

Essay contest advice and sample essays

The first portion of the 2010 Tournament is the essay contest, which is used to select the approximately forty teams we will invite to the February tournament on Duke's campus.

Essays are judged based on the depth of their case law understanding, the quality of their writing, and the persuasiveness of their analysis. Essays are judged blindly (the reader does not know which team or school submitted a given essay) and objectively (based on an unpublished rubric that measures these different components).

We are always wary of limiting the creativity of participants' essays or encouraging students to adhere to any sort of outline. However, we recognize the importance—especially for first-time participants—of guidance in writing the essay. Below are some important things to keep in mind, as well as three strong sample essays from last year.

We strongly caution against to emulate exactly any of the three sample essays below. These are only three of the many excellent essays we received last year, and none is exactly like any other.

Case knowledge—the first part of the prompt asks for a brief summary of the case in question (in this year's tournament, *United States v. Flores-Montano*). Consider the various aspects of the ruling that are particularly important: what was the Court's ruling in this case, and what does it imply for the future? What were the findings of fact? What was the context of the case, and how does it relate to past precedent? Were there any strong and significant opinions in dissent?

Argument/analysis—the second part of the prompt asks students to respond to a particular element of the decision (this year, the Court's border search exception). Here students are encouraged to argue their opinion rather than strictly reporting the facts and judgment of the case. Persuasive, well supported arguments—rather than lukewarm hedging—are encouraged. Students may be provocative; essays will be graded on the strength of their argumentation and not on our agreement with its premise.

Writing style—as with any academic or persuasive writing, quality prose is essential. We expect writing that is strong on two counts: objectively, on adherence to proper grammar and spelling, and more subjectively, on the style, flow, and coherence of the writing.

2009 Sample Essay #1

The Supreme Court ruled in a 5-4 decision that the racial tiebreakers employed by the Seattle and Jefferson County school systems were unconstitutional because they did not meet the standard of “strict scrutiny” required whenever “the government distributes benefits on the basis of individual racial classifications.” Strict scrutiny mandates “that the use of individual racial classifications in the assignment plans here under review is ‘narrowly tailored’ to achieve a ‘compelling’ government interest.” (Roberts)

In the past, a compelling government interest entailed either the use of racial classifications to remedy *de jure* segregation, or to create diversity in higher education when race was not the only factor considered. The first possibility, that of remedying segregation, was deemed invalid because the Seattle school district did not show that it was ever segregated by law, and the Jefferson County school district had “eliminated the vestiges associated with the former policy of segregation and its pernicious effects” as of the year 2000. The second possibility, creating diversity, was not accepted because both school districts’ definitions of diversity were too limited in that they focused on the students as members of a racial group and not as individuals in pursuit of higher education. Because the plans in question were not “part of a broader assessment of diversity” but rather “an effort to achieve a racial balance,” it was also determined that the plans were not narrowly tailored. (Roberts)

Justice Roberts, in section III.B of his opinion, then posited that racial balancing has “no logical stopping point” and that “racial balancing is not transformed from ‘patently unconstitutional’ to a compelling state interest simply by relabeling it ‘racial diversity’” (Roberts). Justice Kennedy, however, was less dismissive of the state interest in racial balancing, and, in a concurring opinion, he suggested that diversity may be considered a compelling state interest if certain race conscious mechanisms were used. In declining to join section III.B of Roberts’ opinion, he suggested that “strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; [and,] allocating resources for special programs...” would pass the strict scrutiny standard because they were race conscious without being racially discriminating (Kennedy). Because of Kennedy’s dissent from the plurality on this issue, the Court’s holding does not include section III.B of Roberts’ opinion.

Clearly an adherent to the “strict constructionist” school of constitutional interpretation, Justice Roberts’ jurisprudence has historically been very hostile to “racial balancing” measures. Roberts lays out his position on this issue quite conclusively with the statement: “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” On this statement, we concur with Roberts’ assessment. “Racial balancing” programs are a clear violation of the Equal Protection Clause of the 14th amendment, which guarantees to citizens that “no state shall ... deny to any person within its jurisdiction the equal protection of the laws.” If racial bias of *any kind* exists, regardless of intention, it violates this provision of the Constitution.

