006, for example, there were fewer than 100 black

students in UCLA’s incoming class of roughly 5,000, the lowest number since at least 1973. See *id.*, at 24.

The University of California also saw declines in minority representation at its graduate programs and professional schools. In 2005, underrepresented minorities made up 17 percent of the university’s new medical students, which is actually a lower rate than the 17.4 percent reported in 1975, three years before *Bakke*. President and Chancellors Brief 13. The numbers at the law schools are even more alarming. In 2005, underrepresented minorities made up 12 percent of entering law students, well below the 20.1 percent in 1975. *Id.*, at 14.

As in Michigan, the declines in minority representation at the University of California have come even as the minority population in California has increased. At UCLA, for example, the proportion of Hispanic freshmen among those enrolled declined from 23 percent in 1995 to 17 percent in 2011, even though the proportion of Hispanic college-aged persons in California increased from 41 percent to 49 percent during that same period. See Fessenden and Keller.

UCLA Hispanic Students¹⁸



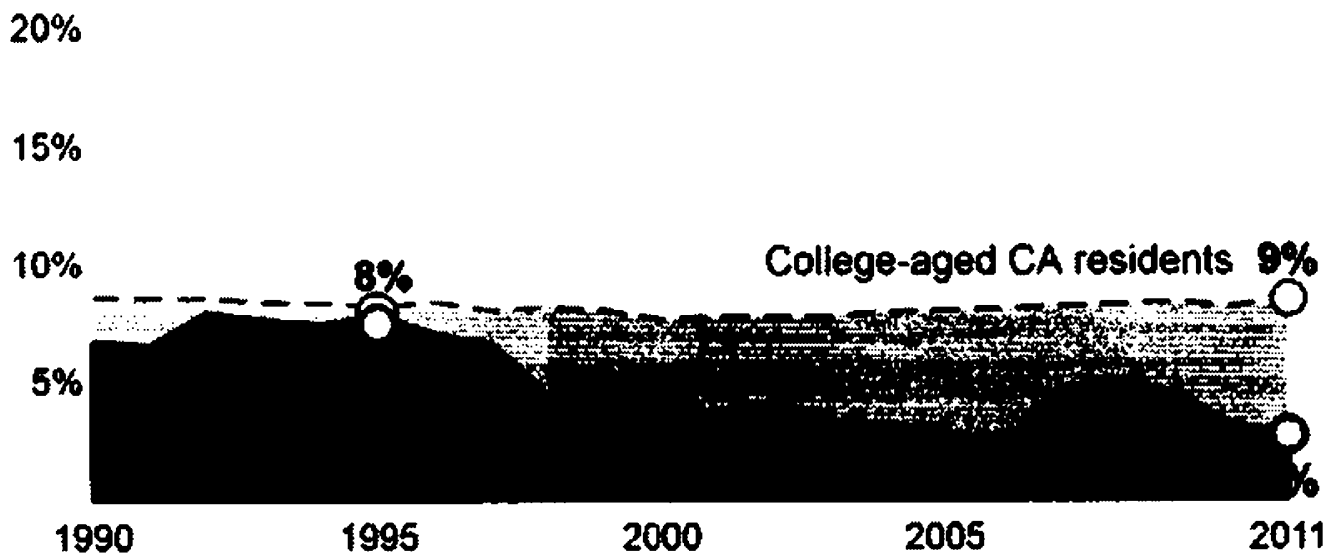
percent in 2011, even though the proportion of black college-aged persons in California increased from 8 percent to 9 percent during that same period. See *ibid.*

Editor's Note: The preceding image contains the reference for footnote¹⁸.

And the proportion of black freshmen among those enrolled at UCLA declined from 8 percent in 1995 to 3

UCLA Black Students¹⁹

BLACK



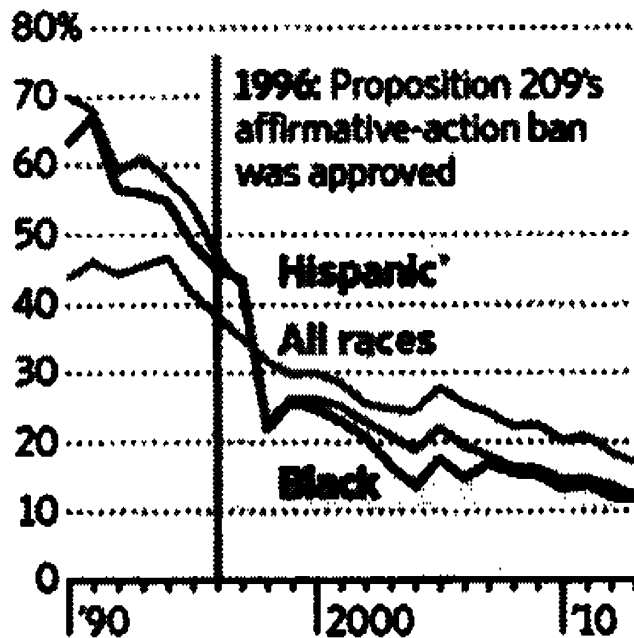
*1681 Editor's Note: The preceding image contains the reference for footnote¹⁹.

While the minority admissions rates at UCLA and Berkeley have decreased, the number of minorities enrolled at colleges across the county has increased. See

Phillips, Colleges Straining to Restore Diversity: Bans on Race-Conscious Admissions Upend Racial Makeup at California Schools, Wall Street Journal, Mar. 7, 2014, p. A3.

BERKELEY AND UCLA²⁰

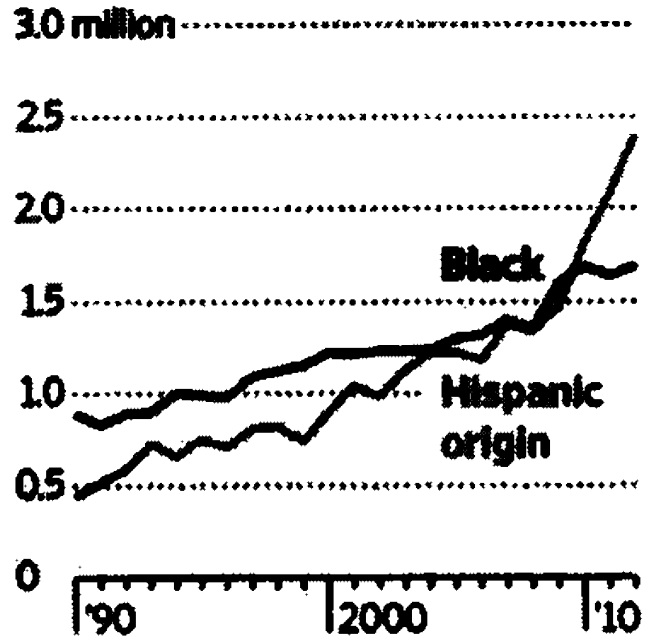
Students admitted to UC Berkeley and UCLA as a percentage of applications recieved, by race



*Includes Latino and Chicano

Sources: University of California; U.S. Census Bureau

Number of high school graduates ages 18-24 that are enrolled in college, by race



The Wall Street Journal

(quoting the Associate President and Chief Policy Advisor of the University of California).

*1682 Editor's Note: The preceding image contains the reference for footnote²⁰.

The President and Chancellors assure us that they have tried. They tell us that notwithstanding the university's efforts for the past 15 years "to increase diversity on [the University of California's] campuses through the use of race-neutral initiatives," enrollment rates have "not rebounded ... [or] kept pace with the demographic changes among California's graduating high-school population." President and Chancellors Brief 14. Since Proposition 209 took effect, the university has spent over a half-billion dollars on programs and policies designed to increase diversity. Phillips, *supra*, at A3. Still, it has been unable to meet its diversity goals. *Ibid.* Proposition 209, it says, has "completely changed the character" of the university." *Ibid.*

B

These statistics may not influence the views of some of my colleagues, as they question the wisdom of adopting race-sensitive admissions policies and would prefer if our Nation's colleges and universities were to discard those policies altogether. See *ante*, at 1638 – 1639 (ROBERTS, C.J., concurring) (suggesting that race-sensitive admissions policies might "do more harm than good"); *ante*, at 1644, n. 6 (SCALIA, J., concurring in judgment); *Grutter*, 539 U.S., at 371–373, 123 S.Ct. 2325 (THOMAS, J., concurring in part and dissenting in part); *id.*, at 347–348, 123 S.Ct. 2325 (SCALIA, J., concurring in part and

dissenting in part). That view is at odds with our recognition in *Grutter*, and more recently in *Fisher v. University of Texas at Austin*, 570 U.S. —, 133 S.Ct. 2411, 186 L.Ed.2d 474 (2013), that race-sensitive admissions policies are necessary to achieve a diverse student body when race-neutral alternatives have failed. More fundamentally, it ignores the importance of diversity in institutions of higher education and reveals how little my colleagues understand about the reality of race in America.

This Court has recognized that diversity in education is paramount. With good reason. Diversity ensures that the next generation moves beyond the stereotypes, the assumptions, and the superficial perceptions that students coming from less-heterogeneous communities may harbor, consciously or not, about people who do not look like them. Recognizing the need for diversity acknowledges that, “[j]ust as growing up in a particular region or having particular professional experiences is likely to affect an individual’s views, so too is one’s own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters.” *Grutter*, 539 U.S., at 333, 123 S.Ct. 2325. And it acknowledges that “to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.” *Id.*, at 332, 123 S.Ct. 2325.

Colleges and universities must be free to prioritize the goal of diversity. They must be free to immerse their students in a multiracial environment that fosters frequent and meaningful interactions with students of other races, and thereby *1683 pushes such students to transcend any assumptions they may hold on the basis of skin color. Without race-sensitive admissions policies, this might well be impossible. The statistics I have described make that fact glaringly obvious. We should not turn a blind eye to something we cannot help but see.

To be clear, I do not mean to suggest that the virtues of adopting race-sensitive admissions policies should inform the legal question before the Court today regarding the constitutionality of § 26. But I cannot ignore the unfortunate outcome of today’s decision: Short of amending the State Constitution, a Herculean task, racial minorities in Michigan are deprived of even an opportunity to convince Michigan’s public colleges and universities to consider race in their admissions plans when other attempts to achieve racial diversity have proved unworkable, and those institutions are unnecessarily

hobbled in their pursuit of a diverse student body.

* * *

The Constitution does not protect racial minorities from political defeat. But neither does it give the majority free rein to erect selective barriers against racial minorities. The political-process doctrine polices the channels of change to ensure that the majority, when it wins, does so without rigging the rules of the game to ensure its success. Today, the Court discards that doctrine without good reason.

