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Confusion Surrounding Title VI and the Discriminatory Intent Requirement: Guardians Association v. Civil Services Commission {103 S. Ct. 3221}

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CONFUSION SURROUNDING TITLE VI AND THE DISCRIMINATORY INTENT REQUIREMENT: *GUARDIANS ASSOCIATION V. CIVIL SERVICE COMMISSION*

Title VI of the Civil Rights Act of 1964[1] prohibits racial discrimination in federally funded programs.[2] Congress failed to define the term "discrimination,"[3] however, thereby creating uncertainty[4] as to whether it intended to require proof of discriminatory intent[5] to establish a Title VI violation, or whether evidence of discriminatory effects[6] would suffice. In *Guardians Association v. Civil Service Commission*,[7] a divided Supreme Court[8] found discriminatory intent nec-

1. 42 U.S.C. §§ 2000d-2000d-6 (1982).

2. *Id.* § 2000d. This section provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *Id.*

3. Title VI generated considerable debate because of the lack of specificity surrounding the term "discrimination." For example, in a congressional debate concerning the meaning of discrimination under Title VI, one senator stated that Congress "must set up a definition and legal standards in a bill for the bill to be constitutional. This has not been done." 110 CONG. REC. 5863 (1964) (statement of Sen. Eastland). Congressmen opposing the bill expressed concern that the federal goverment would possess dangerously broad powers because of the many programs that receive federal aid and because "discrimination" is a broad term. Some congressmen feared that the lack of a clear standard would permit the government to cut off federal funds for political reasons. *See, e.g., id.* at 1619 (statements of Rep. Abernathy); *id.* at 1632 (statements of Rep. Dowdy); *id.* at 5251 (statements of Sen. Talmadge); *id.* at 5612 (statements of Sen. Ervin).

4. This uncertainty is illustrated by several Title VI cases that have reached opposite conclusions on the proper discrimination standard. For a list of these cases, see *infra* note 48.

5. A discriminatory intent standard requires the plaintiff to show that the defendant acted out of racial animus. *See* Note, *Intent or Impact: Proving Discrimination Under Title VI of the Civil Rights Act of 1964*, 80 MICH. L. REV. 1095, 1096 (1982). *See also* Comment, *Title VI: The Second Circuit Sidestep*, 47 BROOKLYN L. REV. 827, 831 (1981).

6. *See* Comment, *supra* note 5, which defines a discriminatory effect as "a disparate racial impact unjustified by a legitimate governmental purpose . . . ." *Id.*

7. 103 S. Ct. 3221 (1983), *cert. denied*, 103 S. Ct. 3568 (1983).

essary to establish a Title VI violation.[9]

Guardians involved the New York City Police Department's (NYCPD's) appointment of new recruits based upon their scores on several written exams.[10] Blacks and Hispanics generally scored lower on the exams, and thus were hired later.[11] Consequently, when the NYCPD began laying off officers on a "last-hired, first-fired" basis,[12] blacks and Hispanics suffered disproportionately.[13] The discharged officers filed suit[14] alleging that the layoffs violated their rights under

8. The *Guardians* Court reached a 5-4 decision, consisting of six different opinions. *Id. See infra* notes 49-65 and accompanying text.

9. 103 S. Ct. at 3229. *See infra* 49-65 and accompanying text.

10. 103 S. Ct. at 3223. For discussion and examples of the examinations in question, see Guardians Ass'n v. Civil Serv. Comm'n, 633 F.2d 232, 238-47, 269-70 (2d Cir. 1980).

11. 103 S. Ct. at 3223.

12. *Id.* For a discussion of the "last-hired, first-fired" method of seniority, see Blumrosen & Blumrosen, *Layoff or Work Sharing: The Civil Rights Act of 1964 in the Recession of 1975*, 7 CIV. RIGHTS DIG., Spring 1975, at 35; U.S. COMM'N ON CIVIL RIGHTS, LAST HIRED, FIRST FIRED—LAYOFFS AND CIVIL RIGHTS (1977).

13. 103 S. Ct. at 3223. An independent study by Rand Institute verified the presence of a disproportionate impact. Guardians Ass'n v. Civil Serv. Comm'n, 431 F. Supp. 526, 540 (S.D.N.Y. 1977).

