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HUNTER V. REGENTS OF THE UNIVERSITY OF CALIFORNIA 190 F.3D 1061 (9TH CIR. 1999).

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FACTS

The UCLA Graduate School of Education and Information Studies conducts research at a uniquely designed laboratory, the Corrine A. Seed University Elementary School ("UES").[1] UES develops innovative teaching methods to improve education in the dramatically-changing urban public schools in California.[2] UES selects its student research-subjects to match a demographic model of the general population of the state.[3]

UES' Admissions Committee explicitly informs all applicants to the school that it will consider students' gender, race/ethnicity, and family income in the admissions process.[4] After ensuring the research population will be a cross-sample of the general population, UES' Admissions Committee never again considers these three characteristics.[5] Instead, the committee uses dominant language, residency, and potential parental involvement to determine each applicants' suitability as a research subject.[6] Once a pool of suitable applicants is created, UES selects its students from this pool at random.[7]

In 1995, UES denied admission to Hunter, despite the previous admission of Hunter's sister who had identical demographic characteristics.[8] Consequently, Hunter's parents sued the institution[9] under Title VI of the Civil Rights Act of 1964[10] alleging that UES' admissions policy unlawfully discriminated on the basis of race.[11]

The district court employed strict scrutiny because the admissions policy "treated similarly-situated individuals differently" on the basis of race.[12] To satisfy strict scrutiny, UES had to identify a compelling state interest and

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1. Hunter v. Regents of the Univ. of Cal., 190 F.3d 1061, 1062 (9th Cir. 1999).
2. *Hunter*, 190 F.3d at 1062.
3. 190 F.3d at 1062.
4. *Id. See also Hunter v. Regents of the Univ. of Cal.*, 971 F. Supp. 1316, 1328, n.23 (C.D. Cal. 1997) (providing UES' consent form with these three characteristics that applicants' parents must sign).
5. *Hunter*, 971 F. Supp. at 1320.
6. *Hunter*, 190 F.3d at 1062.
7. *Hunter*, 190 F.3d at 1068 (Beezer, J., dissenting).
8. 190 F.3d at 1064.
9. Hunter sued the Regents under 42 U.S.C. § 2000d (1994) and sued the Dean of the Graduate School under 42 U.S.C. § 1983 (1994).
10. 42 U.S.C. § 2000d.
11. *Hunter*, 190 F.3d at 168.
12. *Hunter*, 971 F. Supp. at 1323, n.13. Although only a single procedure, the court found UES's similarly affected Hunter's probability of admission and undistinguishable from the "dual admission" procedures previously found unconstitutional. Regents of the University of California v. Bakke, 438 U.S. 265, 319-320 (1978) (Powell, J.) (stating race may be factor considered in medical school's admissions procedure, but separate procedure for "disadvantaged" minority students was unconstitutional).

prove that its admissions policy was narrowly tailored to achieve that interest.[13]

UES asserted it had a compelling state interest in conducting research to benefit education, and all parties agreed that education is "most vital" and "a most fundamental obligation of government."[14] Although the district court agreed with Hunter that providing education is not by itself compelling, the court concluded that UES was distinguishable.[15] UES provided a compelling state interest because its primary mission is to conduct research to benefit public education throughout the state.[16] Based on its record of educational innovations, the court determined that UES was integral to improving education in the state and therefore, created a compelling state interest.[17]

Turning to the issue of narrowly tailored means, the court stated that it would be neither possible nor reasonable to require that UES employ any means, which did not classify by race.[18] The court received expert evidence indicating that, to gather data from a sample with variable racesm UES had to select a sample with the same distribution of race.[19] Noting that the same benefits to education would not be gained by studying a population which was merely "diverse,"[20] the court decided that the research could not be conducted outside the unique environment of UES.[21] Thus the district court found that UES serves a compelling state interest and utilizes narrowly tailored means, so the court ordered judgment for the defendants.[22] Subsequently, Hunter's parents appealed the ruling to the United States Court of Appeals for the Ninth Circuit.[23]

HOLDING

The Court of Appeals for the Ninth Circuit found that Regents asserted a compelling state interest in operating a research-oriented elementary school dedicated to improving the quality of education in urban public schools.[24] The court also found that UES' consideration of race was narrowly tailored to