In doing so, it permits the decision of a majority of the voters in Michigan to strip Michigan’s elected university boards of their authority to make decisions with respect to constitutionally permissible race-sensitive admissions policies, while preserving the boards’ plenary authority to make all other educational decisions. “In a most direct sense, this implicates the judiciary’s special role in safeguarding the interests of those groups that are relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Seattle*, 458 U.S., at 486, 102 S.Ct. 3187 (internal quotation marks omitted). The Court abdicates that role, permitting the majority to use its numerical advantage to change the rules mid-contest and forever stack the deck against racial minorities in Michigan. The result is that Michigan’s public colleges and universities are less equipped to do their part in ensuring that students of all races are “better prepare[d] ... for an increasingly diverse workforce and society ...” *Grutter*, 539 U.S., at 330, 123 S.Ct. 2325 (internal quotation marks omitted).

Today’s decision eviscerates an important strand of our equal protection jurisprudence. For members of historically marginalized groups, which rely on the federal courts to protect their constitutional rights, the decision can hardly bolster hope for a vision of democracy that preserves for all the right to participate meaningfully and equally in self-government.

I respectfully dissent.

Parallel Citations

97 Empl. Prac. Dec. P 45,054, 82 USLW 4251, 14 Cal. Daily Op. Serv. 4210, 24 Fla. L. Weekly Fed. S 667

Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.
- * Justice SCALIA and Justice SOTOMAYOR question the relationship between *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 102 S.Ct. 3187, 73 L.Ed.2d 896 (1982), and *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007). See *post*, at 1642, n. 2 (SCALIA, J., concurring in judgment); *post*, at 1664, n. 9 (SOTOMAYOR, J., dissenting). The plurality today addresses that issue, explaining that the race-conscious action in *Parents Involved* was unconstitutional given the absence of a showing of prior *de jure* segregation. *Parents Involved*, *supra*, at 720–721, 127 S.Ct. 2738 (majority opinion), 736, 127 S.Ct. 2738 (plurality opinion); see *ante*, at 1633. Today’s plurality notes that the Court in *Seattle* “assumed” the constitutionality of the busing remedy at issue there, “ ‘even absent a finding of prior *de jure* segregation.’ ” *Ante*, at 1633 (quoting *Seattle*, *supra*, at 472, n. 15, 102 S.Ct. 3187). The assumption on which *Seattle* proceeded did not constitute a finding sufficient to justify the race-conscious action in *Parents Involved*, though it is doubtless pertinent in analyzing *Seattle*. “As this Court held in *Parents Involved*, the [Seattle] school board’s purported remedial action would not be permissible today absent a showing of *de jure* segregation,” but “we must understand *Seattle* as *Seattle* understood itself.” *Ante*, at 1633 (emphasis added).
- 1 For simplicity’s sake, I use “respondent” or “respondents” throughout the opinion to describe only those parties who are adverse to petitioner, not Eric Russell, a respondent who supports petitioner.
- 2 The plurality cites evidence from Justice BREYER’s dissent in *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007), to suggest that the city had been a “partial” cause of its segregation problem. *Ante*, at 1633. The plurality in *Parents Involved* criticized that dissent for relying on irrelevant evidence, for “elid[ing the] distinction between *de jure* and *de facto* segregation,” and for “casually intimat[ing] that Seattle’s school attendance patterns reflect[ed] illegal segregation.” 551 U.S., at 736–737, and n. 15, 127 S.Ct. 2738. Today’s plurality sides with the dissent and repeats its errors.
- 3 Or so the Court assumed. See 458 U.S., at 472, n. 15, 102 S.Ct. 3187 (“Appellants and the United States do not challenge the propriety of race-conscious student assignments for the purpose of achieving integration, even absent a finding of prior *de jure* segregation. We therefore do not specifically pass on that issue”).
- 4 The dissent’s version of this test is just as scattershot. Since, according to the dissent, the doctrine forbids “reconfigur[ing] the political process in a manner that burdens only a racial minority,” *post*, at 1653 (opinion of SOTOMAYOR, J.) (emphasis added), it must be that the reason the underlying issue (that is, the issue concerning which the process has been reconfigured) is “racial” is that the policy in question benefits only a racial minority (if it also benefitted persons not belonging to a racial majority, then the political-process reconfiguration would burden them as well). On second thought: The issue is “racial” if the policy benefits primarily a racial minority and “ ‘[is] designed for that purpose,’ ” *post*, at 1675. This is the standard *Seattle* purported to apply. But under that standard, § 26 does not affect a “racial issue,” because under *Grutter v. Bollinger*, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003), race-based admissions policies may not constitutionally be “designed for [the] purpose,” *Seattle*, *supra*, at 472, 102 S.Ct. 3187, of benefitting primarily racial minorities, but must be designed for the purpose of achieving educational benefits for students of all races, *Grutter*, *supra*, at 322–325, 123 S.Ct. 2325. So the dissent must mean that an issue is “racial” so long as the policy in question has the incidental effect (an effect not flowing from its design) of benefiting primarily racial minorities.
- 5 And how many members of a particular racial group must take the same position on an issue before we suppose that the position is in the *entire group*’s interest? Not *every* member, the dissent suggests, *post*, at 1675. Beyond that, who knows? Five percent? Eighty-five percent?
- 6 The dissent proves my point. After asserting—without citation, though I and many others of all races deny it—that it is “common-sense reality” that affirmative action benefits racial minorities, *post*, at 1660, the dissent suggests throughout, *e.g.*, *post*, at 1667 – 1668, that that view of “reality” is so necessarily shared by members of racial minorities that they *must* favor affirmative action.
- 7 The dissent contends, *post*, at 1672, that this point “ignores the obvious: Discrimination against an individual occurs because of that individual’s membership in a particular group.” No, I do not ignore the obvious; it is the dissent that misses the point. Of course discrimination against a group constitutes discrimination against each member of that group. But since it is persons and not groups that are protected, one cannot say, as the dissent would, that the Constitution prohibits discrimination against minority groups, but not against majority groups.
- 8 Cf., *e.g.*, Ackerman, *Beyond Carolene Products*, 98 Harv. L.Rev. 713, 723–724 (1985) (“Other things being equal, ‘discreteness and insularity’ will normally be a source of enormous bargaining advantage, not disadvantage, for a group engaged in pluralist American politics. Except for special cases, the concerns that underlie *Carolene* should lead judges to protect groups that possess the opposite characteristic from the ones *Carolene* emphasizes—groups that are ‘anonymous and diffuse’ rather than ‘discrete and insular’ ”).

9 The dissent thinks I do not understand its argument. Only when amending Michigan’s Constitution violates *Hunter–Seattle*, it says, is that constitutionally prescribed activity necessarily not part of the State’s existing political process. *Post*, at 1662 – 1663, n. 7. I understand the argument quite well; and see quite well that it begs the question. Why is Michigan’s action here unconstitutional? Because it violates *Hunter–Seattle*. And why does it violate *Hunter–Seattle*? Because it is not part of the State’s existing political process. And why is it not part of the State’s existing political process? Because it violates *Hunter–Seattle*.

10 According to the dissent, *Hunter–Seattle* fills an important doctrinal gap left open by *Washington v. Davis*, since *Hunter–Seattle* ‘s rule—unique among equal-protection principles—makes clear that “the majority” may not alter a political process with the goal of “prevent[ing] minority groups from partaking in that process on equal footing.” *Post*, at 1669. Nonsense. There is no gap. To “manipulate the ground rules,” *post*, at 1670, or to “ri[g] the contest,” *post*, at 1670, in order to harm persons because of their race is to deny equal protection under *Washington v. Davis*.

11 And doubly shameful to equate “the majority” behind § 26 with “the majority” responsible for Jim Crow. *Post*, at 1651 – 1652 (SOTOMAYOR, J., dissenting).

1 I of course do not mean to suggest that Michigan’s voters acted with anything like the invidious intent, see n. 8, *infra*, of those who historically stymied the rights of racial minorities. Contra, *ante*, at 1648, n. 11 (SCALIA, J., concurring in judgment). But like earlier chapters of political restructuring, the Michigan amendment at issue in this case changed the rules of the political process to the disadvantage of minority members of our society.

2 Although the term “affirmative action” is commonly used to describe colleges’ and universities’ use of race in crafting admissions policies, I instead use the term “race-sensitive admissions policies.” Some comprehend the term “affirmative action” as connoting intentional preferential treatment based on race alone—for example, the use of a quota system, whereby a certain proportion of seats in an institution’s incoming class must be set aside for racial minorities; the use of a “points” system, whereby an institution accords a fixed numerical advantage to an applicant because of her race; or the admission of otherwise unqualified students to an institution solely on account of their race. None of this is an accurate description of the practices that public universities are permitted to adopt after this Court’s decision in *Grutter v. Bollinger*, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003). There, we instructed that institutions of higher education could consider race in admissions in only a very limited way in an effort to create a diverse student body. To comport with *Grutter*, colleges and universities must use race flexibly, *id.*, at 334, 123 S.Ct. 2325, and must not maintain a quota, *ibid*. And even this limited sensitivity to race must be limited in time, *id.*, at 341–343, 123 S.Ct. 2325, and must be employed only after “serious, good faith consideration of workable race-neutral alternatives,” *id.*, at 339, 123 S.Ct. 2325. *Grutter*-compliant admissions plans, like the ones in place at Michigan’s institutions, are thus a far cry from affirmative action plans that confer preferential treatment intentionally and solely on the basis of race.

3 In *Crawford*, the Court confronted an amendment to the California Constitution prohibiting state courts from mandating pupil assignments unless a federal court would be required to do so under the Equal Protection Clause. We upheld the amendment as nothing more than a repeal of existing legislation: The standard previously required by California went beyond what was federally required; the amendment merely moved the standard back to the federal baseline. The Court distinguished the amendment from the one in *Seattle* because it left the rules of the political game unchanged. Racial minorities in *Crawford*, unlike racial minorities in *Seattle*, could still appeal to their local school districts for relief.

The *Crawford* Court distinguished *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969), by clarifying that the charter amendment in *Hunter* was “something more than a mere repeal” because it altered the framework of the political process. 458 U.S., at 540, 102 S.Ct. 3211. And the *Seattle* Court drew the same distinction when it held that the initiative “work[ed] something more than the ‘mere repeal’ of a desegregation law by the political entity that created it.” 458 U.S., at 483, 102 S.Ct. 3187.

4 Justice SCALIA accuses me of crafting my own version (or versions) of the racial-focus prong. See *ante*, at 1643, n. 4 (opinion concurring in judgment). I do not. I simply apply the test announced in *Seattle*: whether the policy in question “inures primarily to the benefit of the minority.” 458 U.S., at 472, 102 S.Ct. 3187. Justice SCALIA ignores this analysis, see Part II–B–1, *supra*, and instead purports to identify three versions of the test that he thinks my opinion advances. The first—whether “ ‘the policy in question benefits only a racial minority,’ ” *ante*, at 1643, n. 4 (quoting *supra*, at 1641 – 1642)—misunderstands the doctrine and misquotes my opinion. The racial-focus prong has never required a policy to benefit *only* a minority group. The sentence from which Justice SCALIA appears to quote makes the altogether different point that the political-process doctrine is obviously not implicated in the first place by a restructuring that burdens members of society equally. This is the second prong of the political-process doctrine. See *supra*, at 1641 – 1642 (explaining that the political-process doctrine is implicated “[w]hen the majority reconfigures the political process in a manner that burdens only a racial minority”). The second version—which asks whether a policy “benefits *primarily* a racial minority,” *ante*, at 1643, n. 4—is the one articulated by the *Seattle* Court and, as I have explained, see *supra*, at 1647 and this page, it is easily met in this case. And the third—whether the policy has “the incidental effect” of benefitting racial minorities,” *ante*, at 1643, n. 4—is not a test I advance at all.

