

Affirmative Action Reaction

BY EUAN BEAR

Retired University of Michigan Law Professor David Chambers said he was "giddy with relief, overjoyed" that the U.S. Supreme Court's late June ruling upheld the law school's affirmative action admissions process. Chambers worked on an *amicus* brief in the case (see "Beyond Bakke," *OITM* April 2003).

"The decision for the law school was the best outcome we could have hoped for," he added.

The Supreme Court affirmed the University of Michigan Law School's practice of considering race as one factor among many in deciding which applicants would be admitted. At the same time, the Court ruled that the different process used by the University for undergraduate admissions was impermissible. That process was found to be "mechanistic" because a specific number of "points" was added to every minority applicant's score.

"The undergraduate process is reasonable, given the large number of applicants being considered," Chambers said. But despite that ruling, the important thing is that the principle of

race-conscious or racism-compensatory university admissions has been affirmed, he continued.

A near-record number of *amicus* briefs were filed in the case, running about six-to-one in support of affirmative action.

"The decision turned in the end on Justice [Sandra Day] O'Connor. She couldn't drive herself to end a system that had such a good effect," Chambers said.

Dan Vogel, president of the University of Vermont, said the University was "thrilled by the decision. We congratulate the University of Michigan for taking the lead and preserving access for a diverse body of students."

At the same time, he cautioned, "There is no consensus yet, even among attorneys, as to what these two decisions mean. It is clear that formulaic approaches are not allowed."

Vogel said there would be "no real impact" at UVM "because we are so selective." The University received 10,300 applications for about 1,900 freshman class placements in the fall of 2002, he said. Few observers would consider that a "critical mass" of ethnically and racially diverse students has been achieved at the University, however.

"We work very hard to build a diverse

student body. Race is just one thing among many that we consider. Our approach is successful and labor- and resource-intensive," Vogel said, citing the university's close relationship with a Bronx high school, which will send 20 of its graduating seniors to UVM this fall. Among them are six Hispanics, seven African Americans, and four Asian Americans.

In an op-ed piece in the *Chicago Tribune*, Vogel called attention to the 25-year deadline written into her concurring opinion by Justice Sandra Day O'Connor.

"Half a century has not been enough to desegregate the schools, and now we're told we have just half as much time again to transform or somehow to counteract the cultural, political, social and economic contexts that led the court to rule that colleges can use race as a plus to create diverse student bodies for the benefit of all students and of society," he wrote.

"By 2028, we need to be out of the affirmative action business."

The effect of the ruling on Texas and California, which had already banned race-conscious admissions procedures from its colleges and universities, was unclear. In Texas, where a federal court found that the *Bakke* decision on

affirmative action should be held in abeyance (in *Hopwood v. Texas*), any high school student who graduates in the top 10 percent of the class is guaranteed admission to the state's university system.

According to a press release from the a group calling itself "Young Conservatives of Texas," the rulings are "better than *Bakke*" and "place significant new limits on the use of race in admissions." The organization "warned" the University of Texas president that any plan to "reimpose racial preferences in undergraduate admissions is illegal" because the student body has already achieved a "critical mass" of minority students. David Rogers, a member of YCT, was a plaintiff in the *Hopwood v. Texas* case.

But according to Chambers, "Nothing in these rulings would prevent the University of Texas from using the same process as the University of Michigan Law School."

As for those who would turn into an enforceable deadline Justice O'Connor's expectation that affirmative action would no longer be needed 25 years from now, Chambers said, "We've clearly made some progress over the last 25 years, but we have a long way to go before there's no more need." ▼

Dean Formally Announces Bid

BY PAUL OLSEN

After nearly two years on the campaign trail, former Governor Howard Dean came home to Vermont to formally announce his bid to unseat Republican President George Bush in 2004.

"This is a campaign to unite and empower people," Dean told a crowd of 4000 supporters gathered on the Church Street Marketplace in Burlington. "We stand today in common purpose to take our country back."

Burlington, Dean's hometown, is where he began his political career as a Democratic State Representative in 1982.

Throughout his fiery 30-minute announcement speech, dubbed "The Great American Restoration," Dean emphasized health care, environmental protection, and fiscal responsibility. He was also pointed in his criticism of incumbent President George Bush.