13. 971 F. Supp. at 1328.
14. *Id.* at 1328 (citations omitted).
15. *Id.*
16. *Id.*
17. *Id.* at 1329.
18. *Id.* at 1330.
19. *Id.*
20. *Id.* at 1331.
21. *Id.* at 1332.
22. *Id.*
23. *Hunter*, 190 F.3d at 1062.
24. *Id.*

achieve that interest.[25] Therefore, the court affirmed the district court's ruling.[26]

ANALYSIS

The Ninth Circuit reviewed *de novo* the conclusion that UES' consideration of race satisfied strict scrutiny.[27] The court determined that "California's interest in the operation of a research-oriented elementary school dedicated to improving the quality of education in urban public schools [was] a compelling state interest."[28] Although no single interest was compelling, the court noted that three factors collectively made UES "an exceptional school and a valuable resource."[29] First, limitless challenges confront crucial public education.[30] Secondly, UES has proven its capacity to benefit education statewide through its research.[31] Finally, UES' devotion of its unique resources to research benefitting education made it distinctive.[32] Though the district court found UES' research mission to benefit education compelling, the Ninth Circuit decided that the already proven benefits which "foster a better schooling system" by providing "a center for the education and training of teachers" made UES exceptional and a compelling interest.[33] Thus, the Ninth Circuit found that UES established the compelling state interest by its proven record, a different basis than the lower court's conclusion that the research alone was sufficient.[34]

After concluding that defendant satisfied the first requirement of strict scrutiny, the court next examined whether the admissions policy was narrowly tailored to that interest.[35] The court deferred to the university's academic judgment that it was necessary to use such a racial classification to conduct research which would benefit education.[36] The countless "innovative educational techniques" proved the credibility of this judgment.[37] The court recognized that no alternatives to an explicit consideration of race could

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25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.* at 1064.
29. *Id.* at 1065.
30. *Id.* at 1064.
31. *Id.* at 1065.
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.* at 1066. *See Hunter*, 971 F. Supp. at 1324 (stating that it is not possible to obtain representative sample of "ethnically diverse . . . students without the use of specific racial targets and classifications." *Id.*)
37. *Hunter*, 190 F.3d at 1065.

provide the same results.[38] As it would be unfeasible to use any other classification while achieving the same benefit to public education, the Ninth Circuit concluded UES' consideration of race was narrowly tailored.[39]

Dissenting, Judge Beezer argued that a non-remedial consideration of race could never be a compelling state interest.[40] He declared that any non-remedial racial classification could be so amorphous that it would threaten "the fundamental purpose of the Equal Protection Clause."[41] In addition to finding a lack of any compelling state interest, Judge Beezer asserted that the means offered by UES to achieve the asserted interest were not narrowly tailored.[42] He stated that no alternative can be narrowly tailored unless it does not use a racial classification.[43]

CONCLUSION

In *Hunter v. Regents of the University of California*, the Ninth Circuit upheld the use of a racial classification for research.[44] In so doing, it endorsed a non-remedial use of race. Although the dissent claims that it is impermissible for any state actor to consider race without a remedial purpose, the United States Supreme Court "expressly left open the question whether . . . [a non-remedial purpose] alone could ever be a compelling interest."[45] Similarly to UES, other state actors can continue to present non-remedial state interests that could be found compelling. Unless the Supreme Court decides that only remedial purposes are compelling, other courts may choose to recognize a wider range of permissible state considerations of race.

Summary and Analysis Prepared by:
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38. *Id.*
39. *Id.* at 1067.
40. *Id.* at 1067 (Beezeer, J., dissenting).
41. *Id.* at 1073-1074.
42. *Id.* at 1076.
43. *Id.* at 1079. Judge Beezer suggests the following alternatives by which UES accomplish the same research without considering race when selecting students: Establishing as many laboratory schools across the state as is necessary to create a natural pool, *Id.* at 1078 n.4; Educate teachers to collect research while teaching and place UES supervisors in public schools, *Id.* at 1079; Modify or eliminate by legislation any current policies which would present an impediment to conducting research in the public schools. *Id.* at 1078.
44. *Id.* at 1062.
45. *Id.* at 1064 n.6 (quoting Shaw v. Hunt, 517 U.S. 899, 911 (1996)).