SUPREME COURT OF THE UNITED STATES

Nos. 90–1205 AND 90–6588

UNITED STATES, PETITIONER

90–1205 v.

KIRK FORDICE, GOVERNOR OF MISSISSIPPI, ET AL.

JAKE AYERS, ET AL., PETITIONERS

90–6588 *v.*

KIRK FORDICE, GOVERNOR OF MISSISSIPPI, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 26, 1992]

JUSTICE WHITE delivered the opinion of the Court.

In 1954, this Court held that the concept of "`separate but equal'" has no place in the field of public education. *Brown* v. *Board of Education (Brown I)*, 347 U. S. 483, 495 (1954). The following year, the Court ordered an end to segregated public education "with all deliberate speed." *Brown* v. *Board of Education (Brown II)*, 349 U. S. 294, 301 (1955). Since these decisions, the Court has had many occasions to evaluate whether a public school district has met its affirmative obligation to dismantle its prior *de jure* segregated system in elementary and secondary schools. In this case we decide what standards to apply in determining whether the State of Mississippi has met this obligation in the university context.

Mississippi launched its public university system in 1848 by establishing the University of Mississippi, an institution dedicated to the higher education exclusively of white persons. In succeeding decades, the State erected additional post-secondary, single-

race educational facilities. Alcorn State University opened its doors in 1871 as "an agricultural college for the education of Mississippi's black youth." *Ayers* v. *Allain*, 674 F. Supp. 1523, 1527 (ND Miss. 1987). Creation of four more exclusively white institutions followed: Mississippi State University (1880), Mississippi University for Women (1885), University of Southern Mississippi (1912), and Delta State University (1925). The State added two more solely black institutions in 1940 and 1950: in the former year, Jackson State University, which was charged with training "black teachers for the black public schools," *id.,* at 1528; and in the latter year, Mississippi Valley State University, whose functions were to educate teachers primarily for rural and elementary schools and to provide vocational instruction to black students.

Despite this Court's decisions in *Brown I* and *Brown II*, Mississippi's policy of *de jure* segregation continued. The first black student was not admitted to the University of Mississippi until 1962, and then only by court order. See *Meredith* v. *Fair*, 306 F. 2d 374 (CA5), cert. denied, 371 U. S. 828, enf'd, 313 F. 2d 532 (1962) (en banc) *(per curiam)*. For the next 12 years the segregated public university system in the State remained largely intact. Mississippi State University, Mississippi University for Women, University of Southern Mississippi, and Delta State University each admitted at least one black student during these years, but the student composition of these institutions was still almost completely white. During this period, Jackson State and Mississippi Valley State were exclusively black; Alcorn State had admitted five white students by 1968.

In 1969, the United States Department of Health, Education and Welfare (HEW) initiated efforts to enforce Title VI of the Civil Rights Act of 1964, 42 U. S. C. §2000d.[1] HEW requested that the State

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[1]This provision states: "No person in the United States shall, on the ground of race, color, or national origin,

devise a plan to disestablish the formerly *de jure* segregated university system. In June 1973, the Board of Trustees of State Institutions of Higher Learning submitted a Plan of Compliance, which expressed the aims of improving educational opportunities for all Mississippi citizens by setting numerical goals on the enrollment of other-race students at State universities, hiring other-race faculty members, and instituting remedial programs and special recruitment efforts to achieve those goals. App. 898–900. HEW rejected this Plan as failing to comply with Title VI because it did not go far enough in the areas of student recruitment and enrollment, faculty hiring, elimination of unnecessary program duplication, and institutional funding practices to ensure that "a student's choice of institution or campus, henceforth, will be based on other than racial criteria." *Id.,* at 205. The Board reluctantly offered amendments, prefacing its reform pledge to HEW with this statement: "With deference, it is the position of the Board of Trustees . . . that the Mississippi system of higher education is in compliance with Title VI of the Civil Rights Act of 1964." *Id.,* at 898. At this time, the racial composition of the State's universities had changed only marginally from the levels of 1968, which were almost exclusively single-race.[2] Though HEW refused

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be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

[2]For the 1974–1975 school year, black students comprised 4.1 percent of the full-time undergraduate enrollments at University of Mississippi; at Mississippi State University, 7.5 percent; at University of Southern Mississippi, 8.0 percent; at Delta State University, 12.6 percent; at Mississippi University for Women, 13.0 percent. At Jackson State, Alcorn State, and Mississippi Valley State, the percentages of black students were 96.6 percent, 99.9 percent, and 100

to accept the modified Plan, the Board adopted it anyway. 674 F. Supp., at 1530. But even the limited effects of this Plan in disestablishing the prior *de jure* segregated system were substantially constricted by the state legislature, which refused to fund it until Fiscal Year 1978, and even then at well under half the amount sought by the Board. App. 896–897, 1444–1445, 1448–1449.[3]

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percent, respectively. Brief for United States 7.

