

To me, it is an opportunity-based system for people who have had a disadvantaged life and I believe is a healing balm on this very difficult undertone of racism that we have seen in this country.

Madam President, I think the administration is moving in a positive direction, so I object.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I do not know what the agenda is. I know the chairman of the Judiciary Committee has a different opinion.

Maybe the Democratic leader decided we are not going to be dealing with the appropriations bill. We have an amendment on which we are getting ready to vote. We were supposed to vote on it a couple of minutes ago. I guess people want to debate the Michigan case, but that is really not the issue before us. The issue before us is an appropriations bill.

Eleven out of the thirteen appropriations bills have not been passed. We are trying to finish the appropriations bills. The chairman of the Appropriations Committee is trying to move the Senate forward. He has been asking for amendments. We are trying to consider amendments. We are getting ready to vote on an amendment, and the Democratic leader has a resolution that says: We want to adopt a position opposite that of the President of the United States on the Michigan case, without even advanced warning and without allowing the chairman of the Judiciary Committee, who also has a resolution taking a different position, to come forward.

There is a time and place to debate it, but this is not it. We should be doing the business we have not completed from last year, and that is the appropriations bill. I have a resolution, and I can do exactly what the Democratic leader did. I can ask unanimous consent that we take the plaintiff's side of this case and ask that it would pass. I know it would be objected to. It was actually drafted by Senator HATCH, so I will leave that to him to elect to do.

It is kind of a waste of the Senate's time for people to take a contentious issue and say: I am going to ask unanimous consent that we take one side of that issue and try to pass it, knowing it would not pass. I could make this same argument and know it would not pass. I think we would be wasting the Senate's time.

I urge our colleagues to stay with the regular order and finish the work we did not do last year, and that would be to deal with the amendments that are pending and pass the unfinished business of the appropriations bills.

I shall not ask unanimous consent at this point, but if people want to pursue this, we can.

I yield the floor.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2003—Continued

Mr. BIDEN addressed the Chair. The PRESIDING OFFICER. The Senator from Delaware.

Mr. McCAIN. Madam President, I ask for the regular order.

Mr. STEVENS. Madam President, there is a time agreement in effect.

The PRESIDING OFFICER. The regular order is 2 minutes of debate before a vote relative to the Senator's amendment.

Who yields time?

Mr. McCAIN. I yield to the Senator from Hawaii for his 1 minute, and I will take 1 minute.

Mr. INOUE. Madam President, I yield back my time.

Mr. McCAIN. I yield back my time.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Madam President, I move to table the amendment.

Mr. NICKLES. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second on the motion to table?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL, I announce that the Senator from Nebraska (Mr. HAGEL) is necessarily absent.

Mr. REID. I announce that the Senator from Louisiana (Mr. BREAU), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

I further announce that, if Present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "Aye".

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 33, as follows:

[Rollcall Vote No. 8 Leg.]

YEAS—62

Akaka	Domenici	Lott
Baucus	Dorgan	McConnell
Bayh	Durbin	Mikulski
Biden	Ensign	Murkowski
Bingaman	Feinstein	Murray
Bond	Frist	Nelson (FL)
Boxer	Gregg	Nelson (NE)
Burns	Harkin	Pryor
Byrd	Hollings	Reed
Campbell	Hutchison	Reid
Cantwell	Inouye	Roberts
Carper	Jeffords	Rockefeller
Chafee	Johnson	Schumer
Clinton	Kennedy	Snowe
Cochran	Kohl	Specter
Collins	Landrieu	Stabenow
Conrad	Lautenberg	Stevens
Corzine	Leahy	Talent
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
Dodd	Lincoln	

NAYS—33

Alexander	DeWine	Lugar
Allard	Dole	McCain
Allen	Enzi	Miller
Bennett	Feingold	Nickles
Brownback	Fitzgerald	Santorum
Bunning	Graham (FL)	Sessions
Chambliss	Graham (SC)	Shelby
Coleman	Grassley	Smith
Cornyn	Hatch	Sununu
Craig	Inhofe	Thomas
Crapo	Kyl	Voivovich

NOT VOTING—5

Breaux	Hagel	Sarbanes
Edwards	Kerry	

The motion was agreed to.

Mr. STEVENS. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, what is the regular order now?

The PRESIDING OFFICER. Under the previous order, the Senator from Delaware has 20 minutes.

Mr. STEVENS. Madam President, under the agreement he has 20 minutes to speak. Following that, for the information of the Senate, Senator BROWNBACK has 5 minutes.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, if I may ask the chairman of the Appropriations Committee, Senator STEVENS, a question.

Mr. STEVENS. Yes.