14. The plaintiffs began this legal battle in 1972, when they unsuccessfully sought a preliminary injunction to prevent the NYCPD from making appointments based upon the examinations. Guardians Ass'n v. Civil Serv. Comm'n, 490 F.2d 400 (2d Cir. 1973). Plaintiffs filed the suit in question, concerning "last-hired, first-fired" layoffs, in 1976. The district court found no discriminatory intent, but held that since the exams produced a disparate impact on minorities and were not job-related, their use violated Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-2000e-16 (1982)) (prohibiting employment discrimination). 431 F. Supp. 526, 534-35 (S.D.N.Y. 1977). The court granted a preliminary injunction preventing the NYCPD from firing or recalling any officers until it revised the seniority lists. *Id.* at 551. The Second Circuit Court of Appeals vacated and remanded this decision, citing International Bhd. of Teamsters v. United States, 431 U.S. 324 (1977). Guardians Ass'n v. Civil Serv. Comm'n, 562 F.2d 38 (2d Cir. 1978) (unpublished opinion); Guardians Ass'n v. Civil Serv. Comm'n, 466 F. Supp. 1273, 1275-76 (S.D.N.Y. 1979) (explaining the rationale of the court of appeals decision to vacate and remand). The *Teamsters* Court found that a bona fide seniority system established before Title VII became effective is not subject to Title VII requirements if it merely creates a discriminatory effect. 431 U.S. at 348-55.

Because the seniority system in *Guardians* met these requirements, the court of appeals ruled that the district court had erred in granting the preliminary injunction. Guardians Ass'n v. Civil Serv. Comm'n, 562 F.2d 38 (2d Cir. 1978) (on remand after court of appeals vacated preliminary injunction). On remand, the district court again restored seniority rights, but only to those class members hired after Title VII became effective. *Guardians*, 466 F. Supp. 1273, 1280 (S.D.N.Y. 1979). The court then considered Title VI, which became effective before the layoffs occurred. It granted the

Title VI.[15] The Second Circuit Court of Appeals denied relief,[16] holding that establishing a Title VI violation requires proof of discriminatory intent.[17] A fragmented[18] Supreme Court affirmed.[19]

Congress passed the Civil Rights Act of 1964[20] to protect the basic civil rights of United States citizens.[21] As one way to achieve this goal, Congress included Title VI to deny federal funds to programs operating in a racially discriminatory manner.[22] Congress, however, failed to specify whether Title VI should apply to programs that merely cause discriminatory effects, or whether it should apply only to programs evincing intentional discrimination. The legislative history does not clearly support either contention.[23]

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plaintiffs compensatory seniority and restored the preliminary injunction against NYCPD's seniority-based employment policy. *Id.* at 1287. The court of appeals affirmed the result under Title VII, but denied the relief granted under Title VI. Guardians Ass'n v. Civil Serv. Comm'n, 633 F.2d 232 (2d Cir. 1980). The Supreme Court affirmed. 103 S. Ct. 3221 (1983), *cert. denied*, 103 S. Ct. 3568 (1983).

15. Plaintiffs also brought a Title VII claim. *See supra* note 14.

16. 633 F.2d 232 (2d Cir. 1980). *See supra* note 14.

17. 633 F.2d at 247-54. Although the court's decision was unanimous, its reasoning was split. Two judges based their decision on lack of discriminatory intent, *id.* at 272-75, while the third felt that Title VI did not provide a compensatory private remedy. *Id.* at 255-62.

18. A 5-4 vote affirmed the lower court, but the Justices authored six separate opinions on the matter. 103 S. Ct. 3221. *See supra* note 8 and *infra* notes 49-65 and accompanying text.

19. 103 S. Ct. at 3235.

Another case involving the validity of a "last-hired, first-fired" seniority system, although arising under Title VII rather that Title VI, is Firefighters Local Union No. 1784 v. Stotts, 104 S. Ct. 2576 (1984). In *Stotts*, the Court ruled that the district court had erred in modifying a consent decree under which the city had adopted a goal of increasing the number of blacks in the fire department. *Id.* at 2590. The modification had prohibited the city from laying off blacks if such layoffs would reduce the proportion of blacks in certain job categories. *Id.* at 2581.