- 5 By stripping the governing boards of the authority to decide whether to adopt race-sensitive admissions policies, the majority removed the decision from bodies well suited to make that decision: boards engaged in the arguments on both sides of a matter, which deliberate and then make and refine “considered judgment[s]” about racial diversity and admissions policies, see *Grutter*, 539 U.S., at 387, 123 S.Ct. 2325 (KENNEDY, J., dissenting).
- 6 In the face of this overwhelming evidence, Justice SCALIA claims that it is actually easier, not harder, for minorities to effectuate change at the constitutional amendment level than at the board level. See *ante*, at 1644 – 1645 (opinion concurring in judgment) (“voting in a favorable board (each of which has eight members) at the three major public universities requires electing by majority vote at least 15 different candidates, several of whom would be running during different election cycles”). This claim minimizes just how difficult it is to amend the State Constitution. See *supra*, at 1660 – 1662. It is also incorrect in its premise that minorities must elect an entirely new slate of board members in order to effectuate change at the board level. Justice SCALIA overlooks the fact that minorities need not elect any new board members in order to effect change; they may instead seek to persuade existing board members to adopt changes in their interests.
- 7 I do not take the position, as Justice SCALIA asserts, that the process of amending the Michigan Constitution is not a part of Michigan’s existing political process. See *ante*, at 1645 – 1647 (opinion concurring in judgment). It clearly is. The problem with § 26 is not that “amending Michigan’s Constitution is simply not a part of that State’s ‘existing political process.’ ” *Ante*, at 1632 – 1633. It is that § 26 reconfigured the political process in Michigan such that it is now more difficult for racial minorities, and racial minorities alone, to achieve legislation in their interest. Section 26 elevated the issue of race-sensitive admissions policies, and not any other kinds of admissions policies, to a higher plane of the existing political process in Michigan: that of a constitutional amendment.
- 8 It certainly is fair to assume that some voters may have supported the *Hunter* amendment because of discriminatory animus. But others may have been motivated by their strong beliefs in the freedom of contract or the freedom to alienate property. Similarly, here, although some Michiganders may have voted for § 26 out of racial animus, some may have been acting on a personal belief, like that of some of my colleagues today, that using race-sensitive admissions policies in higher education is unwise. The presence (or absence) of invidious discrimination has no place in the current analysis. That is the very purpose of the political-process doctrine; it operates irrespective of discriminatory intent, for it protects a process-based right.
- 9 The plurality relies on Justice BREYER’s dissent in *Parents Involved* to conclude that “one permissible reading of the record was that the school board had maintained policies to perpetuate racial segregation in the schools.” *Ante*, at 1633. Remarkably, some Members of today’s plurality criticized Justice BREYER’S reading of the record in *Parents Involved* itself. See 551 U.S., at 736, 127 S.Ct. 2738.
- 10 Under the bylaws of the University of Michigan’s Board of Regents, “[a]ny and all delegations of authority made at any time and from time to time by the board to any member of the university staff, or to any unit of the university may be revoked by the board at any time, and notice of such revocation shall be given in writing.” Bylaws § 14.04, online at <http://www.regents.umich.edu/bylaws>.
- 11 Attempts by the majority to make it more difficult for the minority to exercise its right to vote are, sadly, not a thing of the past. See *Shelby County v. Holder*, 570 U.S. —, —, 133 S.Ct. 2612, 2626–2627, 186 L.Ed.2d 651 (2013) (GINSBURG, J., dissenting) (describing recent examples of discriminatory changes to state voting laws, including a 1995 dual voter registration system in Mississippi to disfranchise black voters, a 2000 redistricting plan in Georgia to decrease black voting strength, and a 2003 proposal to change the voting mechanism for school board elections in South Carolina). Until this Court’s decision last Term in *Shelby County*, the preclearance requirement of § 5 of the Voting Rights Act of 1965 blocked those and many other discriminatory changes to voting procedures.
- 12 Preserving the right to participate meaningfully and equally in the process of government is especially important with respect to education policy. I do not mean to suggest that “the constitutionality of laws forbidding racial preferences depends on the policy interest at stake.” *Ante*, at 1636 (plurality opinion). I note only that we have long recognized that “ ‘education ... is the very foundation of good citizenship.’ ” *Grutter*, 539 U.S., at 331, 123 S.Ct. 2325 (quoting *Brown v. Board of Education*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954)). Our Nation’s colleges and universities “represent the training ground for a large number of our Nation’s leaders,” and so there is special reason to safeguard the guarantee “ ‘that public institutions are open and available to all segments of American society, including people of all races and ethnicities.’ ” 539 U.S., at 331–332, 123 S.Ct. 2325.
- 13 The Court invalidated Amendment 2 on the basis that it lacked any rational relationship to a legitimate end. It concluded that the amendment “impose[d] a broad and undifferentiated disability on a single named group,” and was “so discontinuous with the reasons offered for it that [it] seem[ed] inexplicable by anything but animus toward the class it affect[ed].” *Romer*, 517 U.S., at 632, 116 S.Ct. 1620.
- 14 The plurality raises another concern with respect to precedent. It points to decisions by the California Supreme Court and the United States Court of Appeals for the Ninth Circuit upholding as constitutional Proposition 209, a California constitutional amendment

identical in substance to § 26. *Ante*, at 1635 – 1636. The plurality notes that if we were to affirm the lower court’s decision in this case, “those holdings would be invalidated....” *Ibid*. I fail to see the significance. We routinely resolve conflicts between lower courts; the necessary result, of course, is that decisions of courts on one side of the debate are invalidated or called into question. I am unaware of a single instance where that (inevitable) fact influenced the Court’s decision one way or the other. Had the lower courts proceeded in opposite fashion—had the California Supreme Court and Ninth Circuit invalidated Proposition 209 and the Sixth Circuit upheld § 26—would the plurality come out the other way?

15 In 1973, the Law School graduated 41 black students (out of a class of 446) and the first Latino student in its history. App. in *Grutter v. Bollinger*, O.T. 2002, No. 02–241, p. 204. In 1976, it graduated its first Native American student. *Ibid*. On the whole, during the 1970’s, the Law School graduated 262 black students, compared to 9 in the previous decade, along with 41 Latino students. *Ibid*.

16 These percentages include enrollment statistics for black students, Hispanic students, Native American students, and students who identify as members of two or more underrepresented minority groups.

17 This chart is reproduced from Fessenden and Keller, How Minorities Have Fared in States with Affirmative Action Bans, N.Y. Times, June 24, 2013, online at <http://www.nytimes.com/interactive/2013/06/24/us/affirmative-action-bans.html>.

18 *Ibid*.

19 *Ibid*.

20 This chart is reproduced from Phillips, Colleges Straining to Restore Diversity: Bans on Race-Conscious Admissions Upend Racial Makeup at California Schools, Wall Street Journal, Mar. 7, 2014, p. A3.

No. 02-241

IN THE
Supreme Court of the United States

BARBARA GRUTTER, for herself and all others similarly situated,
Petitioner,

v.

LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, and the
BOARD OF REGENTS OF THE UNIVERSITY OF
MICHIGAN, *et al.*,
Respondents,

and

KIMBERLY JAMES, *et al.*,
Respondents.

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

**BRIEF OF THE AMERICAN BAR ASSOCIATION
AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS**

A. P. CARLTON
Counsel of Record
PRESIDENT
AMERICAN BAR ASSOCIATION
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5215

Of Counsel:
Paul M. Dodyk
Rowan D. Wilson
Avram E. Luft
Katherine S. Bromberg

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
I. THIS COURT HAS SANCTIONED THE USE OF RACE-CONSCIOUS ADMISSIONS POLICIES BY INSTITUTIONS OF HIGHER EDUCATION SINCE 1978	5
II. ENSURING FULL MINORITY PARTICIPATION IN OUR LEGAL INSTITUTIONS IS A COMPELLING STATE INTEREST	7
A. Full Participation by Racial and Ethnic Minorities in the Legal Profession is Necessary to Ensure Adequate Representation of Minority Interests	7
B. Full Participation by Racial and Ethnic Minorities in the Legal Profession is Necessary to Ensure the Legitimacy of Our Democracy	13
C. Race-Conscious Admissions Are Essential to Increasing Minority Representation in the Legal System	18

	Page
III. PUBLIC LAW SCHOOLS HAVE A COMPELLING INTEREST IN ENSURING THAT RACIAL AND ETHNIC MINORITIES RECEIVE A LEGAL EDUCATION.	21
CONCLUSION	25

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Adarand Constructors, Inc. v. Pena</i> , 515 U.S. 200 (1995)	6-7
<i>Arizona v. Rumsey</i> , 467 U.S. 203 (1984)	6-7
<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986)	14
<i>Browder v. Gayle</i> , 142 F. Supp. 707 (D.C. Ala. 1956), <i>aff'd</i> , 352 U.S. 903 (1956)	9
<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954) ...	11, 24
<i>Dickerson v. United States</i> , 530 U.S. 428 (2000)	6-7
<i>Easley v. Cromartie</i> , 532 U.S. 234 (2001)	14
<i>Epps v. Carmichael</i> , 93 F. Supp. 327 (M.D.N.C. 1950)	2-3
<i>Georgia v. McCollum</i> , 505 U.S. 42 (1992)	14
<i>Hopwood v. Texas</i> , 78 F.3d 932 (5th Cir. 1996)	19, 20

<i>Korematsu v. United States</i> , 323 U.S. 214 (1944)	9
<i>McLaurin v. Okla. State Regents for Higher Educ.</i> , 339 U.S. 637 (1950)	12
<i>Missouri ex. rel. Gaines v. Canada</i> , 305 U.S. 337 (1938)	11-12
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989)	13-14
<i>Peters v. Kiff</i> , 407 U.S. 493 (1972)	8-9
<i>Planned Parenthood v. Casey</i> , 505 U.S. 833 (1992)	6-7
<i>Powers v. Ohio</i> , 499 U.S. 400 (1991)	14
<i>Regents of the Univ. of Cal. v. Bakke</i> , 483 U.S. 265	<i>in Passim</i>
<i>Rose v. Mitchell</i> , 443 U.S. 545 (1979)	14
<i>Sweatt v. Painter</i> , 339 U.S. 629 (1950)	12
<i>United States v. Johnson</i> , 323 U.S. 273 (1944) .	13

