Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. 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.

SUPREME COURT OF THE UNITED STATES

Syllabus

SCHUETTE, ATTORNEY GENERAL OF MICHIGAN *v.* COALITION TO DEFEND AFFIRMATIVE ACTION, INTEGRATION AND IMMIGRATION RIGHTS AND FIGHT FOR EQUALITY BY ANY MEANS NECESSARY (BAMN) ET AL.

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

No. 12–682. Argued October 15, 2013—Decided April 22, 2014

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, but that the law school admission plan's more limited use did not, *Grutter* v. *Bollinger*, 539 U. S. 306, 343, 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.

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. 4–18.

(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. The decision by Michigan voters reflects the ongoing national dialogue about such practices. Pp. 4–5.

(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. 5–18.

(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, and *Hunter* v. *Erickson*, 393 U. S. 385, 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. 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. Pp. 5–8.

(2) *Seattle* is best understood as a case in which the state action had the 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, *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.

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," 385 U. S., at 395, 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. Pp. 8–11.

(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, 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 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, 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. 11–18.

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. 1–18.

(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, and *Hunter* v. *Erickson*, 393 U. S. 385. 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. 3–7.

(b) The problems with the political-process doctrine begin with its triggering prong, which assigns to a court the task of determining

Syllabus

whether a law that reallocates policymaking authority concerns a "racial issue," *Seattle*, 458 U. S., at 473, *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. 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 (O'Connor, J., dissenting), and promotes racial stereotyping, see *Shaw* v. *Reno*, 509 U. S. 630, 647. 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 protection as a personal right." *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 224, 230. Pp. 7–12.

(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; 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. 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. 12–15.

(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 (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. 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. 15–17.

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

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