[3]According to counsel for respondents, it was in this time period—the mid- to late-1970s—that the State came into full "compliance with the law" as having taken the necessary affirmative steps to dismantle its prior *de jure* system. Tr. of Oral Arg. 45.

Private petitioners initiated this lawsuit in 1975. They complained that Mississippi had maintained the racially segregative effects of its prior dual system of post-secondary education in violation of the Fifth, Ninth, Thirteenth, and Fourteenth Amendments, 42 U. S. C. §§1981 and 1983, and Title VI of the Civil Rights Act of 1964, 42 U. S. C. §2000d. Shortly thereafter, the United States filed its complaint in intervention, charging that State officials had failed to satisfy their obligation under the Equal Protection Clause of the Fourteenth Amendment and Title VI to dismantle Mississippi's dual system of higher education.

After this lawsuit was filed, the parties attempted for 12 years to achieve a consensual resolution of their differences through voluntary dismantlement by the State of its prior separated system. The Board of Trustees implemented reviews of existing curricula and program "mission" at each institution. In 1981, the Board issued "Mission Statements" that identified the extant purpose of each public university. These "missions" were clustered into three categories: comprehensive, urban, and regional. "Comprehensive" universities were classified as those with the greatest existing resources and program offerings. All three such institutions (University of Mississippi, Mississippi State, and Southern Mississippi) were exclusively white under the prior *de jure* segregated system. The Board authorized each to continue offering doctoral degrees and to assert leadership in certain disciplines. Jackson State, the sole urban university, was assigned a more limited research and degree mission, with both functions geared toward its urban setting. It was exclusively black at its inception. The "regional" designation was something of a misnomer, as the Board envisioned those institutions primarily in an undergraduate role, rather than a "regional" one in the geographical sense of serving just the localities in which they were based. Only the universities

classified as "regional" included institu-tions that, prior to desegregation, had been either exclusively white—Delta State and Mississippi University for Women—or exclusively black—Alcorn State and Mississippi Valley.

By the mid-1980's, 30 years after *Brown*, more than 99 percent of Mississippi's white students were enrolled at University of Mississippi, Mississippi State, Southern Mississippi, Delta State, and Mississippi University for Women. The student bodies at these universities remained predominantly white, averaging between 80 and 91 percent white students. Seventy-one percent of the State's black students attended Jackson State, Alcorn State, and Mississippi Valley, where the racial composition ranged from 92 to 99 percent black. *Ayers* v. *Allain*, 893 F. 2d. 732, 734–735 (CA5 1990) (panel decision).

By 1987, the parties concluded that they could not agree on whether the State had taken the requisite affirmative steps to dismantle its prior *de jure* segregated system. They proceeded to trial. Both sides presented voluminous evidence on a full range of educational issues spanning admissions standards, faculty and administrative staff recruitment, program duplication, on-campus discrimination, institutional funding disparities, and satellite campuses. Petitioners argued that in various ways the State continued to reinforce historic, race-based distinctions among the universities. Respondents argued generally that the State had fulfilled its duty to disestablish its state-imposed segregative system by implementing and maintaining good-faith, nondiscriminatory race-neutral policies and practices in student admission, faculty hiring, and operations. Moreover, they suggested, the State had attracted significant numbers of qualified black students to those universities composed mostly of white persons. Respondents averred that the mere continued

existence of racially identifiable universities was not unlawful given the freedom of students to choose which institution to attend and the varying objectives and features of the State's universities.

At trial's end, based on the testimony of 71 witnesses and 56,700 pages of exhibits, the District Court entered extensive findings of fact. The court first offered a historical overview of the higher education institutions in Mississippi and the developments in the system between 1954 and the filing of this suit in 1975. 674 F. Supp., at 1526–1530. It then made specific findings recounting post-1975 developments, including a description at the time of trial, in those areas of the higher education system under attack by plaintiffs: admission requirements and recruitment; institutional classification and assignment of missions; duplication of programs; facilities and finance; the land grant institutions; faculty and staff; and governance. *Id.*, at 1530–1550.

The court's conclusions of law followed. As an overview, the court outlined the common ground in the case: "Where a state has previously maintained a racially dual system of public education established by law, it assumes an `affirmative duty' to reform those policies and practices which required or contributed to the separation of the races." *Id.,* at 1551. Noting that courts unanimously hold that the affirmative duty to dismantle a racially dual structure in elementary and secondary schools also governs in the higher education context, the court observed that there was disagreement whether *Green* v. *New Kent County School Bd.,* 391 U. S. 430 (1968), applied in all of its aspects to formerly dual systems of higher education, *i.e.*, whether "some level of racial mixture at previously segregated institutions of higher learning is not only desirable but necessary to `effectively' desegregate the system." 674 F. Supp., at 1552. Relying on a Fifth Circuit three-judge court decision, *Alabama State Teachers Assn. (ASTA)* v.