"He divides us by race by using the word quota, which appeals to the worst in us by instilling fear that people of color might take our jobs or our place in the nation's best universities," he said of Bush. "He divides us by gender by attacking a woman's right to make her own health care decisions. And even by attacking young women's right to have the same athletic opportunities that young men do. He divides us by sexual orientation by supporting senators who have slandered gay Americans, and he appeals once again to the worst instincts within us, instead of that which is good in America."

Although Dean did not specifically

mention civil unions in his address, his reference to equality under the law has been his mantra since signing Vermont's landmark civil unions law in 2000.

"It is that ideal, the ideal of the American community, that we seek to restore," he said. "An America where it is not enough to protect my rights under the law but where it is a duty and obligation for each of us as Americans to make sure every single American is equal under the law."

U.S. Senator Patrick Leahy (D-Vermont) thinks Howard Dean's presidential candidacy will have the support of gay and lesbian Americans. "He has shown himself for equal rights for everybody whether it is on sexual orientation, color, disability or anything else," Leahy told *OITM* shortly after Dean's June 23 campaign kickoff. "In that regard, he is sticking with true American ideals. There are 270 million Americans and too many run for office who think they are only there to represent a small segment of America. Howard Dean has been very clear that he wants to represent all Americans."

Jean Berthiaume of Burlington agrees with Leahy. "For the gay and lesbian community, he's put his neck out there," he said. "Governor Dean wasn't concerned about the political ramifications of civil unions. I think he is a leader who was able to inspire and change the people in a state where 50 percent of the population was not for civil unions."

In a recent conference call with representatives of gay and lesbian media outlets, Dean emphasized his commitment to full equal-

ty for gay, lesbian, bisexual, and transgender Americans.

"Most Americans believe that equal rights under the law is something that is part of America," he said from Iowa on June 17. "I really do think that if you talk about the issue of civil unions in the way that Americans can understand, which is equality under the law and equal justice under the law, this issue is not only not a liability, it is actually a strength because people know that I'll stand up and do what I think the right thing is, and I don't care what the polls say."

Dean, 54, also said he supports nondiscrimination laws including gender identity, would order the Food and Drug Administration (FDA) to study the efficacy of medical marijuana within his first year in office, would federally recognize civil unions so "same-sex couples can get equal rights under the law," and would "get rid of" the Defense Department's antigay "don't ask, don't tell" policy on gays in the military.

In the end, Dean believes his vocal support for civil unions will help him win the Democratic primary and defeat President George Bush next year. "This has nothing to do with gay rights, it is about human rights," he said. "It is about the ability of every single American to get equal protection under the law. Gay and lesbian people are the last people in American who it is legal to discriminate against, and I think that is wrong."

Dean, a physician, retired as Vermont's Governor in January after having served as the state's chief executive for 11 years.

During his tenure, he helped pass and signed into law legislation prohibiting discrimination on the basis of sexual orientation. He also supported the extension of benefits to the domestic partners of state employees. In 1994, Dean appointed Bill Lippert, an openly gay man, to fill a vacant seat in Vermont's House of Representatives. In 2000, he signed the nation's first civil unions law, granting gay and lesbian couples in Vermont the rights and responsibilities of marriage.

Howard Dean currently faces eight other challengers in the Democratic presidential primary including Massachusetts Senator John Kerry, Connecticut Senator Joseph Lieberman, Florida Senator Bob Graham, North Carolina Senator John Edwards, Ohio Representative Dennis Kucinich, and Missouri Representative Richard Gephardt. All but Graham have voting records rated at 100 percent on seven bills or resolutions tracked by the Human Rights Campaign in the 107th Congress. Graham's rating was 71 percent. In the 105th Congress, candidate Carol Moseley Braun, then a senator from Illinois, also earned a 100 percent HRC rating on six issues. The eighth candidate, Al Sharpton, has never served in Congress.

In addition, Gephardt's daughter Chrissy is an out lesbian, and Gephardt doesn't shy away from talking proudly about her accomplishments. Despite his family connection, Gephardt remains opposed to legalizing gay marriage. It is unclear whether his gay daughter will trump Governor Dean's gay-friendly executive record. ▼

Paul Olsen lives in Colchester and also writes for *In Newsweekly*.