20. Pub. L. No. 88-352, 78 Stat. 244 (1964) (codified as amended at 42 U.S.C. §§ 2000a-2000h-6 (1982)).

21. H.R. REP. No. 914, 88th Cong., 1st Sess. pt. 2, *reprinted in* 1964 U.S. CODE CONG. & AD. NEWS 2391.

22. *See* Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 284 (1978).

23. Examples of legislative history that lend some support to an effects standard for Title VI include: "The powers sought in this title would affect virtually every man, woman, and child, business and other institutions in this country." 110 CONG. REC. 1703 (remarks of Rep. Winstead); "This is a strong bill and the strongest provision in the bill," *id.* at 2469 (remarks of Rep. Libonati); "It is . . . unconscionable that discrimination still exists in . . . some federally assisted programs. The taxes which support these programs are paid . . . by all citizens. It is simple justice all citizens

Through section 602 of Title VI,[24] Congress placed the burden of implementation and enforcement on the administrative agencies that disburse federal grants and funds.[25] Section 602 requires these agencies to establish rules and regulations consistent with the objectives of Title VI.[26] An organization must observe these rules and regulations to acquire and continue receiving federal funds.[27] Most agencies use the model Title VI regulations[28] created by a presidential task force shortly after Title VI became effective.[29]

The Supreme Court first addressed Title VI in *Lau v. Nichols*.[30] In *Lau*, the San Francisco school system failed to provide supplemental

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should derive equal benefits from these programs." *Id.* at 6561 (remarks of Sen. Kuchel).

Examples of legislative history that may indicate an intent standard for Title VI include: "The harsh facts are that constitutionally protected rights have been disregarded in the administration of Federal programs." *Id.* at 2481 (remarks of Rep. Ryan); "Title VI has now been modified . . . to provide enormous safeguards . . . in connection with protecting the rights of states, localities and institutions against arbitrary cutoff of Federal Funds." *Id.* at 5243 (remarks of Sen. Clark).

24. 42 U.S.C. § 2000d-1 (1982). This section directs departments and agencies that disburse federal funds to adopt rules and regulations consistent with the statute's objectives. It also empowers the agencies and departments to enforce the adopted rules by refusing to grant federal assistance or by terminating federal assistance after a hearing. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. The departments referred to and their regulations include: Agriculture, 7 C.F.R. §§ 15.1-15b.42 (1984); Commerce, 15 C.F.R. §§ 8.1-.15 (1984); Defense, 32 C.F.R. §§ 300.1-.14 (1984); Education, 34 C.F.R. §§ 100.1-.13 (1984); Energy, 10 C.F.R. §§ 1040.1-.14 (1984); Health and Human Services, 45 C.F.R. §§ 80.1-.13 (1984); Housing and Urban Development, 24 C.F.R. §§ 17.1-.12 (1984); Interior, 43 C.F.R. §§ 17.1-.12 (1984); Justice, 28 C.F.R. §§ 42.1-.540 (1984); Labor, 29 C.F.R. §§ 31.1-.12 (1984); State, 22 C.F.R. §§ 141.1-.12 (1984); Transportation, 49 C.F.R. §§ 21.1-.23 (1984); Treasury, 31 C.F.R. § 51.224 (1984).

29. In response to a presidential directive, the Justice Department, the Bureau of Budget, the Civil Rights Commission, and representatives from the White House formed a task force to draw up the model regulations. *See* Comment, *Title VI of the Civil Rights Act of 1964—Implementation and Impact*, 36 GEO. WASH. L. REV. 824, 845-46 (1968). The task force first developed regulations for the Department of Health, Education, and Welfare (HEW), then used this as a standard for all the other departments. These regulations establish an "effects" test. *Id.* at 826. For an example of a typical regulation, see 45 C.F.R. §§ 80.1-.13 (1984), which provides that a recipient of federal funds may not "utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. . . ." 45 C.F.R. § 80.3(b)(2) (1984).