Alabama Public School and College Authority, 289 F. Supp. 784 (MD Ala. 1968), our *per curiam* affirmance of that case, 393 U. S. 400 (1969), and its understanding of our later decision in *Bazemore* v. *Friday*, 478 U. S. 385 (1986), the court concluded that in the higher education context, "the affirmative duty to desegregate does not contemplate either restricting choice or the achievement of any degree of racial balance." 674 F. Supp., at 1553. Thus, the court stated: "While student enrollment and faculty and staff hiring patterns are to be examined, greater emphasis should instead be placed on current state higher education policies and practices in order to insure that such policies and practices are racially neutral, developed and implemented in good faith, and do not substantially contribute to the continued racial identifiability of individual institutions." *Id.,* at 1554.

When it addressed the same aspects of the university system covered by the fact-findings in light of the foregoing standard, the court found no violation of federal law in any of them. "In summary, the court finds that current actions on the part of the defendants demonstrate conclusively that the defendants are fulfilling their affirmative duty to dis-establish the former *de jure* segregated system of higher education." *Id.*, at 1564.

The Court of Appeals reheard the case en banc and affirmed the decision of the District Court. *Ayers* v. *Allain*, 914 F. 2d 676 (CA5 1990). With a single exception, see *infra,* at ___, it did not disturb the District Court's findings of fact or conclusions of law. The en banc majority agreed that "Mississippi was . . . constitutionally required to eliminate invidious racial distinctions and dismantle its dual system." *Id.*, at 682. That duty, the court held, had been discharged since "the record makes clear that Mississippi has adopted and implemented race neutral policies for operating its colleges and universities and that all

students have real freedom of choice to attend the college or university they wish . . . ." *Id.*, at 678.

We granted the respective writs of certiorari filed by the United States and the private petitioners. 499 U. S. ___ (1991).

The District Court, the Court of Appeals, and respondents recognize and acknowledge that the State of Mississippi had the constitutional duty to dismantle the dual school system that its laws once mandated. Nor is there any dispute that this obligation applies to its higher education system. If the State has not discharged this duty, it remains in violation of the Fourteenth Amendment. *Brown* v. *Board of Education* and its progeny clearly mandate this observation. Thus, the primary issue in this case is whether the State has met its affirmative duty to dismantle its prior dual university system.

Our decisions establish that a State does not discharge its constitutional obligations until it eradicates policies and practices traceable to its prior *de jure* dual system that continue to foster segregation. Thus we have consistently asked whether existing racial identifiability is attributable to the State, see, *e.g.*, *Freeman* v. *Pitts*, 503 U. S. ___ (1992) (slip op., at 24); *Bazemore* v. *Friday, supra,* at 407 (WHITE, J., concurring); *Pasadena City Board of Educ.* v. *Spangler*, 427 U. S. 424, 434 (1976); *Gilmore* v. *City of Montgomery*, 417 U. S. 556, 566–567 (1974); and examined a wide range of factors to determine whether the State has perpetuated its formerly *de jure* segregation in any facet of its institutional system. See, *e.g.*, *Board of Education of Oklahoma City* v. *Dowell*, 498 U. S. ___, ___ (slip op., at 11); *Swann* v. *Charlotte-Mecklenburg Bd. of Education,* 402 U. S. 1, 18 (1971); *Green* v. *New Kent County School Bd., supra,* at 435–438.

The Court of Appeals concluded that the State had fulfilled its affirmative obligation to disestablish its

prior *de jure* segregated system by adopting and implementing race-neutral policies governing its college and university system. Because students seeking higher education had "real freedom" to choose the institution of their choice, the State need do no more. Even though neutral policies and free choice were not enough to dismantle a dual system of primary or secondary schools, *Green* v. *New Kent County School Board, supra,* the Court of Appeals thought that universities "differ in character fundamentally" from lower levels of schools, 914 F. 2d, at 686, sufficiently so that our decision in *Bazemore* v. *Friday, supra,* justified the conclusion that the State had dismantled its former dual system.

Like the United States, we do not disagree with the Court of Appeals' observation that a state university system is quite different in very relevant respects from primary and secondary schools. Unlike attendance at the lower level schools, a student's decision to seek higher education has been a matter of choice. The State historically has not assigned university students to a particular institution. Moreover, like public universities throughout the country, Mississippi's institutions of higher learning are not fungible—they have been designated to perform certain missions. Students who qualify for admission enjoy a range of choices of which institution to attend. Thus, as the Court of Appeals stated, "[i]t hardly needs mention that remedies common to public school desegregation, such as pupil assignments, busing, attendance quotas, and zoning, are unavailable when persons may freely choose whether to pursue an advanced education and, when the choice is made, which of several universities to attend." 914 F. 2d, at 687.