Constitutional Provisions:

Cal. Const. art. IX, § 1	21
Cal. Const. art. I § 31, cl. a	19
Idaho Const. art. IX, § 1	21
Ind. Const. art. VIII, § 1	21
Me. Const. pt. 1, art. VIII, § 1	21
Mass. Const. pt. 2, C. 5, § 2	21

Mich. Const. art. VIII, § 1	21
Minn. Const. art. XIII, § 1	21
Mo. Const. art. IX, § 1(a)	21
N.H. Const. pt. 2, art. 83	21
N.D. Const. art. VIII, § 1	21
R.I. Const. art. XII, § 1	21
S.D. Const. art. VIII, § 1	21
Tex. Const. art. VII, § 1	21

Miscellaneous:

ABA Comm'n on Racial and Ethnic Diversity in the Profession, <i>Goal IX Report 2000- 2001</i> (2001)	3
Amer, Mildred L., The Library of Congress, <i>Membership of the 107th Congress: A Profile</i> (2001)	8
American Bar Association, <i>ABA Policy and Procedures Handbook</i> (2001)	1
American Bar Association, <i>Achieving Justice in a Diverse America: Summit on Racial & Ethnic Bias in the Justice System</i> (1994)	3
American Bar Association, <i>68 Annual Report of the American Bar Association</i> (1943)	2
American Bar Association, <i>Legal Education and Bar Admission Statistics, 1963-2001, at http://www.abanet.org/legaled/statistics/le_ bastats.html (last visited Feb. 7, 2003)</i>	18

American Bar Association, <i>Minority Degrees Awarded (by ethnic group) 1980-2001</i> , at http://www.abanet.org/legaled/statistics/minidegrees.html (last visited Feb. 10, 2003)	18-19
American Bar Association, <i>Minority Enrollment 1971-2001</i> , at http://www.abanet.org/legaled/statistics/ministats.html (last visited Feb. 10, 2003) . . .	18
American Bar Association, <i>Report of the Task Force on the Bakke Decision</i> (1978)	2
American Bar Association, <i>Standards for Approval of Law Schools</i> (2000 ed.)	2, 20
Bowen, William G. & Bok, Derek, <i>The Shape of the River</i> (1998)	18
Bragg, Rick, <i>38 Years Later, Last of Suspects is Convicted in Church Bombing</i> , N.Y. Times, May 23, 2002, at A1	11
Britt, Donna, <i>One Woman's Unending Pain, Another's Silence</i> , Wash. Post, Jan. 10, 2003, at B01	11
Burns, Kenneth J., Jr., <i>C.L.E.O.: Friend of Disadvantaged Minority Law Students</i> , 61 A.B.A. J. 1483 (1975)	2
Carter, Terry, <i>Divided Justice</i> , 85 A.B.A. J. 42 (Feb. 1999)	17
Chambliss, Elizabeth, American Bar Association, <i>Miles to Go 2000: Progress of Minorities in the Legal Profession</i> (2000) . .	19

<i>Cincinnati Officer is Acquitted in Killing that Ignited Unrest</i> , N.Y. Times, Sept. 27, 2001, at A14	15-16
Cummings, Judith, <i>Detroit Asian-Americans Protest Lenient Penalties for Murder</i> , N.Y. Times, Apr. 26, 1983, at A16	15-16
de Tocqueville, Alexis, 1 <i>Democracy in America</i> (Vintage Books 1990) (1835)	15
Dreifus, Claudia, <i>The Widow Gets Her Verdict</i> , N.Y. Times, Nov. 27, 1994, § 6 (Magazine), at 69	11
Du Bois, W.E.B., <i>The Souls of Black Folk</i> (Bantam 1989) (1903)	15
<i>Federalist, The</i> , No. 39 (James Madison) (Jacob E. Cook ed., 1961) (1788)	13
Gibson, Campbell & Jung, Kay, U.S. Dep't of Commerce, <i>Historical Census Statistics on Population Totals by Race, 1790-1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions and States</i> (2002) available at http://www.census.gov/population/www/documentation/twps0056.html (last visited Feb. 10, 2003)	11
Gray, Fred D, <i>Civil Rights -- Past, Present and Future, Part II</i> , 64 Ala. Law. 8 (2003) ..	9
Greenberg, Jack, <i>In Memoriam -- Marvin E. Frankel</i> , 102 Colum. L. Rev. 1743 (2002) ...	9
Griswold, Erwin N., <i>Some Observations on the DeFunis Case</i> , 75 Colum. L. Rev. 512 (1975)	13

Herbert, Bob, <i>Kafka in Tulia</i> , N.Y. Times, July 29, 2002, at A19	15-16
Herbert, Bob, <i>The Latest From Tulia</i> , N.Y. Times, Dec. 26, 2002, at A39	15-16
Higginbotham, Leon. A., Jr., <i>Seeking Pluralism in Judicial Systems: The American Experience and the South African Challenge</i> , 42 Duke L.J. 1028 (1993)	10
Jacobs, Michelle S., <i>People from the Footnotes: The Missing Element in Client- Centered Counseling</i> , 27 Golden Gate U. L. Rev. 345 (1997)	12-13
Kidder, William C., <i>The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admission, 1950-2000</i> , 19 Harv. Black Letter L.J. (forthcoming spring 2003)	11,12, 19-20
Knapp, Kiyoko Kamio, <i>Disdain of Alien Lawyers: History of Exclusion</i> , 7 Seton Hall Const. L.J. 103 (1996)	12-13
Lyles, Kevin L., <i>The Gatekeepers: Federal District Courts in the Political Process</i> (1997)	17
Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts, <i>Final Report</i> (1989)	16-17
Myrdal, Gunnar, 2 <i>An American Dilemma: The Negro Problem and Modern Democracy</i> (Transaction Publishers 2000) (1944)	15

National Governors Association, <i>Fast Facts on Governors</i> , at http://www.nga.org/governors/1,1169,C_TRI_VIA^D_2163,00.html (last visited Feb. 6, 2003)	8
New York State Judicial Comm'n on Minorities, <i>Report of the New York State Judicial Comm'n on Minorities</i> , 19 Fordham Urb. L.J. 181 (1992)	16
Newman, Lawrence, ABA Section of Legal Education and Admissions to the Bar, <i>Recommendation on Standard 212 3</i> (1980) .	20-21
O'Connor, Hon. Sandra Day, <i>Thurgood Marshall: The Influence of a Raconteur</i> , 44 Stan. L. Rev. 1217 (1992).	10
Oregon Supreme Court, <i>Report of the Oregon Supreme Court Task Force on Racial/ Ethnic Issues in the Judicial System</i> , 73 Or. L. Rev. 823 (1994)	16
<i>Presidential Occupations at</i> http://members.aol.com/_ht_a/DOWNINDAPARISH2/president.htm (last visited Feb. 6, 2003)	8
Racial Fairness Implementation Task Force of the Supreme Court of Ohio, The, <i>Progress Report</i> (2001)	16
Rottman, David B. and Tomkins, Alan J., <i>Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges</i> , Court Review, Fall 1999	17

Rush, Benjamin, <i>A Plan for the Establishment of Public Schools and the Diffusion of Knowledge in Pennsylvania</i> (1786), reprinted in <i>Essays on Education in the Early Republic</i> (Frederick Rudolph ed., 1965).	22
Sack, Kevin, <i>Despite Report After Report, Unrest Endures in Cincinnati</i> , N.Y. Times, Apr. 16, 2001, at A1	15-16
Schiflett, Kathy, Kentucky Court of Justice, <i>Kentucky's Court of Justice Racial/Ethnic Fairness Task Force and Comm'n Initiatives</i> (2001)	16
<i>Slayer is Acquitted of Civil Rights Violation</i> , N.Y. Times, May 2, 1987, at A28	15-16
Tennessee Supreme Court Comm. to Implement the Recommendations of the Racial and Ethnic Fairness Comm'n and Gender Fairness Comm'n, <i>2001 Annual Report</i> (2001)	16
U.S. Census Bureau, U.S. Dep't of Commerce, <i>Census 2000 Summary File 1</i> , at http://www.census.gov/population/cen2000/phc-t9/tab01.pdf (released Feb. 25, 2002) . . .	18-19
U.S. Census Bureau, U.S. Dep't of Commerce, <i>Demographic Trends in the 20th Century</i> (Nov. 2002)	10, 20
U.S. Census Bureau, U.S. Dep't of Commerce, <i>Statistical Abstract of the United States: 2001</i> (2001).	18

U.S. Census Bureau, U.S. Dep't of Commerce, <i>U.S. Summary: 2000</i> (July 2002) available at http://www.census.gov/prod/2002pubs/ c2kprof00-us.pdf	10, 20
Van Hecke, Maurice T., <i>Racial Desegregation in the Law Schools</i> , 9 J. Legal Educ. 283 (1956)	12
Washington, George, Address to both Houses of Congress (Jan. 8, 1970), in <i>Annals of Cong.</i> 970 (Gales & Seaton ed., 1790)	22
Yamamoto, Eric K., <i>The Color Fault Lines: Asian American Justice from 2000</i> , 8 Asian L.J. 153 (2001)	9

The American Bar Association (“ABA”) respectfully submits this brief as amicus curiae in support of the University of Michigan Law School’s use of race and ethnicity as a factor in making admissions decisions.¹

INTEREST OF THE AMICUS CURIAE

The American Bar Association, with more than 410,000 members, is the leading national membership organization of the legal profession.² The ABA’s primary mission is to serve “the public and the profession by promoting justice, professional excellence and respect for the law.”³

Lawyers play a central role in our system of government. Thus, for the past four decades, the ABA has worked to ensure that members of all racial and ethnic groups in the United States are represented in the legal profession. Such representation is essential to ensure that all citizens, regardless of their race or ethnicity, are able to participate meaningfully and effectively in our legal system’s institutions, which are the foundation of our representative democracy.

¹ This brief has not been authored in whole or in part by counsel for a party and no person or entity, other than amicus, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Written consents to the filing of briefs by amici curiae have been filed in the Office of the Clerk of the Supreme Court by all parties to the proceeding.

² Neither this brief, nor the decision to file it, should be interpreted to reflect the views of any judicial member of the American Bar Association. No inference should be drawn that any member of the Judicial Division Council has participated in the adoption or endorsement of the positions in this brief. This brief was not circulated to any member of the Judicial Division Council prior to filing.

³ American Bar Association, *ABA Policy and Procedures Handbook* 1 (2001).

