Decision upholds use of race in admissions

But Supreme Court strikes down points system

By Anne Gearan, The Associated Press

WASHINGTON -- In its most significant statement about race in a generation, a divided Supreme Court allowed the nation's colleges and universities to select students based in part on race, ruling Monday that diverse classrooms mold good citizens and strong leaders.

The court emphasized that race cannot be the overriding factor, but a majority acknowledged a broad social value from affirmative action -- in encouraging all races to learn and work together.

"In order 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," Justice Sandra Day O'Connor wrote for the 5-4 majority.

At issue was whether admissions policies that give one racial group an edge unconstitutionally discriminate against other groups.

In two decisions involving the University of Michigan, the court underscored that a point-based screening system based on race is unconstitutional but left room for the nation's public universities -- and by extension other public and private institutions -- to seek ways to take race into account.

"The court has in essence provided the nation with a road map on how to construct affirmative action programs in higher education that are constitutionally acceptable," said NAACP president Kweisi Mfume.

The court preserved the rules outlined 25 years ago in a landmark ruling that underpin the consideration of race at institutions or gatherings as diverse as military academies, corporate boardrooms and campus leadership retreats.

In the 1978 University of California v. Bakke ruling a different group of justices struck down a quota system that had excluded a white student from medical school, but they allowed less structured forms of affirmative action.

On Monday, the court struck down a point-based screening system for applicants that automatically gave minorities a 20-point bonus out of a possible 150.

The cases put the Bush administration in an awkward spot. The White House had sided with white applicants rejected at the Michigan schools without endorsing an outright end to affirmative action.

"There are innovative and proven ways for colleges and universities to reflect our diversity without using racial quotas," President Bush said after Monday's ruling. "The court has made clear that colleges and universities must engage in a serious, good faith consideration of workable race-neutral alternatives."

In the end, the high court made only bare mention of the administration's argument that race-neutral alternatives to affirmative action are already working in Bush's home state of Texas and elsewhere.

Opponents of affirmative action had hoped the Supreme Court would use this opportunity to ban most consideration of race in any government decisions. The court is far more conservative than in 1978, when it last ruled on affirmative action in higher education admissions, and the justices have put heavy conditions on government affirmative action in other arenas over the

CELEBRATION: Christen Flack (front right) cheers with others Monday on the University of Michigan campus in Ann Arbor.
(Photo by By David Coates/The Associated Press)

past decade.

O'Connor said the value of diverse classrooms extends far beyond the campus. Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer joined her endorsement of a program in place at the University of Michigan's law school.

The law school uses an inexact admissions formula that gives extra consideration to blacks, Hispanics and to applicants from other groups the school says have historically suffered from discrimination.

The program has produced minority enrollment of between 12 percent and 20 percent over the past decade. There is no fixed target, the school said.

At the same time, the court struck down a more rigid, point-based admissions policy for University of Michigan undergraduates. That vote was 6-3.

The difference was a matter of degree. The Constitution permits schools to consider an applicant's race as one among many factors when weighing which students will win a place at a top-notch school, O'Connor wrote in the more significant law school ruling. What a school cannot do, she and other justices said, is install inflexible or automatic racial preferences.

The law school and its backers argued that a "critical mass" of minority students is essential to break down racial stereotypes and benefits the entire student body. Minorities must be present in more than token numbers to ensure all students can interact, the university has said.

But no student's transcript will note that he or she "Works and Plays Well With Others," Justice Antonin Scalia retorted, in mocking reference to language more often associated with grade school report cards.

The importance of "cross-racial understanding," or of simply getting along with other people, is a lesson of life learned by "people three feet shorter and 20 years younger than the full-grown adults at the University of Michigan Law School, in institutions ranging from Boy Scout troops to public school kindergartens," Scalia wrote in dissent.

Chief Justice William H. Rehnquist and Justices Anthony M. Kennedy and Clarence Thomas also dissented in the law school case.

Thomas, the court's only black justice, accused the law school of maintaining "an exclusionary admissions system that it knows produces racially disproportionate results."

"Racial discrimination is not a permissible solution to the self-inflicted wounds of this elitist admissions policy," he wrote.

Michigan says it accepts only academically qualified students, no matter their race.

In the companion case, O'Connor joined Rehnquist, Scalia, Kennedy, Thomas and Stephen Breyer to strike down the undergraduate school's 150-point grading system. Minority status was worth more than some measures of academic excellence, writing ability or leadership skills. Outstanding athletes also got 20 points, as did impoverished applicants.

Stevens, Souter and Ginsburg dissented.

Affirmative action programs should not go on forever, O'Connor wrote. "We expect that 25 years from now, the use of racial preferences will no longer be necessary."

The law school case is Grutter v. Bollinger, 02-241; the undergraduate case is Gratz v. Bollinger, 02-516.