We do not agree with the Court of Appeals or the District Court, however, that the adoption and implementation of race-neutral policies alone suffice to demonstrate that the State has completely

abandoned its prior dual system. That college attendance is by choice and not by assignment does not mean that a race-neutral admissions policy cures the constitutional violation of a dual system. In a system based on choice, student attendance is determined not simply by admissions policies, but also by many other factors. Although some of these factors clearly cannot be attributed to State policies, many can be. Thus, even after a State dismantles its segregative *admissions* policy, there may still be state action that is traceable to the State's prior *de jure* segregation and that continues to foster segregation. The Equal Protection Clause is offended by "sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson*, 307 U. S. 268, 275 (1939). If policies traceable to the *de jure* system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound educational practices. *Freeman*, *supra*, at ___ (slip op., at 21–22; *Dowell*, *supra*, at ___ (slip op., at 11); *Green,* 391 U. S., at 439; *Florida ex rel. Hawkins* v. *Board of Control of Fla.,* 350 U. S. 413, 414 (1956) *(per curiam)*.[4] We also disagree with respondents that the

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[4]To the extent we understand private petitioners to urge us to focus on present discriminatory effects without addressing whether such consequences flow from policies rooted in the prior system, we reject this position. Private petitioners contend that the State must not only cease its legally authorized discrimination, it must also "eliminate its continuing effects insofar as practicable." Brief for Petitioners in No. 90– 6588, p. 44. Though they seem to disavow as radical a remedy as student reassignment in the university setting, *id.,* at 66, their focus on "student enrollment, faculty and staff employment patterns, [and] black citizens' college-going and degree-granting rates," *id.*, at 63, would seemingly compel

Court of Appeals and District Court properly relied on our decision in *Bazemore* v. *Friday,* 478 U. S. 385 (1986). *Bazemore* neither requires nor justifies the conclusions reached by the two courts below.[5]

Bazemore raised the issue whether the financing and operational assistance provided by a state university's extension service to voluntary 4-H and Homemaker Clubs was inconsistent with the Equal

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remedies akin to those upheld in *Green* v. *New Kent County School Bd.,* 391 U. S. 430 (1968), were we to adopt their legal standard. As will become clear, however, the inappropriateness of remedies adopted in *Green* by no means suggests that the racial identifiability of the institutions in a university system is irrelevant to deciding whether a State such as Mississippi has satisfactorily dismantled its prior *de jure* dual system or that the State need not take additional steps to ameliorate such identifiability.

[5]Similarly, reliance on our *per curiam* affirmance in *Alabama State Teachers Assn. (ASTA)* v. *Alabama Public School and College Authority*, 289 F. Supp. 784 (MD Ala. 1968), aff'd, 393 U. S. 400 (1969) *(per curiam)*, is misplaced. In *ASTA*, the state teachers association sought to enjoin construction of an extension campus of Auburn University in Montgomery, Alabama. The three-judge District Court rejected the allegation that such a facility would perpetuate the State's dual system. It found that the State had educationally justifiable reasons for this new campus and that it had acted in good faith in the fields of admissions, faculty, and staff. 289 F. Supp., at 789. The court also noted that it was "reasonable to conclude that a new institution will not be a white school or a Negro school, but just a school." *Ibid.* Respondents are incorrect to suppose that *ASTA* validates policies traceable to the *de jure* system regardless of whether or not they are educationally justifiable or can be practicably altered to reduce

Protection Clause because of the existence of numerous all-white and all-black clubs. Though prior to 1965 the clubs were supported on a segregated basis, the District Court had found that the policy of segregation had been completely abandoned and that no evidence existed of any lingering discrimination in either services or membership; any racial imbalance resulted from the wholly voluntary and unfettered choice of private individuals. *Bazemore*, *supra*, at 407 (WHITE, J., concurring). In this context, we held inapplicable the *Green* Court's judgment that a voluntary choice program was insufficient to dismantle a *de jure* dual system in public primary and secondary schools, but only after satisfying ourselves that the State had not fostered segregation by playing a part in the decision of which club an individual chose to join.

Bazemore plainly does not excuse inquiry into whether Mississippi has left in place certain aspects of its prior dual system that perpetuate the racially segregated higher education system. If the State perpetuates policies and practices traceable to its prior system that continue to have segregative effects—whether by influencing student enrollment decisions or by fostering segregation in other facets of the university system—and such policies are without sound educational justification and can be practicably eliminated, the State has not satisfied its burden of proving that it has dismantled its prior system. Such policies run afoul of the Equal Protection Clause, even though the State has abolished the legal requirement that whites and blacks be educated separately and has established racially neutral policies not animated by a discriminatory purpose.[6] Because the standard applied by the

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their segregative effects.