Mr. BIDEN. Although I have been waiting a while, I can refrain from doing that if we are likely to move on to other votes. I do not want to hold people up on Friday afternoon. But if we don't have something we are going to go to right away—in other words, I don't want to get in the chairman's way. But, otherwise, I would like to speak. But I know it is Friday afternoon. I see people with topcoats on their laps, and they have places to go. I can make this the last order of business today. But I don't want to yield to others who are not going to speak on an amendment. But I will yield if you really think we are going to move to something and we are going to act on it. That is my point.

I ask the Senator from Alaska if he can tell me what the plans are.

Mr. STEVENS. Madam President, the Senator from Delaware has given us a chance to think. This is a good time to think. So we are happy to give him 20 minutes right now.

The PRESIDING OFFICER. The Senator from Delaware.

THE UNIVERSITY OF MICHIGAN CASE

Mr. BIDEN. Madam President, I rise today to, quite frankly, compliment and add to the comments of my friend from West Virginia, Senator BYRD—although I will not be as eloquent—who spoke today on Iraq and Korea and national security policy.

Before I do, there was an intervening comment exchange that was made on the floor earlier relating to the Michigan University cases.

I rise at this moment not to speak on whether or not the merits of the Michigan cases or the merits of the Michigan admissions policies are constitutional or unconstitutional. My instinct, in what little I know about it, is that it seems to be constitutional because there is a two-pronged equal protection test that has to be met; and that is, does the University's consideration of race as one of many factors in making admissions decisions constitute a compelling Government interest, and if it does, is it narrowly tailored. It appears, from what I have read in the press, that it is.

But I want to respond in the next 2 minutes to something my friend from Pennsylvania, my neighbor, Senator SANTORUM, said. He talked about this point system. I just want to remind everyone how the University of Michigan's policy works, which is like many other universities.

Under the University's undergraduate admissions process, every applicant can get up to 150 points in seeking admission. My assumption is, what the university does, it reviews all of the applications from applicants. No one gets 150 points, necessarily, but there are methods by which you can get up to 150 points.

Madam President, 110 of the 150 points are strictly related to academic criteria. They relate to GPA, the school you went to, the high school you went to, the curricula you took, your SAT scores, et cetera. Forty points are up for grabs, and they relate to nonacademic factors.

It is possible for a minority to get 20 points because of his minority status. People are pointing to that as saying that is unfair. Well, forget the constitutional detailed arguments for just a moment, because we will have plenty of time to make those on the floor. I want everyone to remind themselves what the rest of the University of Michigan policy allows.

If you are the son or daughter of alumni, you get 4 points. If you come from an underrepresented county within the State of Michigan, you can get up to 16 points. If you are a Michigan resident, you get 10 points. If you are from an underrepresented State, you get 2 points.

Let me translate this. And I do not mean this as a criticism of anybody else's State. The most competitive, the most difficult place to gain admission, the most difficult geographic States to gain admission to the most elite colleges are Delaware, Pennsylvania, New Jersey, and New York. It is harder to get into competitive colleges if you're a resident of those States.

If you are from Mississippi or Alabama or Alaska and have the same scores as students from these northeast states—like my son or daughter from Delaware, and my nephew from Penn-

sylvania—and everything else is equal, the child from Mississippi or Alabama or Alaska will get into the school before the child from Delaware, Pennsylvania, New Jersey, or Maryland. That's because—rightly or wrongly—the academic standards in these latter States are considered to be higher, and the competition is more intense.

So that is a literal fact of life. You say: OK, well, why in God's name would some child who does not have quite the same marks, or has the same marks, from the Midwest or Alaska or the Deep South have an advantage over a child from a New England State or a mid-Atlantic State? The reason is not to benefit the child. It is to benefit all the other students in the university. Because we have made a judgment, historically, in this Nation that it is better for my child to go to school with someone from Alaska, Mississippi, South Carolina, North Carolina—all across the Nation—than it is to go to school with everybody being from Pennsylvania, New Jersey, and Delaware. It has been a judgment educators have made. And the more elite the university, the more diversity, geographically, they seek.

It is the same way, I might add, that Rhodes Scholarships are, in fact, awarded. It is a heck of a lot harder to get a Rhodes Scholarship as a resident from New York State than it is from South Dakota. That is a fact—a fact. It is the competition pool. Why? More money per pupil tends to be spent in those richer States than in the States that are not as wealthy.

So what have we done? In everything we do about education, we seek, as a goal, not to reward the student, the diverse student who is coming in, but the goal is to reward the student body that is there to expose them to diversity.

It is good that my middle-Atlantic State daughter is in a school with people who talk to you like this—you know what I mean—like y'all do in the South. It is a good thing. She should be exposed to that. It is good your southern son or daughter knows and has someone in class that talks like they are from Brooklyn. It is a good thing. Some may disagree, but that has been a national consensus.