30. 414 U.S. 563 (1974).

language instruction to numerous children of Chinese ancestry who did not speak English.[31] The Court found a Title VI violation even though the plaintiffs never proved the school district intended to discriminate against these students.[32] A substantial part of the Court's rationale concerned the Department of Health, Education, and Welfare (HEW)[33] Title VI implementing regulations.[34] The HEW regulations used an effects standard[35] and the Court found that when the school district accepted federal aid it agreed to abide by the regulations.[36]

Justice Stewart, concurring in *Lau*, went a step further and confirmed the validity of section 602 of Title VI.[37] He cited *Mourning v. Family Publication Services*,[38] in which the Court held that implementing regulations created under provisions similar to section 602 were valid if reasonably related to the purposes of the legislation.[39] Justice Stewart, joined by Chief Justice Burger and Justice Blackmun, concluded that an effects standard is reasonably related to the purposes of Title VI.[40]

In *Regents of the University of California v. Bakke*,[41] the Court again addressed the Title VI interpretation problem. Bakke, a white applicant to a state medical school, claimed he was wrongly denied admission because of his race.[42] The school's affirmative action pro-

31. *Id.* at 564. The school district made supplemental English courses available only to about 1,000 of the 2,856 students of Chinese ancestry who did not speak English. *Id.*

32. *Id.* at 569-70 (Stewart, J., concurring).

33. 45 C.F.R. §§ 80.1-.13 (1976). The Department of Health, Education, and Welfare is now the Department of Health and Human Services.

34. 414 U.S. at 564 (1974). Both Justice Douglas' majority opinion and Justice Stewart's concurrence made the implementing regulations a crucial factor in their decision. *Id.* at 566-69; *id.* at 569-72 (Stewart, J., concurring).

35. 45 C.F.R. §§ 80.3(b)(2), (3) (1976). For a definition of a "discriminatory effect," see *supra* note 6.

36. 414 U.S. at 568-69.

37. *Id.* at 571 (Stewart, J., concurring).

38. 411 U.S. 356 (1973).

39. *Id.* at 369. *Mourning* concerned implementing regulations created by the Federal Reserve Board for the Truth in Lending Act, 15 U.S.C. § 1604 (1982). *Id.* at 358.

40. 414 U.S. at 571. The remainder of the unanimous *Lau* Court, by using § 602 as the basis for their decision, implicitly indicated that a reasonable relationship existed between an effects standard and the goals of Title VI. *Id.* at 569.

41. 438 U.S. 265 (1978).

42. *Id.* at 277-78. Bakke applied to the University of California at Davis in 1973

gram set aside a number of spaces in each entering class for members of disadvantaged minorities. It used race as a factor in selecting applicants to fill those spaces.[43] A majority of the Court considered Title VI in relation to the Constitution.[44] They found that Title VI incorporates a constitutional standard of discrimination and thus only prohibits intentional discrimination.[45] The Court stated this conclusion in dictum,[46] however, making it uncertain whether *Bakke*

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and 1974. In both years minority students with grade point averages and MCAT scores significantly lower than Bakke's scores gained admission through the school's affirmative action program. *Id.* at 277 n.7.

43. *Id.* at 272-76.

44. *Id.* at 281-87 (opinion of Powell, J.); *id.* at 352-55 (opinion of Brennan, White, Marshall, and Blackmun, JJ.).

45. *Id.* (citing Washington v. Davis, 426 U.S. 229 (1976)). *Washington v. Davis* and other cases involving different parts of the Civil Rights Act suggest that constitutional and statutory tests differ. *Washington* involved a challenge to police department hiring procedures brought by applicants rejected because of poor results on a verbal skills test. *Id.* at 232-36. The Court rejected the challengers' claim that the procedures violated the equal protection clause of the Constitution (U.S. CONST. amend. XIV, § 1 as applied to the District of Columbia through the fifth amendment due process clause, U.S. CONST. amend. V). It held that proof of discriminatory intent was necessary to sustain such a claim. *Id.* at 238-48. The Court then evaluated the plaintiffs' claim under the District of Columbia version of Title VII and found against the plaintiffs on that claim as well, because the tests bore a direct relation to the requirements of the police training program. *Id.* at 249-52. By disposing of the Title VII claim separately, the Court implied that the constitutional standard may differ from the statutory standard. *Washington*, therefore, let stand the Court's earlier ruling in Griggs v. Duke Power Co., 401 U.S. 424 (1971), that plaintiffs could establish a Title VII violation without having to prove defendants' discriminatory intent. Under *Griggs*, plaintiffs can prevail merely by showing that a hiring criterion has a discriminatory impact and is insufficiently job-related. 401 U.S. at 431.

In Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977), the Court considered a challenge under the equal protection clause and Title VIII, 42 U.S.C. §§ 3601-3619 (1982), to the Village's refusal to rezone land to permit the construction of low-income housing. 429 U.S. at 254. The Court ruled against the plaintiffs on the equal protection claim, holding that they had failed to establish the requisite intent to discriminate. *Id.* at 268-71. The Court, however, remanded the case for determination of the Title VIII issue, *id.* at 271, clearly implying that a different standard applies to Title VIII claims than to equal protection clause claims. On remand, the lower court used a discriminatory effects standard to evaluate the plaintiff's claim. Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977), *cert. denied*, 434 U.S. 1025 (1978). For a discussion of the differing constitutional and statutory standards within the Title VIII framework, see Comment, Schmidt v. Boston Housing Authority: *Racial Classifications in Public Housing*, 23 URBAN L. ANN. 343, 352-53 (1982).

46. The Court ordered Bakke admitted because the defendant failed to prove that Bakke's application would have been rejected even in the absence of an affirmative action program. Therefore, the intent requirement is dictum and at least one com-

actually overruled *Lau*.[47] The ensuing confusion is exemplified by the subsequent divergent standards lower courts have used to determine Title VI violations.[48]

The *Guardians* Court approached the Title VI question from several perspectives. Justice White, announcing the judgment of the Court, stated that an effects test sufficiently proved a Title VI violation for two reasons.[49] First, he found that *Bakke* did not overrule *Lau* because the cases involved different issues and, therefore, *Lau* is still valid.[50] Alternatively, Justice White concluded that even if *Bakke* demanded that Title VI follow an intent standard, failure to

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mentator suggests that *Bakke* does not overrule Lau v. Nichols, 414 U.S. 563 (1974) (*see supra* notes 30-40 and accompanying text). *See* Note, *supra* note 5, at 1098-99.

47. One commentator suggests that *Bakke* did not overrule *Lau* because: 1) Neither Justice Powell nor Justice Brennan expressed any desire to overrule *Lau*; 2) different issues confronted the court (*see infra* note 50); 3) Justice Powell and Justice Brennan may have limited Title VI to a constitutional standard only because they feared not doing so would prohibit affirmative action programs; and 4) the Supreme Court implicitly acknowledged that *Bakke* did not address the type of standard required in a Title VI claim. Note, *supra* note 5, at 1098-1101.

In Board of Educ. v. Harris, 444 U.S. 130 (1979), however, the Court seemed to uphold an intent standard for Title VI, when it found that a "violation of Title VI may result in a cutoff of all federal funds, and it is likely that Congress would wish this drastic result only when the discrimination is intentional." *Id.* at 150. The Court, however, did not decide *Harris* on Title VI grounds, therefore the statement is dictum. *But cf.* Fullilove v. Klutznick, 448 U.S. 448, 479 (1980) (the Court indicated that administrative implementing regulations using an effects standard are valid).

48. Since *Bakke*, some courts have upheld an effects standard. *See, e.g.*, NAACP v. Medical Center, Inc., 657 F.2d 1322 (3d Cir. 1981) (a hospital's plan to relocate, which has a disparate impact on minorities, violates Title VI); Guadelupe Org., Inc. v. Tempe Elementary School Dist. No. 3, 587 F.2d 1022 (9th Cir. 1978) (providing non-English speaking students with remedial English instruction satisfies the *Lau* standard and creates no discriminatory effect); Johnson v. City of Arcadia, 450 F. Supp. 1363 (M.D. Fla. 1978) (disparate impact is sufficient to prove a municipal service violation of Title VI). Other courts have used an intent standard. *See, e.g.*, Harris v. White, 479 F. Supp. 996 (D. Mass. 1979) (plaintiff's failure to show intentional discrimination defeats a Title VI claim); Valdez v. Graham, 474 F. Supp. 149 (M.D. Fla. 1979) (defendant's policies did not discriminate invidiously, thus no Title VI violation); Otero v. Mesa County Valley School Dist. No. 51, 470 F. Supp. 326 (D. Colo. 1979) (recovery under Title VI requires discriminatory intent; discriminatory impact does not suffice).