[6]Of course, if challenged policies are not rooted in the prior dual system, the question becomes whether the

District Court did not make these inquiries, we hold that the Court of Appeals erred in affirming the District Court's ruling that the State had brought itself into compliance with the Equal Protection Clause in the operation of its higher education system.[7]

Had the Court of Appeals applied the correct legal standard, it would have been apparent from the

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fact of racial separation establishes a new violation of the Fourteenth Amendment under traditional principles. *Board of Education of Oklahoma City v. Dowell*, 498 U. S. ___, ___ (1991) (slip op., at 11–12); *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252 (1977).

[7]The Court of Appeals also misanalyzed the Title VI claim. The court stated that "we are not prepared to say the defendants have failed to meet the duties outlined in the regulations." 914 F. 2d, at 687–688, n. 11. The court added that it need not "discuss the scope of Mississippi's duty under the regulations" because "the duty outlined by the Supreme Court in *Bazemore* controls in Title VI cases." *Ibid.* It will be recalled, however, that the relevant agency and the courts had specifically found no violation of the regulation in *Bazemore*. See 478 U. S., at 409 (WHITE, J., concurring). Insofar as it failed to perform the same factual inquiry and application as the courts in *Bazemore* had made, therefore, the Court of Appeals' reliance on *Bazemore* to *avoid* conducting a similar analysis in this case was inappropriate.

Private petitioners reiterate in this Court their assertion that the state system also violates Title VI, citing a regulation to that statute which requires states to "take affirmative action to overcome the effects of prior discrimination." 34 CFR §100.3(b)(6)(i) (1991). Our cases make clear, and the parties do not disagree, that the reach of Title VI's protection extends no further than the Fourteenth Amendment.

undisturbed factual findings of the District Court that there are several surviving aspects of Mississippi's prior dual system which are constitutionally suspect; for even though such policies may be race-neutral on their face, they substantially restrict a person's choice of which institution to enter and they contribute to the racial identifiability of the eight public universities. Mississippi must justify these policies or eliminate them.

It is important to state at the outset that we make no effort to identify an exclusive list of unconstitutional remnants of Mississippi's prior *de jure* system. In highlighting, as we do below, certain remnants of the prior system that are readily apparent from the findings of fact made by the District Court and affirmed by the Court of Appeals,[8] we

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See *Regents of University of California* v. *Bakke,* 438 U. S. 265, 287 (1978) (Opinion of Powell, J.); *id.*, at 328 (Opinion of Brennan, WHITE, Marshall, and BLACKMUN, JJ., concurring in judgment in part and dissenting in part); *see also Guardians Assn.* v. *Civil Service Comm'n of New York City,* 463 U.S. 582, 610–11 (1983) (Powell, J., concurring in judgment); *id.*, at 612–613 (O'CONNOR, J., concurring in judgment); *id.,* at 639–643 (STEVENS, J., dissenting). We thus treat the issues in this case as they are implicated under the Constitution.

[8]In this sense, it is important to reiterate that we do not disturb the findings of no discriminatory purpose in the many instances in which the courts below made such conclusions. The private petitioners and the United States, however, need not show such discriminatory intent to establish a constitutional violation for the perpetuation of policies traceable to the prior *de jure* segregative regime which have continuing discriminatory effects. As for present policies that do not have such historical antecedents, a claim of violation of the Fourteenth Amendment

by no means suggest that the Court of Appeals need not examine, in light of the proper standard, each of the other policies now governing the State's university system that have been challenged or that are challenged on remand in light of the standard that we articulate today. With this caveat in mind, we address four policies of the present system: admission standards, program duplication, institutional mission assignments, and continued operation of all eight public universities.

We deal first with the current admissions policies of Mississippi's public universities. As the District Court found, the three flagship historically white universities in the system—University of Mississippi, Mississippi State University, and University of Southern Mississippi—enacted policies in 1963 requiring all entrants to achieve a minimum composite score of 15 on the American College Testing Program (ACT). 674 F. Supp., at 1531. The court described the "discriminatory taint" of this policy, *id.*, at 1557, an obvious reference to the fact that, at the time, the average ACT score for white students was 18 and the average score for blacks was 7. 893 F. 2d, at 735. The District Court concluded, and the en banc Court of Appeals agreed, that present admissions standards derived from policies enacted in the 1970's to redress the problem of student unpreparedness. 914 F. 2d, at 679; 674 F. Supp., at 1531. Obviously, this mid-passage justification for perpetuating a policy enacted originally to discriminate against black students does not make the present admissions standards any less constitutionally suspect.