Like geography, race is one of those factors colleges do and should consider. The only generic point I want to make to people, as a Senator who opposes quotas—that is not hyperbole; I oppose quotas; and I have a 30-year voting record about that—but what is good for the goose is good for the gander.

All of you who tell me this is a level playing field, give me a break. If your daddy happened to go to that school, it is not wrong that you get a preference. But at least admit you are getting a preference. Stop this game, this silly little game.

If, in fact, you come from a State that is poor, stop pretending to me that it is a level playing field for a kid from Mississippi to get to Harvard versus a kid from Westchester County, NY to get to Harvard.

Give me a break. Let's stop being phony around here. I am not suggesting anybody is phony. I am just trying to inform those of you who have not had a chance to think of this how things actually work, how they actually work.

And, by the way, even on the academic side, you get somewhere between zero and 10 points based on the school you went to.

The school I went to is a Catholic prep school, with mostly middle class kids. My daughter, who is now a senior in college, graduated from that same school several years ago. If my memory serves me correctly, I believe that out of 114 kids in her graduating class, 69 passed five or more advanced placement tests, meaning that they tested out of their entire first semesters at the universities they attended—69 out of 114 passed five or more AP tests.

According to what was then put out by the SAT outfit out of New Jersey, these kids represented the highest number in the region to test out of their first semester classes, and one of the highest in the country—this little old Catholic school I went to. Guess what. It costs 14 grand a year to go to that school. Now, my daughter, I am confident, were she applying to Michigan, could have gotten up to 18 points—up to 10 for the quality of the school and up to an additional 8 for the quality of her curriculum. And not because of anything she had, but because her old man was able to borrow the money with her mother to pay for her to go to that school and expose her to that. She may have gotten B's and my sons who went there or I who went there may have gotten B's, while a kid from a little one-room schoolhouse—some States still have one-room schoolhouses, not many—from a small school in, say, North Dakota, where you have 20 kids in a senior class, that kid got a B, same grade point. My daughter may have gotten up to 18 points; the kid from North Dakota, with the same grade point average, may get no added points.

How does it really work? A Black kid in west Philadelphia, he might have gotten B's from a school we all acknowledge isn't that great a school. My daughter gets an 18-point bump on the academic side because she went to a school that costs—guess what, when I went there, it cost \$900 a year, now it is 15, 14 grand. How many middle-class Black kids out there are able to pay 14 grand, or Hispanic, Latino kids? So I just think we should be honest about this.

There is a legitimate constitutional argument to make and a test that Michigan is going to have to prove, and they should have to prove. There is a two-prong test here. When you are in a suspect category—race is a suspect category—there are two tests: One, is there a compelling Government interest in using race as one of many factors to achieve a diverse class, and, two, is that use narrowly tailored. I think

Michigan can prove that. I haven't done all the work. I teach constitutional law; I think I know a little about it. I can't say to the Chamber, I am guaranteeing I know the Michigan test is constitutional. They should have to prove it. No problem. I think they will. But let's not kid each other. OK? Level playing fields? I will conclude this part and get on to what I was going to speak about and just look at it.

Of the total 150 points an applicant to the University of Michigan can get, 40 points are for non-academic factors. You can get 20 points if you're an underrepresented minority, but also if you're a scholarship athlete, or if you're a kid who is socio-economically disadvantaged; you can get 10 points if you're a Michigan resident, 16 points if you live in 2 particular counties in Michigan; 4 points if your parents are alumni; 3 points for your required personal essay; 5 points for personal achievement; 5 points for leadership and service and, guess what—I say to my friend who went to a great, great university, the Presiding Officer, Duke University, one of the great universities in America; this will not surprise her, I suspect—the provost has 20 points of discretion. How about that one? The provost has 20 points of discretion.

Do you think the provost is more likely to receive a phone call from the chairman of the board of General Motors, or do you think the provost is likely to take a phone call from Rashid's mother in Detroit? My colleagues, as the kids used to say, let's get real. Let's acknowledge the truth of this. There is no absolutely totally blind test out there.

I am not criticizing. Universities have a reason for giving alumni preference. How do you think Harvard was built? There is a little red book on how Harvard's endowment was built. You build loyalty to a university. People then do things for the university. That is a good thing, not a bad thing. It is a good thing. There is geographic diversity. It is a good thing that there is discretion built in.

But if you are going to take this purest view that race can never be considered, that minority status can't be considered and you want to be fair, be fair. Cash in your senatorial credentials when you start writing recommendations. OK? Don't write a recommendation.