49. 103 S. Ct. at 3225-27.

50. *Id.* at 3225-26. Justice White determined that the issue in *Bakke* was whether Title VI forbids intentional but remedial discrimination that is permitted by the Constitution. *Id.* at 3226. Nevertheless, he stated that *Lau* addressed the question of whether Title VI proscribes unintentional discrimination as well as intentional nonremedial discrimination. *Id.*

comply with the administrative agency implementing regulations can establish a violation.[51] Nevertheless, Justice White denied recovery, arguing that compensatory relief is not available for past unintentional Title VI violations.[52] Justice Powell, joined by Chief Justice Burger, denied relief on the ground that discriminatory intent is essential to a Title VI infraction,[53] agency regulations to the contrary notwithstanding.[54] He based this conclusion on his opinion in *Bakke*[55] which stated that Title VI only reaches as far as the equal protection clause or the fifth amendment.[56] Justice Rehnquist also found discriminatory intent essential, but believed that the administrative implementing regulations were valid.[57] He joined Justice White's opinion in denying compensatory relief to the plaintiffs.[58] Justice O'Connor determined that discriminatory intent is necessary for a Title VI violation and, therefore, the implementing regulations using an effects test were invalid.[59]

Justice Marshall, dissenting, concluded that discriminatory effects sufficed to prove a Title VI violation.[60] The Justice based his deci-

51. *Id.* at 3226-27.

52. *Id.* at 3229-34. Justice White, however, would allow prospective injunctive relief under Title VI against actions having unintentional discriminatory effects. *Id.* at 3231-32 (Powell, J., concurring).

53. *Id.* at 3235-37. Justice Powell found that *Bakke* overruled *Lau. Id.* Powell, however, rested his conclusion upon a different argument. Justice Powell and Chief Justice Burger asserted that Title VI does not permit a private cause of action. *Id.* at 3235-36. The other Justices disagree, however, *id.* at 3227-29, 3257, 3250-52, and in previous cases, the Court has upheld the right of private litigants to sue for civil rights violations. *See, e.g.*, Cannon v. University of Chicago, 441 U.S. 677 (1979) (allowed a private right of action under Title IX and stated that Title VI and Title IX should be interpreted consistently); Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) (allowed applicant denied admission to sue the school); Hills v. Gautreaux, 425 U.S. 284 (1976) (permitted tenants to sue housing authority); Lau v. Nichols, 414 U.S. 563 (1974) (allowed class action suit by students against a school district). *See generally* Comment, *Civil Rights: Title VI--Is a Private Right of Action Intended?*, 19 WASHBURN L.J. 565 (1980) (concluding that a private right of action is intended).

54. 103 S. Ct. at 3237 n.5 (Powell, J., concurring).

55. 438 U.S. at 281-87.

56. 103 S. Ct. at 3236 (Powell, J., concurring).

57. *Id.* at 3237. Justice Rehnquist did not write his own opinion, but instead concurred with portions of other opinions. His decision consisted of Parts I, III, IV, and V of Justice White's opinion, *id.* at 3223-25, 3227-34, and Part II of Justice Powell's opinion. *Id.* at 3236-37.

58. *Id.* at 3227-34.

59. *Id.* at 3237-39 (O'Connor, J., concurring).