The present admission standards are not only traceable to the *de jure* system and were originally adopted for a discriminatory purpose, but they also

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cannot be made out without a showing of discriminatory purpose. See *supra*, at ___.

have present discriminatory effects. Every Mississippi resident under 21 seeking admission to the university system must take the ACT. Any applicant who scores at least 15 qualifies for automatic admission to any of the five historically white institutions except Mississippi University for Women, which requires a score of 18 for automatic admission unless the student has a 3.0 high school grade average. Those scoring less than 15 but at least 13 automatically qualify to enter Jackson State University, Alcorn State University, and Mississippi Valley State University. Without doubt, these requirements restrict the range of choices of entering students as to which institution they may attend in a way that perpetuates segregation. Those scoring 13 or 14, with some exceptions, are excluded from the five historically white universities and if they want a higher education must go to one of the historically black institutions or attend junior college with the hope of transferring to a historically white institution.[9] Proportionately more blacks than whites face this choice: in 1985, 72 percent of Mississippi's white high school seniors achieved an ACT composite score of 15 or better, while less than 30 percent of black high school seniors earned that score. App. 1524–1525. It is not surprising then that Mississippi's universities remain predominantly identifiable by race.

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[9]The District Court's finding that "[v]ery few black students, if any, are actually denied admission to a Mississippi university as a first-time freshman for failure to achieve the minimal ACT score," *Ayers* v. *Allain,* 674 F. Supp. 1535 (ND Miss. 1987), ignores the inherent self-selection that accompanies public announcement of "automatic" admissions standards. It is illogical to think that some percentage of black students who fail to score 15 do *not* seek admission to one of the historically white universities because of this automatic admission standard.

The segregative effect of this automatic entrance standard is especially striking in light of the differences in minimum automatic entrance scores among the regional universities in Mississippi's system. The minimum score for automatic admission to Mississippi University for Women (MUW) is 18; it is 13 for the historically black universities. Yet MUW is assigned the same institutional mission as two other regional universities, Alcorn State and Mississippi Valley—that of providing quality undergraduate education. The effects of the policy fall disproportionately on black students who might wish to attend MUW; and though the disparate impact is not as great, the same is true of the minimum standard ACT score of 15 at Delta State University—the other "regional" university—as compared to the historically black "regional" universities where a score of 13 suffices for automatic admission. The courts below made little if any effort to justify in educational terms those particular disparities in entrance requirements or to inquire whether it was practicable to eliminate them.

We also find inadequately justified by the courts below or by the record before us the differential admissions requirements between universities with dissimilar programmatic missions. We do not suggest that absent a discriminatory purpose different programmatic missions accompanied by different admission standards would be constitutionally suspect simply because one or more schools are racially identifiable. But here the differential admission standards are remnants of the dual system with a continuing discriminatory effect, and the mission assignments "to some degree follow the historical racial assignments," 914 F. 2d, at 692. Moreover, the District Court did not justify the differing admission standards based on the different mission assignments. It observed only that in the 1970's, the Board of Trustees justified a minimum ACT score of 15

because too many students with lower scores were not prepared for the historically white institutions and that imposing the 15 score requirement on admissions to the historically black institutions would decimate attendance at those universities. The District Court also stated that the mission of the regional universities had the more modest function of providing quality undergraduate education. Certainly the comprehensive universities are also, among other things, educating undergraduates. But we think the 15 ACT test score for automatic admission to the comprehensive universities, as compared with a score of 13 for the regionals, requires further justification in terms of sound educational policy.

Another constitutionally problematic aspect of the State's use of the ACT test scores is its policy of denying automatic admission if an applicant fails to earn the minimum ACT score specified for the particular institution, without also resorting to the applicant's high school grades as an additional factor in predicting college performance. The United States produced evidence that the American College Testing Program (ACTP), the administering organization of the ACT, discourages use of ACT scores as the sole admissions criterion on the ground that it gives an incomplete "picture" of the student applicant's ability to perform adequately in college. App. 1209–1210. One ACTP report presented into evidence suggests that "it would be foolish" to substitute a 3- or 4-hour test in place of a student's high school grades as a means of predicting college performance. *Id.,* at 193. The record also indicated that the disparity between black and white students' high school grade averages was much narrower than the gap between their average ACT scores, thereby suggesting that an admissions formula which included grades would increase the number of black students eligible for automatic admission to all of Mississippi's public

universities.[10]

The United States insists that the State's refusal to consider information which would better predict college performance than ACT scores alone is irrational in light of most States' use of high school grades and other indicators along with standardized test scores. The District Court observed that the Board of Trustees was concerned with grade inflation and the lack of comparability in grading practices and course offerings among the State's diverse high schools. Both the District Court and the Court of Appeals found this concern ample justification for the failure to consider high school grade performance along with ACT scores. In our view, such justification is inadequate because the ACT requirement was originally adopted for discriminatory purposes, the current requirement is traceable to that decision and seemingly continues to have segregative effects, and the State has so far failed to show that the "ACT-only" admission standard is not susceptible to elimination without eroding sound educational policy.