2009 Sample Essay #2

The central issue in the Parents Involved case is the constitutionality of a school district discriminating on the basis of race to attain racial balance. This case involves school districts in Seattle and Jefferson County that allowed students to choose which high schools they were to attend, to the extent that school sizes would allow. In order to prevent overcrowding within the schools, the counties established a system of tiebreakers. Among the deciding factors was racial classification, in an attempt to maintain certain levels of racial diversity. The Parents Involved organization, a group of concerned parents, and a Jefferson County mother challenged the use of race in the selection process, citing the equal protection clause of the 14th amendment.

By a 5-4 margin, the Court held that this selection criterion was unconstitutional based on the equal protection clause. The Court ruled that the methods used did not meet the strict scrutiny test, as there was no evident "compelling government interest", and the schools' selection processes were not "narrowly tailored." For "compelling government interest", the court has emphasized two compelling interests: first, to heal the wounds caused by past intentional segregation; and second, to maintain a level of diversity in higher education. In this case, the court found no need to remedy past discrimination, as there was no actionable history of discrimination in either district. The court also distinguished the *Grutter v. Bolinger* decision because instead of using a "holistic review" of students in this case students were assigned based on race quotas. The court also found that the process did not meet the "narrowly tailored" test because the school failed to consider race-neutral alternatives. Since the school failed to meet the guidelines of the strict scrutiny test in the present case, the court deemed the school selection process unconstitutional.

In a companion plurality opinion, which is not officially binding, Chief Justice Roberts stated that, "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race." When taken in the context of today's society, this is a logical argument. After *Brown v. Board*, certain race-based actions seemed necessary in order to remedy inequality "with all deliberate speed." However, in contemporary times when a level of equality is being approached, the Chief Justice stated that racial discrimination to achieve equality can often exacerbate racial tensions instead of ameliorating them. In his dissenting opinion, Justice Breyer stressed that the equal protection clause allowed school districts to use race to promote racial equality. However, as the Chief Justice stated in his plurality opinion, there is no legal basis for a more lenient strict scrutiny test to reduce segregation; in fact he describes this argument as a case of the "ends justify the means" which is not supported by the case history.

As demonstrated by the Parents Involved case, governmental uses of racial classification that do not present a compelling governmental interest and are not narrowly tailored fail to comply with the equal protection clause.

2009 Sample Essay #3

In 2007, the Supreme Court heard *Parents Involved in Community Schools v. Seattle School District No. 1*, a case that addressed the issue of applying race as a standard of admittance to a district high school. Citing such legal precedents as *Brown v. Board of Education* and *Grutter and Gratz v. Bollinger*, the court ruled in a 5-4 decision in favor of the parents that Seattle's school district neither presented a "compelling state interest" nor operated under a "narrowly tailored plan" in employing a racial tiebreaking mechanism. This interpretation represents a step backwards for equality within the pedagogical system.

The Seattle School District permitted prospective students to seek enrollment to any high school within the area, resulting in several cases of over-application. In those instances, a series of tiebreaking factors were considered in order to determine which students should receive priority. One of the critical factors considered was the students' race, in hopes that the student body would accurately represent the racial demographic of the surrounding region. A group of parents sued the school district, claiming that granting preferential treatment due to race violated the Civil Rights Act of 1964 as well as the Fourteenth Amendment's Equal Protection Clause.

In his plurality opinion, Chief Justice Roberts concluded that the racial tiebreaker was unconstitutional, declaring, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." Although Roberts' assertion is rhetorically potent, its inherent faith in humans' ability to rectify societal injustices without authoritative backing remains overly idealistic. The only objective method of ensuring that ethnic diversity is maintained is through regulated policies. Without a pre-established quota, school officials are more likely to allow personal biases to impact future, individual admissions processes, which by no means would guarantee a sufficiently diverse high school class. However, if the proportion of students admitted is concurrent with geographic statistics, prejudicial treatment in admittance need never be an issue.

Furthermore, the implicit assumptions in Roberts' statement are antithetical to the spirit of *Brown v. Board of Education*, which declared that segregated schools did not provide equal educational opportunities. Though in many ways the societal winds have changed since 1954, it remains a fact that a large number of minorities battle socioeconomic inequities that are a product of centuries of racial injustice. To simply "stop discriminating on a basis of race" would ignore the structural disadvantages that many minorities continue to face. In order to give them a truly equal opportunity, safeguards must be put in place to ensure that minorities are adequately represented within our educational institutions.