60. *Id.* at 3239-44 (Marshall, J., dissenting).

sion upon the effects standard used in the implementing regulations,[61] coupled with Congress' failure to alter these regulations for two decades.[62] Justices Stevens, Brennan, and Blackmun also dissented.[63] They found that *Bakke* clearly created an intent standard for Title VI,[64] but also determined that the implementing regulations permitted compensatory relief.[65]

The *Guardians* Court had an opportunity to clarify the necessary factors for obtaining relief under Title VI. Unfortunately, as Justice Powell noted, this decision will serve only to "confuse rather than guide."[66] The Court's stand on the "effect-intent" question is fairly clear—seven of nine Justices believed that a Title VI violation requires proof of discriminatory intent.[67] Five Justices, however, felt that implementing regulations that specified an effects test are valid.[68] Also, a different set of five Justices asserted either directly or indirectly[69] that they would not permit compensatory relief without discriminatory intent.[70] Because of the varying rationales it is difficult to discern just what the Court as a whole actually intended.[71]

61. *Id.* at 3240-44 (Marshall, J., dissenting). *See supra* note 29 (discussion of the implementing regulations).

62. 103 S. Ct. at 3241-42 (Marshall, J., dissenting). In 1966 the House of Representatives voted on and defeated a proposal to require a Title VI intent standard. 112 CONG. REC. 18,715 (1966).

63. 103 S. Ct. at 3249-55 (Stevens, J., dissenting).

64. *Id.* at 3252-53 (Stevens, J., dissenting). The Justices stated that "proof of invidious purpose is a necessary component of a valid Title VI claim." *Id.* at 3253 (Stevens, J., dissenting).

65. *Id.* at 3253-55 (Stevens, J., dissenting).

66. *Id.* at 3235 (Powell, J., concurring).

67. *Id.* at 3235 n.1 (Powell, J., concurring).

68. *Id.* at 3235 n.27.

69. Justices White and Rehnquist explicitly spoke out against compensatory relief. *Id.* at 3229-34. *See supra* text accompanying notes 49 & 58. Justice Powell and Chief Justice Burger would not permit a private cause of action. It therefore follows that they would not allow compensatory relief for a private party. *See supra* note 53 and accompanying text. Justice O'Connor would deny any relief, including compensatory damages, absent proof of discriminatory intent. *See supra* text accompanying note 59.

70. 103 S. Ct. at 3235 n.27.

71. Although a majority found discriminatory intent necessary, and a majority found a right of action for discriminatory effects violating administrative regulations, the question of what relief is available remains unanswered. This case also leaves other issues unsettled. If the regulations are valid but compensatory relief is unavailable, what incentive would a private party have to file suit? If an effects test cannot

The Court has distinguished standards for statutory claims from standards for constitutional claims in other titles of the Civil Rights Act.[72] In *Guardians*, however, no such distinction is made, apparently because of the dictum in *Bakke* finding Title VI incorporated the constitutional standard.[73] Although legislative history fails to support clearly either an intent or an effects standard,[74] a congressional desire for an effects standard is evident through negative inference. Congress delegated the responsibility for implementing Title VI to administrative agencies.[75] These agencies created regulations[76] to carry out the goals of Title VI.[77] Because Congress has not objected to these regulations,[78] its approval of them may be inferred. Finally, the Supreme Court itself applied the effects test in *Lau*[79] and in cases involving other titles of the Civil Rights Act.[80]

The *Guardians* decision leaves a cloud of uncertainty over Title VI. The shift in opinions from *Lau* to *Guardians*[81] indicates that the Court desires an intent standard for Title VI. *Guardians* will provide additional support for the intent standard in subsequent Title VI actions and future plaintiffs will shoulder a heavier burden of proof.

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establish a violation, is the entire spectrum of relevant administrative regulations unenforceable, or only certain portions?

72. *See supra* note 45 and accompanying text.

73. 438 U.S. at 281-87 (opinion of Powell, J.); *id.* at 328-55 (opinion of Brennan, White, Marshall, and Blackmun, JJ.).

74. *See supra* note 23 and accompanying text.

75. 42 U.S.C. § 2000d-1 (1982). *See supra* note 24 and accompanying text.

76. *See supra* notes 28-29 and accompanying text.

77. *See supra* note 21 and accompanying text.

78. *See supra* note 62.

79. *See supra* notes 30-40 and accompanying text.

80. *See supra* note 45.

81. In *Lau*, a unanimous Court upheld an effects standard. 414 U.S. 563 (1974). In *Guardians*, seven Justices voted for an intent standard. 103 S. Ct. 3221 (1983), *cert. denied*, 103 S. Ct. 3568 (1983). *See supra* notes 49-65 and accompanying text.