America's law schools are the portal through which virtually all lawyers must pass. Consequently, the ability of racial and ethnic minorities to participate in our legal system depends upon whether law schools admit them in appreciable numbers. In 1968, the ABA responded to the glaring absence of African-Americans in the legal profession by creating the Council for Legal Education Opportunity (C.L.E.O.) "to encourage and assist qualified persons from minority groups to enter law school and the legal profession."⁴ In response to this Court's 1978 decision in *Regents of the University of California v. Bakke*, 438 U.S. 265, an ABA Task Force was convened to study the continuing under-representation of minorities in the bar and how it should be remedied. That Task Force endorsed "programs at law schools having as their purpose the admission to law school and ultimately to the legal profession of greater numbers of interested but disadvantaged members of minority groups."⁵

Since 1980, the ABA, as the primary accrediting agency for law schools, has required all law schools to demonstrate "a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups, notably racial and ethnic minorities, which have been victims of discrimination in various forms."⁶ It was not always so. Until 1943, the ABA excluded African-Americans from membership.⁷ As late as 1950, a representative of the ABA

⁴ Kenneth J. Burns, Jr., *C.L.E.O.: Friend of Disadvantaged Minority Law Students*, 61 A.B.A. J. 1483, 1483 (1975).

⁵ American Bar Association, *Report of the Task Force on the Bakke Decision* 659 (1978).

⁶ American Bar Association, *Standards for Approval of Law Schools* 36-37, Standard 211 (2000 ed.).

⁷ American Bar Association, 68 *Annual Report of the American Bar Association* 110 (1943).

testified in opposition to an attempt by African-Americans to secure admission to the all-white University of North Carolina School of Law. *See Epps v. Carmichael*, 93 F. Supp. 327, 329 (M.D.N.C. 1950). During this period, the ABA, like much of society, was complicit in the pervasive exclusion of African-Americans from the legal system.

The ABA has made great strides in overcoming its past exclusionary practices. In 1986, the ABA added to its mission Goal IX: “To Promote Full and Equal Participation in the Profession by Minorities [and] Women,”⁸ and created the Commission on Racial and Ethnic Diversity in the Profession, charged with the goal of “achiev[ing] a multi-ethnic, multicultural profession conscious and appreciative of difference and blind to prejudice.”⁹ Following the Rodney King incident, the ABA created the Council on Racial and Ethnic Justice with the goals of aggressively promoting the recruitment and promotion of attorneys of color, establishing mentoring programs for young lawyers of color, emphasizing the hiring of people of color for clerkships and increasing the number of people of color serving on Bar Examination Committees.¹⁰ The ABA’s efforts toward diversifying the profession have benefitted the ABA. Both the President-Elect of the ABA, who becomes President in August 2003, and the President-Elect Nominee, who becomes President in August 2004, are lawyers of color, Dennis W. Archer and Robert J. Grey, Jr., respectively.

Like the ABA, this country has made great strides to remove legal and customary obstacles to the full participation

⁸ ABA Comm’n on Racial and Ethnic Diversity in the Profession, *Goal IX Report 2000-2001* 1 (2001).

⁹ *Id.* at 2.

¹⁰ American Bar Association, *Achieving Justice in a Diverse America: Summit on Racial & Ethnic Bias in the Justice System* 7 (1994).

of racial and ethnic minorities in the institutions of our justice system. Nevertheless, it has been only within the last three decades of American history that members of racial and ethnic minorities have begun to have an appreciable presence in the legal profession. This increase has been due largely to the measured and appropriate use of race-conscious admissions policies by America's leading law schools, spurred by this Court's decision in *Bakke*. Whether these fragile gains are preserved likely will depend upon the decision in this case.

SUMMARY OF THE ARGUMENT

Full participation of all racial and ethnic groups in the legal profession is a compelling state interest. *See* Point II.A., *infra*. Such participation ensures that the distinct voices of all segments of society are heard through effective representation for all people. It also creates a more inclusive legal system which better protects the rights of, and is more accessible to, the population that it governs. Furthermore, the full participation of all racial and ethnic groups in this country's legal profession preserves the legitimacy of our legal system and safeguards the integrity of our democratic government. *See* Point II.B., *infra*.

Because law schools serve as the portal to the legal profession, it is essential that they continue to be permitted to consider race and ethnicity among the myriad of other factors used to determine admissions. Pursuant to this Court's decision in *Bakke*, law schools have adopted race-conscious admissions policies which further the compelling interest of diversifying the legal profession in a manner that is consistent with the Constitution. *See* Point I., *infra*. These race-conscious admissions policies have paved the way for significant growth in the number of lawyers from under-represented racial and ethnic groups. *See* Point II.C., *infra*. Should the Court proscribe these race-conscious admissions programs, the likely result will be a precipitous decline in the

number of lawyers from under-represented racial and ethnic groups. Ironically, that decline would coincide with the rapid growth of minority populations in this country. Such a disparity may foster a perception of illegitimacy of the legal system.

States have powerful and legitimate interests in educating their citizenries to enhance the functioning of, and public support for, their own governments. *See* Point III., *infra*. This Court should give some deference to Michigan's, like other states', decision to adopt constitutionally permissible admissions policies to promote the diffusion of knowledge and to protect and enhance the operation and legitimacy of their own systems of government.

ARGUMENT

The American Bar Association respectfully submits that ensuring the full participation of racial and ethnic minorities in the institutions of the legal system of the United States is a compelling state interest, which clearly justifies the use of race-conscious admissions policies.

I. THIS COURT HAS SANCTIONED THE USE OF RACE-CONSCIOUS ADMISSIONS POLICIES BY INSTITUTIONS OF HIGHER EDUCATION SINCE 1978.

This Court sanctioned the use of race-conscious admissions policies by institutions of higher learning in 1978, when it last addressed the issue in *Bakke*. In the lead opinion, Justice Powell concluded that under the strict scrutiny test race-conscious admissions served a compelling state interest, although they must not be implemented by a rigid quota system which reserves a "fixed number of places" for persons of a particular race or ethnicity. *Bakke*, 438 U.S. at 316. Justice Powell contrasted such unlawful quotas with permissible

policies in which race or ethnicity “may be deemed a ‘plus’ in a particular applicant’s file, [but does] not insulate the individual from comparison with all other candidates for the available seats.” *Id.* at 317.¹¹

In this Court’s most comprehensive recent articulation of the standard for deciding the constitutionality of race-conscious policies, Justice O’Connor, speaking for the Court in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995),¹² endorsed the general approach articulated by Justice Powell, holding that all racial classifications are subject to strict scrutiny and must be justified by a compelling state interest. *Id.* at 227. Justice O’Connor went on to explain that the purpose of strict scrutiny is: “to make sure that a governmental classification based on race . . . is legitimate, before permitting unequal treatment based on race.” *Id.* at 228. She concluded:

Finally, we wish to dispel the notion that strict scrutiny is ‘strict in theory, but fatal in fact.’ The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country, is an unfortunate reality and government is not disqualified from acting in response to it.

Id. at 237 (citation omitted). Over the past quarter century our nation’s law schools, in reliance on *Bakke*, have used race-

¹¹ In announcing the judgment of this Court, Justice Powell was joined by four Justices who sanctioned race-conscious admissions policies “designed to overcome substantial, chronic minority under-representation where there is reason to believe that the evil addressed is a product of past racial discrimination.” *Bakke*, 438 U.S. at 366.

¹² *Adarand* involved a minority set-aside for public construction projects. Such programs are different in kind from race-conscious admissions policies that are used to ensure that racial and ethnic minorities participate in higher education and in the democratic institutions that are fundamental to our government.

conscious admissions policies successfully to foster the inclusion of racial and ethnic minorities in their student bodies.¹³

II. ENSURING FULL MINORITY PARTICIPATION IN OUR LEGAL INSTITUTIONS IS A COMPELLING STATE INTEREST.

The compelling public interest in minority participation in the institutions of our democratic government is beyond dispute. Full participation by racial and ethnic minorities in the institutions of the legal system is especially crucial to our democracy.

A. Full Participation by Racial and Ethnic Minorities in the Legal Profession is Necessary to Ensure Adequate Representation of Minority Interests.

Ensuring that racial and ethnic minorities are members of the legal profession is a compelling state interest. American

¹³ “[A]ny departure from the doctrine of *stare decisis* demands special justification.” *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984); *see also Dickerson v. United States*, 530 U.S. 428, 443 (2000); *Adarand*, 515 U.S. at 231 (1995); *Planned Parenthood v. Casey*, 505 U.S. 833, 864 (1992). To determine the existence of special justifications, the Court looks to reliance on the established rule, the workability of that rule and whether the law or the understanding of society has so changed that the rule is plainly indefensible. *See Dickerson*, 530 U.S. at 443-44; *Casey*, 505 U.S. at 854-55. No such special justifications exist here. Although race-conscious admissions programs are presently a matter of public debate, such debate only underscores the Court’s responsibility to avoid creating the impression that it is withdrawing its past approval in a “surrender to political pressure.” *Casey*, 505 U.S. at 867. “[T]o overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court’s legitimacy beyond any serious question.” *Id.*

society is diverse, and growing more so each year. Full participation in the legal profession by racial and ethnic minorities is a *sine qua non* for the effective functioning of the legal system and for the legitimacy of our system of government. Twenty-four of our nation's forty-two presidents have been lawyers.¹⁴ Twenty-three of our nation's current governors hold law degrees.¹⁵ Lawyers have long been the single largest occupational group in the Congress. In the last session of Congress, 53 senators and 162 representatives were lawyers.¹⁶ At the point where the legal system impinges upon and often determines the fortunes of its citizens, members of the public can speak effectively only through lawyers, and their fate is often determined by the judiciary.

Effective representation of our nation's minorities depends upon their full participation in all of the institutions that comprise our legal system. This is not to say that a person's interests are determined by his or her race or ethnicity. Rather, it means that the interests of minority groups cannot be adequately considered or represented without their participation in meaningful numbers in our legal system.¹⁷

¹⁴ *Presidential Occupations* at http://members.aol.com/_ht_a/DOWNINDAPARISH2/president.htm (last visited Feb. 6, 2003).

¹⁵ National Governors Association, *Fast Facts on Governors*, at http://www.nga.org/governors/1,1169,C_TRIVIA^D__2163,00.html (last visited Feb. 6, 2003).

¹⁶ Mildred L. Amer, The Library of Congress, *Membership of the 107th Congress: A Profile* 3 (2001).

¹⁷ See *Peters v. Kiff*, 407 U.S. 493, 503-04 (1972) (plurality opinion) (“[W]e are unwilling to make the assumption that the exclusion of Negroes has relevance only for issues involving race. When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps

Lawyers, judges and public officials who share a common membership in a minority group typically share a body of experience that is not shared or fully understood by those who are not members of that minority group.¹⁸ It is only through the articulation of these diverse experiences and the ensuing give-and-take within the institutions which comprise our legal system and our democracy that racial and ethnic minority interests can be adequately protected and represented.

unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that its exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case . . .”).