A second aspect of the present system that necessitates further inquiry is the widespread

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[10]In 1985, 72 percent of white students in Mississippi scored 15 or better on the ACT, whereas only 30 percent of black students achieved that mark, a difference of nearly 2½ times. By contrast, the disparity among grade averages was not nearly so wide. 43.8 percent of white high school students and 30.5 percent of black students averaged at least a 3.0, and 62.2 percent of whites and 49.2 percent of blacks earned at least a 2.5 grade point average. App. 1524–1525. Though it failed to make specific factfindings on this point, this evidence, which the State does not dispute, is fairly encompassed within the District Court's statement that "[b]lack students on the average score somewhat lower [than white students]." 674 F. Supp., at 1535.

duplication of programs. "Unnecessary" duplication refers, under the District Court's definition, "to those instances where two or more institutions offer the same nonessential or noncore program. Under this definition, all duplication at the bachelor's level of nonbasic liberal arts and sciences course work and all duplication at the master's level and above are considered to be unnecessary." 674 F. Supp., at 1540. The District Court found that 34.6 percent of the 29 undergraduate programs at historically black institutions are "unnecessarily duplicated" by the historically white universities, and that 90 percent of the graduate programs at the historically black institutions are unnecessarily duplicated at the historically white institutions. *Id.*, at 1541. In its conclusions of law on this point, the District Court nevertheless determined that "there is no proof" that such duplication "is directly associated with the racial identifiability of institutions," and that "there is no proof that the elimination of unnecessary program duplication would be justifiable from an educational standpoint or that its elimination would have a substantial effect on student choice." *Id.,* at 1561.

The District Court's treatment of this issue is problematic from several different perspectives. First, the court appeared to impose the burden of proof on the plaintiffs to meet a legal standard the court itself acknowledged was not yet formulated. It can hardly be denied that such duplication was part and parcel of the prior dual system of higher education—the whole notion of "separate but equal" required duplicative programs in two sets of schools—and that the present unnecessary duplication is a continuation of that practice. *Brown* and its progeny, however, established that the burden of proof falls on the *State*, and not the aggrieved plaintiffs, to establish that it has dismantled its prior *de jure* segregated system. *Brown II,* 349 U. S., at 300. The court's holding that petitioners could not establish the

constitutional defect of unnecessary duplication, therefore, improperly shifted the burden away from the State. Second, implicit in the District Court's finding of "unnecessary" duplication is the absence of any educational justification and the fact that some if not all duplication may be practicably eliminated. Indeed, the District Court observed that such duplication "cannot be justified economically or in terms of providing quality education." 674 F. Supp., at 1541. Yet by stating that "there is no proof" that elimination of unnecessary duplication would decrease institutional racial identifiability, affect student choice, and promote educationally sound policies, the court did not make clear whether it had directed the parties to develop evidence on these points, and if so, what that evidence revealed. See *id.*, at 1561. Finally, by treating this issue in isolation, the court failed to consider the combined effects of unnecessary program duplication with other policies, such as differential admissions standards, in evaluating whether the State had met its duty to dismantle its prior *de jure* segregated system.

We next address Mississippi's scheme of institutional mission classification, and whether it perpetuates the State's formerly *de jure* dual system. The District Court found that, throughout the period of *de jure* segregation, University of Mississippi, Mississippi State University, and University of Southern Mississippi were the flagship institutions in the state system. They received the most funds, initiated the most advanced and specialized programs, and developed the widest range of curricular functions. At their inception, each was restricted for the education solely of white persons. *Id.,* at 1526–1528. The missions of Mississippi University for Women and Delta State University (DSU), by contrast, were more limited than their other all-white counterparts during the period of legalized segregation. MUW and DSU were each established to provide

undergraduate education solely for white students in the liberal arts and such other fields as music, art, education, and home economics. *Id.*, at 1527–1528. When they were founded, the three exclusively black universities were more limited in their assigned academic missions than the five all-white institutions. Alcorn State, for example, was designated to serve as "an agricultural college for the education of Mississippi's black youth." *Id.,* at 1527. Jackson State and Mississippi Valley State were established to train black teachers. *Id.*, at 1528. Though the District Court's findings do not make this point explicit, it is reasonable to infer that state funding and curriculum decisions throughout the period of *de jure* segregation were based on the purposes for which these institutions were established.

In 1981, the State assigned certain missions to Mississippi's public universities as they then existed. It classified University of Mississippi, Mississippi State, and Southern Mississippi as "comprehensive" universities having the most varied programs and offering graduate degrees. Two of the historically white institutions, Delta State University and Mississippi University for Women, along with two of the historically black institutions, Alcorn State University and Mississippi Valley State University, were designated as "regional" universities with more limited programs and devoted primarily to undergraduate education. Jackson State University was classified as an "urban" university whose mission was defined by its urban location.