You want to be really fair? Be like every other person out there, do you know what I mean? Maybe it is because I come from a place called Claymont. I come from an Irish Catholic family. I am the first one in my family to go to college—no Horatio Alger story.

I once got in an argument during the Thomas hearings which I don't like to recall very often. Someone was saying to me that there was no preference given to the Justice getting in the Yale University Law School. And I looked at this particular guy, who wasn't happy

with me over another issue about logging roads through Federal lands. He was really mad at me about that. I looked at him and I said: Where did you go to school?

He said: I went to Yale.

I said: You are the guy who took my spot at Yale.

He said: What do you mean?

I said: We are the same age. You took my spot at Yale. I know you are the one.

He said: What are you talking about?

This guy happened to be from Alaska. I come from Delaware. If I'm not mistaken, you got points at Yale for being from Alaska. And probably his marks were better than mine, but I joked with him. He didn't know.

I said: I bet my marks were better than yours. I said: I'll make you another bet. I bet your daddy went to Yale.

He said: Yes, what difference does that make?

It makes a difference. Assume my marks had been the same as his. I am from Claymont, Delaware. My father is making 17,000 bucks a year, and I applied to Yale. He is from a geographically underrepresented area and his daddy went to Yale.

I mean this sincerely, I understand the anger of working-class and middle-class White people like me, my background. I can remember when my dad, who was an automobile salesman, I remember my dad being so angry when he was trying to borrow the money to get a student loan to send me to the local university and my sister almost at the same time. He was \$800 over the limit. It was like 18,000 bucks he made that year, over the limit to be able to borrow.

The guy who worked on the lot came in really happy one day, and my dad was good friends with him. But the guy was the laborer who cleaned the cars. And he said: My son is getting in. I got the loan.

And my dad thought it was so unfair that this guy made one-third less than he did and he was able to get the loan, but my dad couldn't afford to send us all without the loan.

So I am not in any way belittling the legitimate concern and anxiety of middle class and lower middle class White folks who feel they are pushed out of the way. That is why I think we should give them all a \$12,000 tax deduction to get to school which I have been pushing for 8 years now.

But it amazes me how some of our friends in this Chamber and in the body politic political elite really will bleed over the 1 or 2 or whatever percent of the White children who really do get bumped out of the way. Where is their bleeding for the 10, 20, or 30 percent of the Black kids or Latino kids who get pushed out of the way a thousand ways? Is anybody suggesting to me the injustice done to middle White class or any White student is anywhere nearly equivalent to the injustices done or the lack of opportunity available to minorities?

There is such an imbalance about this. That doesn't mean we should justify a wrong when it is only done to 1 percent of the people because there is a greater wrong done to another group of people. We ought to be able to figure out how to deal with this.

I will end with this: I respectfully suggest we should be making it a lot easier for kids to get to college, period, across the board. One of the things we should do is what my friend from Connecticut has devoted his career to, and he knows more about it than I do by a long shot, and that is making elementary and secondary education truly equal. He had an amendment that said, on this big bill we passed on education, by the way, if you are going to test people equally, make sure you spend equal amounts of money on them.

If you are a kid in west Philadelphia and you are a kid in Marion, which is one of the wealthiest areas just 4 miles away, I don't remember exactly what the numbers are, but it is like two or three to one resources spent on the kid in Marion to educate him than the kid in west Philadelphia. We are going to give them the same test. It reminds me of the old separate but equal stuff. So there is a lot we can do to make sure no child, White or Black, is bumped out of the way because they are qualified, but otherwise they do not suffer from one of the litany of things listed as being able to be taken into consideration in admission.

I am not making the case on the merits. I don't know enough about the Michigan policy. I hope we have a honest discussion about this when we talk about it because there are preferences built in across the board, absolute preferences.

I know, as a middle-class White kid—lower middle class economically—growing up, who did relatively well, I knew that the kid who had a lot more money, whose parents had gone to college, had more of an advantage. I didn't begrudge them the advantage. It is just there. It is just there. Let us at least admit to that and acknowledge that. Let's stop this—and nobody has done this in the Chamber, but let's not start demagoging this notion that all these White kids are being discriminated against and so-called reverse discrimination is killing opportunities for White children.

NORTH KOREA AND IRAQ

Mr. BIDEN. Madam President, we can't afford to put either Iraq or North Korea on the back burner. Both need our immediate and sustained attention. But the crisis on the Korean peninsula, and it is a crisis—is our most urgent priority.

The situation in North Korea has gone from bad to worse. They've thrown out the international inspectors. They've turned off cameras that tracked thousands of canisters of weapons grade plutonium. They've withdrawn from the Nuclear Non-Proliferation Treaty.