¹⁸ At a time when they numbered fewer than 1,500 throughout the country, it was primarily African-American lawyers who persevered in the decades long litigation required to bring an end to the reign of Jim Crow. Jack Greenberg, the former Director-Counsel of the NAACP Legal Defense Fund, describes how in 1961, he established “lawyer training institutes” for African-American lawyers, because “[a]lmost no southern white lawyers would then handle civil rights cases.” Jack Greenberg, *In Memoriam -- Marvin E. Frankel*, 102 Colum. L. Rev. 1743, 1744 (2002). Fred D. Gray, an African-American attorney for the plaintiffs in *Browder v. Gayle*, 142 F. Supp. 707 (D.C. Ala. 1956), *aff’d*, 352 U.S. 903 (1956), and the current President of the Alabama State Bar, described how his experience riding segregated buses in Montgomery, Alabama, directly led to his decision to study law and his commitment to the litigation which ended segregated busing. He states: “I made a secret pledge that I would become a lawyer, return to Alabama, pass the bar exam, and destroy everything segregated I could find.” Fred D. Gray, *Civil Rights -- Past, Present and Future, Part II*, 64 Ala. Law. 8, 8 (2003). Similarly, Eric Yamamoto describes how he and other Japanese-American lawyers reopened the Japanese internment case of *Korematsu v. United States*, 323 U.S. 214 (1944), despite the advice of former Supreme Court Justice Goldberg to “forget it, you haven’t a chance.” Eric K. Yamamoto, *The Color Fault Lines: Asian American Justice from 2000*, 8 Asian L.J. 153, 154 (2001).

Members of racial and ethnic minorities bring to the bench and bar the unique perspectives that are necessary for effective representation of minority interests. As Justice O'Connor said of former Justice Thurgood Marshall:

Although all of us come to the court with our own personal histories and experiences, Justice Marshall brought a special perspective Justice Marshall imparted not only his legal acumen but also his life experiences, constantly pushing and prodding us to respond not only to the persuasiveness of legal argument but also to the power of moral truth.

Hon. Sandra Day O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 Stan. L. Rev. 1217 (1992). Likewise, Judge Leon Higginbotham, Jr. has recognized the importance of judicial diversity, noting that it "creates a milieu in which the entire judicial system benefits from multi-faceted experiences with individuals who came from different backgrounds."¹⁹

The Census Bureau has recently reported that 86.9 million, or 30.9%, of our nation's population of 281.4 million are members of minority groups²⁰ and that during the last two decades the minority population expanded at eleven times the rate of increase of the majority white population.²¹ Under these circumstances, a legal system that does not reflect and seek the

¹⁹ A. Leon Higginbotham, Jr., *Seeking Pluralism in Judicial Systems: The American Experience and the South African Challenge*, 42 Duke L.J. 1028, 1037 (1993).

²⁰ U.S. Census Bureau, U.S. Dep't of Commerce, *U.S. Summary: 2000* 2, tbl. DP-1 (July 2002) available at <http://www.census.gov/prod/2002pubs/c2kprof00-us.pdf>.

²¹ U.S. Census Bureau, U.S. Dep't of Commerce, *Demographic Trends in the 20th Century* 80 (Nov. 2002) (measuring growth of population in last twenty years).

full participation of America's diverse racial and ethnic minorities works against itself. Yet, for most of our nation's history that was the state of affairs.²²

The virtual absence of African-Americans from America's law schools was not a matter of happenstance.²³ To the contrary, it reflected the official policy for most of our history; African-Americans, until recently the largest racial minority, were excluded as a matter of law from attending law schools of the states in which a majority of them resided. The march of litigation which led to this Court's landmark decisions in *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Bakke*, began in our nation's law schools. Since *Missouri ex. rel.*

²² The Civil Rights movement highlighted the inherent deficiency of an exclusionary white justice system which failed in its basic mission to protect minorities from racial assaults or to punish their perpetrators. See, e.g., Donna Britt, *One Women's Unending Pain, Another's Silence*, Wash. Post, Jan. 10, 2003, at B01; Rick Bragg, *38 Years Later, Last of Suspects is Convicted in Church Bombing*, N.Y. Times, May 23, 2002, at A1; Claudia Dreifus, *The Widow Gets Her Verdict*, N.Y. Times, Nov. 27, 1994, §6 (Magazine), at 69.

²³ In 1950, there were approximately 1450 African-American lawyers in the United States, out of a total of 221,605 lawyers, servicing a population of 150.7 million, 10% of whom were African-Americans. See William C. Kidder, *The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admission, 1950-2000*, 19 Harv. Black Letter L.J. (forthcoming spring 2003) (manuscript at 5); Campbell Gibson & Kay Jung, U.S. Dep't of Commerce, *Historical Census Statistics on Population Totals by Race, 1790-1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions and States Table 1* (2002) available at <http://www.census.gov/population/www/documentation/twps0056.html> (last visited Feb. 10, 2003). In 1960, there were 2,180 African-American lawyers. As recently as 1970, there were only 3,845. Kidder, *supra* (manuscript at 6).

Gaines v. Canada, 305 U.S. 337 (1938), this Court has recognized the importance of the public interest in enabling racial minorities to participate effectively in our legal system. In *Missouri ex. rel. Gaines*, this Court held that the Equal Protection Clause required the State of Missouri to provide a legal education to plaintiff Gaines, an African-American, at the Missouri State Law School because such an education was necessary to enable Mr. Gaines to function effectively as a member of the Missouri bar. *See id.*; *see also Sweatt v. Painter*, 339 U.S. 629 (1950);²⁴ *McLaurin v. Oklahoma State Regents for Higher Educ.*, 339 U.S. 637 (1950). Despite these decisions, as many as one-third of southern state law schools continued to exclude African-Americans in 1956.²⁵ As late as the early 1960s, there were no African-American law students enrolled at the University of Michigan or the University of California at Berkeley or Los Angeles.²⁶

The ABA submits that it is crucial that a client have the ability to choose a lawyer with whom she feels comfortable. This is even more important for racial minorities in light of this country's history of discrimination and racial exclusion. Many marginalized members of society understandably put their trust more readily in lawyers who possess a shared background or heritage.²⁷ It is not simply that the availability of such lawyers

²⁴ In *Sweatt*, the Court rejected as inadequate an all-black law school recently established by the State of Texas, finding that a "law school . . . cannot be effective in isolation from the individuals and institutions with which the law interacts." 339 U.S. at 634.

²⁵ Maurice T. Van Hecke, *Racial Desegregation in the Law Schools*, 9 J. Legal Educ. 283, 285 (1956).

²⁶ *See Kidder, supra* note 23 (manuscript at 8).

²⁷ Social science studies demonstrate that an individual's race affects trust, self-disclosure, and expectations in a relationship where the care-giver is white and the patient or client is African-American. Michelle S. Jacobs,

affects the quality of representation that minority clients receive; it may determine whether that person seeks legal assistance at all. “Effective access to legal representation not only must exist in fact, it must also be perceived by the minority law consumer as existent so that recourse to law for the redress of grievance and the settlement of disputes becomes a realistic alternative to him.”²⁸

B. Full Participation by Racial and Ethnic Minorities in the Legal Profession is Necessary to Ensure the Legitimacy of Our Democracy.

Without effective participation by all segments of society, the legitimacy of our legal system will be imperiled. Our nation’s founders recognized that a legitimate government depends upon the participation of all the people. “It is *essential* to [a republican] government that it be derived from the great body of society, not from . . . a favored class of it”²⁹

In particular, the ability of the judiciary to discharge its constitutional responsibilities “ultimately rests” on “public confidence in it.” *United States v. Johnson*, 323 U.S. 273, 276 (1944); *see also Mistretta v. United States*, 488 U.S. 361, 407

People from the Footnotes: The Missing Element in Client-Centered Counseling, 27 Golden Gate U. L. Rev. 345, 384-91 (1997). Similar studies with Latino, Native-American and Asian-American subjects show similar results. *Id.* at 390. *See also* Kiyoko Kamio Knapp, *Disdain of Alien Lawyers: History of Exclusion*, 7 Seton Hall Const. L.J. 103, 131 (1996) (“Newly-arrived immigrants, faced with cultural and linguistic barriers, may find it especially helpful to retain an advocate who shares their ethnic heritage and has the ability to bridge the culture gap.”).

²⁸ Erwin N. Griswold, *Some Observations on the DeFunis Case*, 75 Colum. L. Rev. 512, 517 (1975).

²⁹ *The Federalist* No. 39, at 251 (James Madison) (Jacob E. Cooke ed., 1961) (1788).

(1989) (“The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship.”). Courts must guard against perceptions that “destroy[] the appearance of justice and thereby cast[] doubt on the integrity of the judicial process.” *Rose v. Mitchell*, 443 U.S. 545, 555-56 (1979).

In its decisions prohibiting the exclusion of minorities from jury service, this Court expressly has recognized the importance of racial inclusiveness to the perceived fairness of the legal system.³⁰ In these cases, the Court has repeatedly held that the perceived fairness of the judicial system rests upon its racial inclusiveness:

[B]e it at the hands of the State or the defense, if a court allows jurors to be excluded because of group bias, [i]t is [a] willing participant in a scheme that could only undermine the very foundation of our system of justice -- our citizens’ confidence in it.

Georgia v. McCollum, 505 U.S. 42, 49-50 (1992) (internal quotations and citations omitted). Similarly, the Court has found in legislative redistricting cases that there is a compelling interest in the legitimacy and functioning of the government. *See Easley v. Cromartie*, 532 U.S. 234 (2001).

³⁰ These cases rest upon two principles of great importance to this case. The first concerns the harm minorities suffer when they are excluded from the “machinery of justice.” *Powers v. Ohio*, 499 U.S. 400, 406, 410 (1991) (discussing “stigma or dishonor” of inability to participate in justice system). The second is that public confidence in the courts depends upon avoiding the perception of unfairness that results from lack of participation. In *Powers*, the Court concluded that discrimination in jury selection undermines public confidence in the administration of justice and “invites cynicism” regarding the impartiality of the system. *Id.* at 412; *see also Batson v. Kentucky*, 476 U.S. 79, 87 (1986) (“The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community.”).

Unfortunately, many minorities perceive the justice system as exclusionary and unfair; for much of our history, that has been true. As Alexis de Tocqueville observed many years ago:

[O]ppressed [African-Americans] may bring an action at law, but they will find none but whites among their judges and although they may legally serve as jurors, prejudice repels them from that office.³¹

The perception of legal oppression and the reality that caused it has endured through the years. As W.E.B. Du Bois observed at the beginning of the twentieth century, “[t]he Negro is coming more and more to look upon law and justice, not as protecting safeguards, but as sources of humiliation and oppression.”³² Half a century later, Gunnar Myrdal observed such distrust to be a continuing reality:

The Negroes, on their side, are hurt in their trust that the law is impartial, that the court and the police are their protection, and, indeed, that they belong to an orderly society which has set up this machinery for common security and welfare. They will not feel confidence in, and loyalty toward, a legal order which is entirely out of their control and which they sense to be inequitable and merely part of the system of caste suppression.³³

The consequence of this unfortunate history is that many people today still question whether our legal system can deliver justice to racial and ethnic minorities.³⁴ The State of Michigan,

³¹ 1 Alexis de Tocqueville, *Democracy in America* 359 (Vintage Books 1990) (1835).

