The Supreme Court’s decision in *Grutter v. Bollinger* affirmed the authority of universities to employ admissions policies that provide a broadly diverse community of qualified applicants with access to their campuses. In a thoughtful majority opinion by Justice Sandra Day O’Connor, the Court held that it does not automatically violate the Equal Protection Clause if public universities deliberately work to create communities that include pedagogically meaningful numbers of students from a broad array of racial, ethnic, religious, socioeco-
nomic, and ideological backgrounds.

I was a named defendant in the litigation, since I was the dean of the University of Michigan Law School at the time. And people who are friendly to our position sometimes pose questions such as the following:

“Why was that so difficult?”
“Why was it only a 5–4 victory, rather than a 9–0 decision?”

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“Why were people so angry with you for promoting such an obviously worthwhile goal?”

I have been thinking about questions such as these for many years, and I believe the answer is clear. Whenever we employ affirmative action, we are using a very dangerous tool. Think, if you will, of a very sharp knife. Or a caustic chemical. Or perhaps a technology like recombinant genetics. Think of any tool that could, in the wrong hands, cause enormous harm to innocent people.

The tool here is the category of race. Through affirmative action, we are using race to do more than just describe the world we see around us. We are giving race performative significance. We are looking at individual applicants, classifying them according to race, and then using the result of that classification process as a factor in how we allocate valuable opportunities.

America’s history tells us that this is a very sharp knife indeed. For almost four hundred years, we have seen racial categories used to construct systems for the subordination of individuals who were assigned to disfavored groups. And it is important to remember that across those four centuries the people who were using the knife invariably believed they were doing so in order to promote an important social end.

The constitutional jurisprudence of the Equal Protection Clause and the legislation of the civil rights era have given us an approach to the use of race as a category by large and powerful institutions. Our society does not ban the knife. It does not outlaw the technology. It does not say that such institutions must always act in a rigidly color-blind fashion.

Instead, our legal system has chosen to rely on the concept of a rebuttable presumption. It declares this kind of classification to be “suspect.” Recognizing that racial classifications can do enormous harm in the wrong hands, it holds their use up to “strict scrutiny.” Our system declares their use to be presumptively illegitimate, permissible only if the institution that wishes to use them can show that its actions are “narrowly tailored” to promote a “compelling interest.”

In the Grutter lawsuit we were able to clear that hurdle. Justice O’Connor’s opinion affirmed that our society has a compelling interest in creating university campuses that are meaningfully integrated. That interest is compelling because an integrated campus promotes certain learning outcomes. And it is compelling because the legitimacy of our democracy depends upon the existence of open,