The institutional mission designations adopted in 1981 have as their antecedents the policies enacted to perpetuate racial separation during the *de jure* segregated regime. The Court of Appeals expressly disagreed with the District Court by recognizing that the "inequalities among the institutions largely follow the mission designations, and the mission designations to some degree follow the historical

racial assignments." 914 F. 2d, at 692. It nevertheless upheld this facet of the system as constitutionally acceptable based on the existence of good-faith racially neutral policies and procedures. That different missions are assigned to the universities surely limits to some extent an entering student's choice as to which university to seek admittance. While the courts below both agreed that the classification and mission assignments were made without discriminatory purpose, the Court of Appeals found that the record "supports the plaintiffs' argument that the mission designations had the effect of maintaining the more limited program scope at the historically black universities." *Id.,* at 690. We do not suggest that absent discriminatory purpose the assignment of different missions to various institutions in a State's higher education system would raise an equal protection issue where one or more of the institutions become or remain predominantly black or white. But here the issue is whether the State has sufficiently dismantled its prior dual system; and when combined with the differential admission practices and unnecessary program duplication, it is likely that the mission designations interfere with student choice and tend to perpetuate the segregated system. On remand, the court should inquire whether it would be practicable and consistent with sound educational practices to eliminate any such discriminatory effects of the State's present policy of mission assignments.

Fourth, the State attempted to bring itself into compliance with the Constitution by continuing to maintain and operate all eight higher educational institutions. The existence of eight instead of some lesser number was undoubtedly occasioned by State laws forbidding the mingling of the races. And as the District Court recognized, continuing to maintain all eight universities in Mississippi is wasteful and irrational. The District Court pointed especially to the

facts that Delta State and Mississippi Valley are only 35 miles apart and that only 20 miles separate Mississippi State and Mississippi University for Women. 674 F. Supp., at 1563–1564. It was evident to the District Court that "the defendants undertake to fund more institutions of higher learning than are justified by the amount of financial resources available to the state," *id.,* at 1564, but the court concluded that such fiscal irresponsibility was a policy choice of the legislature rather than a feature of a system subject to constitutional scrutiny.

Unquestionably, a larger rather than a smaller number of institutions from which to choose in itself makes for different choices, particularly when examined in the light of other factors present in the operation of the system, such as admissions, program duplication, and institutional mission designations. Though certainly closure of one or more institutions would decrease the discriminatory effects of the present system, see, *e.g.*, *United States* v. *Louisiana*, 718 F. Supp. 499, 514 (ED La. 1989), based on the present record we are unable to say whether such action is constitutionally required.[11] Elimination of program duplication and revision of admissions criteria may make institutional closure unnecessary. However, on remand this issue should be carefully explored by inquiring and determining whether retention of all eight institutions itself affects student choice and perpetuates the segregated higher

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[11]It should be noted that in correspondence with the Board of Trustees in 1973, an HEW official expressed the "overall objective" of the Plan to be "that a student's choice of institution or campus, henceforth, will be based on other than racial criteria." App. 205. The letter added that closure of a formerly *de jure* black institution "would create a presumption that a greater burden is being placed upon the black students and faculty in Mississippi." *Id.,* at 206.

education system, whether maintenance of each of the universities is educationally justifiable, and whether one or more of them can be practicably closed or merged with other existing institutions.

Because the former *de jure* segregated system of public universities in Mississippi impeded the free choice of prospective students, the State in dismantling that system must take the necessary steps to ensure that this choice now is truly free. The full range of policies and practices must be examined with this duty in mind. That an institution is predominantly white or black does not in itself make out a constitutional violation. But surely the State may not leave in place policies rooted in its prior officially-segregated system that serve to maintain the racial identifiability of its universities if those policies can practicably be eliminated without eroding sound educational policies.

If we understand private petitioners to press us to order the upgrading of Jackson State, Alcorn State, and Mississippi Valley *solely* so that they may be publicly financed, exclusively black enclaves by private choice, we reject that request. The State provides these facilities for *all* its citizens and it has not met its burden under *Brown* to take affirmative steps to dismantle its prior *de jure* system when it perpetuates a separate, but "more equal" one. Whether such an increase in funding is necessary to achieve a full dismantlement under the standards we have outlined, however, is a different question, and one that must be addressed on remand.

Because the District Court and the Court of Appeals failed to consider the State's duties in their proper light, the cases must be remanded. To the extent that the State has not met its affirmative obligation to dismantle its prior dual system, it shall be adjudged in violation of the Constitution and Title VI and remedial proceedings shall be conducted. The decision of the Court of Appeals is vacated, and the

cases are remanded for further proceedings consistent with this opinion.

It is so ordered.