³² W.E.B. Du Bois, *The Souls of Black Folk* 123 (Bantam 1989) (1903).

³³ Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* 525 (Transaction Publishers 2000) (1944).

³⁴ Recent history has continued to provide examples of troubling court results that shake the confidence of racial and ethnic minorities in our justice

where this case arose, has confronted that troubling fact. In 1987, the Michigan Supreme Court appointed a task force to study racial, gender and ethnic bias, motivated by the belief of “a disturbing percentage of citizens . . . that bias exists in the Michigan Court system.”³⁵ Other state courts and federal circuits have reached similar conclusions and made similar recommendations.³⁶

The *Michigan Report* authored by the Task Force emphasized that “[n]o segment of society is so strategically positioned to attack minority problems as the legal profession.”³⁷ The Task Force examined the representation of

system. See, e.g., Bob Herbert, *The Latest From Tulia*, N.Y. Times, Dec. 26, 2002, at A39; Bob Herbert, *Kafka in Tulia*, N.Y. Times, July 29, 2002, at A19; *Cincinnati Officer is Acquitted in Killing That Ignited Unrest*, N.Y. Times, Sept. 27, 2001, at A14; Kevin Sack, *Despite Report After Report, Unrest Endures in Cincinnati*, N.Y. Times, Apr. 16, 2001, at A1; *Slayer is Acquitted of Civil Rights Violation*, N.Y. Times, May 2, 1987, at A28; Judith Cummings, *Detroit Asian-Americans Protest Lenient Penalties for Murder*, N.Y. Times, Apr. 26, 1983, at A16.

³⁵ Michigan Supreme Court Task Force on Racial/Ethnic Issues in the Courts, *Final Report 2* (1989) (hereinafter *Michigan Report*).

³⁶ See, e.g., The Racial Fairness Implementation Task Force of the Supreme Court of Ohio, *Progress Report 4* (2001); Kathy Schiflett, Kentucky Court of Justice, *Kentucky’s Court of Justice Racial/ Ethnic Fairness Task Force and Comm’n Initiatives 2* (2001); Tennessee Supreme Court Comm. to Implement the Recommendations of the Racial and Ethnic Fairness Comm’n and Gender Fairness Comm’n, *2001 Annual Report* (2001); Oregon Supreme Court, *Report of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System*, 73 Or. L. Rev. 823, 843, 917 (1994); New York State Judicial Comm’n on Minorities, *Report of the New York State Judicial Comm’n on Minorities*, 19 Fordham Urb. L.J. 181 (1992).

³⁷ See *Michigan Report*, *supra* note 35, at 1.

minorities in the institutions which comprised the Michigan legal system and found that the “absence of representative numbers of minorities in these [legal] positions affects the confidence in and effectiveness of the system.”³⁸ The Task Force found that “[m]inority presence is inadequate . . . on the benches of the State.”³⁹ The Task Force concluded:

[t]he inclusion and success of minority attorneys in every facet of the legal profession is essential to the appearance of fairness in the administration of justice, and is an indication of the treatment that other minority participants may expect to receive from that same system.⁴⁰

A recent public opinion survey confirmed generally the findings of the Michigan Task Force. The survey found that 68% of African-Americans said that African-Americans were treated worse in the court system than whites; 43% of whites and 42% of Hispanics agreed.⁴¹ Even within the bar, one survey found that 92% of African-American lawyers believe the justice system is as racially biased as other segments of society⁴² and less than 18% of African-American federal judges believe that the justice system treats African-Americans fairly.⁴³

³⁸ *Id.* at 67.

³⁹ *Id.*

⁴⁰ *Id.* at 57.

⁴¹ David B. Rottman & Alan J. Tomkins, *Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges*, Court Review, Fall 1999, at 24, 26.

⁴² Terry Carter, *Divided Justice*, 85 A.B.A. J. 42, 43 (Feb. 1999).

⁴³ Kevin L. Lyles, *The Gatekeepers: Federal District Courts in the Political Process* 237 (1997).

C. Race-Conscious Admissions Are Essential to Increasing Minority Representation in the Legal System.

In 1965, barely one percent of law students in America were African-American.⁴⁴ It was at this time that Dean Erwin Griswold launched an effort to increase African-American access to Harvard Law School, including the use of race-conscious admissions criteria.⁴⁵ This strategy subsequently was adopted by other law schools and African-American and other minority enrollment at America's law schools began to rise in the late 1960s.

By 1971, 4.8% of the law student population was African-American and 1.48% was Hispanic.⁴⁶ Between 1980 and 2000, the impact of race-conscious admissions standards was felt by the legal profession. African-American participation in the legal profession increased from 2.7% to 5.7%, while Hispanic participation increased from 1% to 4.1%.⁴⁷ The trend of increasing African-American participation in our nation's law schools halted in 1998 when 2,943 degrees were awarded and has fallen in the years since.⁴⁸ At the same time, the number of

⁴⁴ William G. Bowen & Derek Bok, *The Shape of the River* 5 (1998).

⁴⁵ *Id.*

⁴⁶ American Bar Association, *Minority Enrollment 1971-2001*, at <http://www.abanet.org/legaled/statistics/ministats.html> (last visited Feb. 10, 2003) (data cited reflects 1971 school year); American Bar Association, *Legal Education and Bar Admission Statistics, 1963-2001*, at http://www.abanet.org/legaled/statistics/le_bastats.html (last visited Feb. 7, 2003) (data reflects 1971 school year).

⁴⁷ U.S. Census Bureau, U.S. Dep't of Commerce, *Statistical Abstract of the United States: 2001* 380 (2001).

⁴⁸ American Bar Association, *Minority Degrees Awarded (by ethnic group) 1980-2001*, at <http://www.abanet.org/legaled/statistics/>

African-American and Hispanic citizens has risen to nearly 25% of the 281.4 million people living in the United States.⁴⁹

While the nation's law schools have made great strides in increasing minority participation in the legal profession since 1970, minorities are still not full participants in the legal profession.⁵⁰ But it is unquestionable that the improvement in minority participation in our law schools, and thus in our legal system, has been achieved largely by the use of race-conscious admissions policies such as those under attack here.

During the late 1990s, as demand for legal education rose, interested parties sought judicial and legislative intervention to prohibit the use of race-conscious admissions policies. They succeeded in Texas with the Fifth Circuit's decision in *Hopwood v. Texas*, 78 F.3d 932 (5th. Cir. 1996), and in California with Proposition 209.⁵¹ In the wake of those developments, the law schools of Texas and California were forced to abandon their race-conscious admissions policies. The results were dramatic.

At the University of California Law School at Berkeley, African-American enrollment fell from more than twenty-three students per class in the four years preceding Proposition 209

minidegrees.html (last visited Feb. 10, 2003).

⁴⁹ U.S. Census Bureau, U.S. Dep't of Commerce, *Census 2000 Summary File 1*, at <http://www.census.gov/population/cen2000/phc-t9/tab01.pdf> (released Feb. 25, 2002).

⁵⁰ In most cities, less than three percent of law partners are minorities, who are often "partners without power", clustered at the bottom of firm management and compensation structures; only 2-8 percent of general counsel in the Fortune 500 companies are minorities. Elizabeth Chambliss, American Bar Association, *Miles to Go 2000: Progress of Minorities in the Legal Profession* vi (2000).

⁵¹ Cal. Const. art. I, § 31, cl. a (amended 1996).

to fewer than eight students per class, accounting for about 2% of the Law School's average enrollment, in the four years following.⁵² At the University of Texas Law School, African-American enrollment fell from somewhat over thirty-three students per class in the four years preceding *Hopwood* to fewer than eleven students per class, again accounting for somewhat less than 2% of the law school's average enrollment, in the four years following.⁵³

The ABA respectfully submits that the reduction in minority enrollment that would result from an abandonment of the policies embraced by *Bakke*, as evidenced by recent experience in Texas and California, would undo much of what has been accomplished in the last several decades. A precipitous decline in minority participation in the institutions of our legal system, particularly while minority populations are rapidly increasing,⁵⁴ would damage access by minorities to our legal system, undermine the effectiveness of minority representation and erode the legitimacy of the legal system, which rests upon public perception of inclusivity and fairness.

For that reason, the ABA, as part of its accreditation process, requires law schools to demonstrate a "commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups, notably ethnic and racial minorities, which have been victims of discrimination in various forms."⁵⁵ The ABA's commitment, and the similar commitment by law schools, to consider race as one of many factors affecting admissions decisions rests on its firmly-held "belief that diversity in the student body and the

⁵² Kidder, *supra* note 23 (manuscript at 31-32).

⁵³ *Id.*

⁵⁴ See *supra* text accompanying notes 20-21.

⁵⁵ American Bar Association, *Standards for Approval of Law Schools*, Standard 211 (2000 ed.).

legal profession is important both to a meaningful legal education and to meet the needs of a pluralistic society and profession.”⁵⁶

III. PUBLIC LAW SCHOOLS HAVE A COMPELLING INTEREST IN ENSURING THAT RACIAL AND ETHNIC MINORITIES RECEIVE A LEGAL EDUCATION.

The constitutions of our nation’s fifty states recognize the fundamental importance of education to our republican form of government and impose a duty upon the states to provide public education for their citizens and to ensure that such education is extended to all segments of society. Many of our state constitutions explicitly recognize that universal public education is necessary because “[a] general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people” Cal. Const. art IX, § 1. To the same effect, *see* Ind. Const. art. VIII, § 1; Me. Const. art. VIII, § 1; Mass. Const. pt. 2, C. 5, § 2; Mo. Const. art. IX, § 1(a); N.H. Const. pt. 2 art. 83; R. I. Const. art. XII, § 1; Tex. Const. art. VII, § 1.

Other constitutions proclaim that because “[t]he stability of a republican form of government depend[s] mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools.” Minn. Const. art. XIII, § 1; *see also* Idaho Const. art. IX, § 1; S.D. Const. art. VIII, § 1; N.D. Const. art. VIII, § 1. The Michigan Constitution provides that “knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” Mich. Const. art. VIII, § 1.

⁵⁶ Lawrence Newman, ABA Section of Legal Education and Admissions to the Bar, *Recommendation on Standard 212* 3 (1980).

The diffusion of knowledge is the goal of public education generally. George Washington, an ardent supporter of a national university to educate citizens from all parts of the country and from all backgrounds, said:

Knowledge is in every country the surest basis of public happiness. . . . To the security of a free Constitution it contributes in various ways: by convincing those who are entrusted with the public administration, that every valuable end of Government is best answered by the enlightened confidence of the people and by teaching the people themselves to know, and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority.⁵⁷

Benjamin Rush, another eighteenth century proponent of public education, said of the importance of the diffusion of knowledge, “where knowledge is confined to a few people, we always find monarchy, aristocracy, and slavery.”⁵⁸

The diffusion of knowledge through state institutions of higher education must extend to all racial and ethnic groups to help ensure our democracy. Among the many subjects of public education, knowledge of law is of primary importance. Legal education perpetuates the rule of law, upon which the very legitimacy of all governmental decisions depends. Accordingly, when a state such as Michigan seeks to ensure that public legal education is not confined to a few people, it is acting in furtherance of a compelling interest.

In *Bakke*, Justice Powell observed that:

⁵⁷ George Washington, Address to Both Houses of Congress (Jan. 8, 1790), in *Annals of Cong.* 970 (Gales & Seaton ed., 1790).

⁵⁸ Benjamin Rush, *A Plan for the Establishment of Public Schools and the Diffusion of Knowledge in Pennsylvania* (1786), reprinted in *Essays on Education in the Early Republic* 2 (Frederick Rudolph ed., 1965).

[a]cademic freedom . . . long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body.

438 U.S. at 312. Justice Powell recognized that the University of California had a “countervailing constitutional interest” in deciding its admissions policies, that its race-conscious admissions policy was a matter of “paramount importance in the fulfillment of its mission,” and that a university must have wide discretion in making the sensitive judgments as to whom should be admitted, so long as those judgments did not result in awarding a “fixed number of places” on the basis of race. *Bakke*, 438 U.S. at 313, 316.

The use of race-conscious admissions policies by public law schools such as the University of Michigan, implemented pursuant to this Court’s decision in *Bakke*, represents a reasonable effort on the part of the law schools to respond to the under-representation of minorities in our legal system. Until recently, such under-representation was the result of deliberate government policies intended to deny racial and ethnic minorities their democratic right to participate in our government.

The call now for color-blind admissions policies for public institutions of higher education seeks to shift to racial and ethnic minorities the full burden of our long history of slavery, racial segregation and other official policies intended to exclude racial and ethnic minorities. As Justice Marshall observed in *Bakke*:

Most importantly, had the Court been willing in 1896 in *Plessy v. Ferguson*, to hold that the Equal Protection Clause forbids the differences in treatment based on race, we would not be faced with this dilemma in 1978. We must remember, however, that the principle that the “Constitution is color blind” appeared only in the opinion of the lone dissenter. The majority of the Court rejected

the principle of color blindness, and for the next 60 years, from *Plessy* to *Brown v. Board of Education*, ours was a nation where, *by law*, an individual could be given 'special treatment' based on the color of his skin.

438 U.S. at 401 (citation omitted). Since *Brown v. Board of Education*, this Court has made great strides in undoing the legacy of *Plessy*, often by sanctioning narrowly directed race-conscious actions. This has not been done to exclude, but rather to include those previously left out.

The goal of the University of Michigan Law School's race-conscious admissions policy -- the education of both majority and minority students to ensure their effective participation in the institutions of government -- is fundamental and compelling; and the law school's good faith efforts to reach this goal is entitled to some measure of deference. Only if law schools are permitted some reasonable latitude to consider race and ethnicity in their admissions decisions will they be able to accomplish one of the fundamental goals of a democratic government, the diffusion of knowledge through a racially and ethnically diverse student body.

CONCLUSION

For the reasons set forth herein, the American Bar Association respectfully urges this Court to affirm the Sixth Circuit ruling that the University of Michigan Law School's admissions policy is constitutional.

February 18, 2003.

Respectfully submitted,

A. P. CARLTON
Counsel of Record

Of Counsel:
Paul M. Dodyk
Rowan D. Wilson
Avram E. Luft
Katherine S. Bromberg

PRESIDENT
AMERICAN BAR ASSOCIATION
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5215

EXECUTIVE SUMMARY

The United States is more diverse than ever, but its state judges are not. While we recognize that citizens are entitled to a jury of their peers who will be drawn from a pool that reflects the surrounding community, Americans who enter the courtroom often face a predictable presence on the bench: a white male. This is the case despite increasing diversity within law school populations and within state bars across the country.

Most of the legal disputes adjudicated in America are heard in state courts.¹ As such, they must serve a broad range of constituencies and an increasingly diverse public. So why are state judiciaries consistently less diverse than the communities they serve? Unfortunately, studies show that both merit selection systems and judicial elections are equally challenged when it comes to creating diversity.²

Today, white males are overrepresented on state appellate benches by a margin of nearly two-to-one.³ Almost every other demographic group is underrepresented when compared to their share of the nation's population. There is also evidence that the number of black male judges is actually *decreasing*. (One study found that there were proportionately fewer black male state appellate judges in 1999 than there were in 1985.⁴) There are still fewer female judges than male, despite the fact that the majority of today's law students are female, as are approximately half of all recent law degree recipients.⁵ This pattern is most prevalent in states' highest courts, where women have historically been almost completely absent.⁶

These national trends repeat themselves in the ten states we studied. For example:

- Arizona's population is 40% non-white,⁷ but Arizona has no minority Supreme Court justices.⁸ Minorities occupy only 18% of its Court of Appeals judgeships and 16% of its Superior Court judgeships.⁹ Despite Arizona's constitutional provision directing appointing Commissions to reflect the diversity of the state population,¹⁰ the diversity of the state bench falls short.
- Rhode Island's population is 21% non-white.¹¹ Notwithstanding the statutory requirement that the governor and nominating Commissions encourage diversity on the appointing Commissions,¹² it has no minority Supreme Court justices and minorities hold only two of the 22 judgeships on the Superior Court.¹³
- Utah's population is 18% non-white.¹⁴ Yet Utah has no minority Supreme Court justices.¹⁵ Minorities hold one of seven court of appeals judgeships and only four of 70 district court judgeships.¹⁶ Utah has no specific constitutional or statutory diversity provision.

The problem is clear: even after years of women and minorities making strides in the legal profession, white men continue to hold a disproportionate share of judicial seats compared with their share of the general population. The question of why this pattern persists does not have an easy answer; the dynamic is created by the intersection of a number of complex factors.

But it is a situation we can fix. Fortunately, there are common-sense ways to increase awareness of openings on the judiciary and encourage diversity on the bench.

The Brennan Center for Justice at NYU School of Law undertook this study to determine how successful those states with appointed judiciaries are at recruiting and appointing women and racial minorities to sit on the bench. Our goal is to provide an accurate picture of the diversity in state courts and a roadmap of how to improve diversity on the state bench.

In the course of this study, we interviewed members serving on the judicial nominating Commissions in ten states (Arizona, Colorado, Florida, Maryland, Missouri, New Hampshire, New Mexico, Rhode Island, Tennessee and Utah) to learn if, and how diversity is taken into account during the nominating process. To contextualize our interviews, we reviewed the relevant academic literature on judicial selection as well as academic writings in the field of cognitive science on implicit bias. In addition, we investigated the demographic data and the applicable laws in each state. Based on this research, we offer a number of best practices to attract talented female and minority attorneys to the bench.

Looking at a sample of ten states with appointive systems, we found that in most states racial and gender diversity on the bench lags behind the diversity of these states' general populations, bar memberships and law students. This is especially true on the highest courts; four of the ten states we examined had Supreme Courts that are all white.

Overall, too few states have systematic recruitment efforts to attract diverse judicial applicants. We identified two particularly interesting trends from our interviews with judicial nominating Commissioners. Commissioners who thought of themselves as "headhunters" took responsibility for recruiting candidates and keeping an eye on the diversity of the applicant pool throughout the nominating process. Commissioners who conceived of their mission as purely "background-checking" spent little time actively recruiting candidates.

Our research found that to effectively increase diversity, all nominating Commissions must add systematic recruitment to their repertoires. Expanding the pool of applicants at the start of the process is a key ingredient to ensuring a diverse "short list" and ultimately a diverse bench. On the other hand, Commissioners should also take seriously their role as background-checkers. Because judges appointed through these systems are subject to little public scrutiny, Commissions must properly vet who is eligible to sit on the bench.

In light of our research, we offer nominating Commissions a set of ten best practices to attract the brightest female and minority candidates to the judiciary, including:

1. **Grapple fully with implicit bias.** Cognitive scientists have focused attention on the widespread tendency to unwittingly harbor implicit bias against disadvantaged groups. Fortunately, these biases are mutable. Thus, by acknowledging that this tendency exists, Commissions can take steps to counteract their biases.
2. **Increase strategic recruitment.** The first step in ensuring a diverse applicant pool is making sure that an open judicial seat is widely advertised and that all candidates are welcomed to apply.

3. **Be clear about the role of diversity in the nominating process in state statutes.** Many Commissioners we interviewed felt that there was no consensus on how diversity should be considered during the nominating process. Commissions should have clear parameters of when and how diversity can come into play. Such clarity can be laid out in a statute.
4. **Keep the application and interviewing process transparent.** Let candidates know what to expect when they submit their applications, and keep interviews consistent among candidates. Outlining the nominating process for all candidates will ensure that each applicant is treated in a similar way.
5. **Train Commissioners to be effective recruiters and nominators.** Commissioners need clear standards and appropriate training.
6. **Appoint a diversity compliance officer or ombudsman.** States should hold someone accountable for a state's success or failure to achieve meaningful diversity on the bench. A diversity ombudsman would be in charge of monitoring diversity levels and improving outreach efforts.
7. **Create diverse Commissions by statute.** A diverse Commission, for various reasons, is more likely to facilitate a more diverse applicant pool. States should adopt statutes that clearly encourage a diverse Commission.
8. **Maintain high standards and quality.** Creating a diverse bench can be done without sacrificing quality. All local law schools have female and minority graduates and these can be the source of many judicial applicants. Recruitment should also expand to candidates who graduated from top national schools, as these schools often have far more diverse alumni than local law schools.
9. **Raise judicial salaries.** State leaders should keep an eye on judicial salaries to assure that they are high enough to attract the best lawyers and lure diverse candidates out of law firms and onto the bench.
10. **Improve record keeping.** Currently, many of the states we studied did not keep rigorous data on judicial applicants. Keeping a record of the racial and gender makeup of the applicant pool and how candidates advanced through the nomination process will make it much easier for Commissions to track their own progress on issues of diversity.

The good news is that law school populations over the past 20 years (from 1986 to 2006) have been steadily growing more diverse. This pipeline of diverse new talent presents a real opportunity for state courts to increase the gender and racial diversity of its judges over the coming years. However, improvements in the appointment process are necessary to avoid missing this opportunity; since diversifying the bench requires more than just the mere existence of more female and minority attorneys; it requires an intentional and systematic approach to ensure that this diversity is reflected on the bench, including leadership by Governors, Chief Justices and other high ranking officials who can set the proper inclusive tone.

As a matter of fairness, the Brennan Center urges states that nominate judges to marshal their resources and rethink their appointment processes in order to attract talented female and minority attorneys to the state bench.