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# Making the Grade: A Modest Extension of *Bush v. Gore*

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MAKING THE GRADE: A MODEST  
EXTENSION OF *BUSH v. GORE*

SUPREME COURT OF THE UNITED STATES

Fair Grading Coalition et al. v. University of California

No. 00-950

January 2, 2001

*On writ of certiorari to the California Supreme Court*

PER CURIAM.

Students at Hastings College of Law, a unit of the University of California, took their final exams on various dates in December, 2000. Some of these exams were “objective” exams. Hastings grades these exams by hand. There is no standard, not even the intent of the student, to guide the hand grading of ambiguous test answers. Grading at one table could easily differ from grading at another table. (In fact, it is undisputed that some professors do not even use tables.) Writing a law school examination, while it may not be fully protected speech, enjoys a sufficient level of protection to prevent arbitrary discrimination or standardless discretion. This grading system is so clearly unconstitutional that it merits no further discussion, other than to note that the conclusion follows *a fortiori* from *Bush v. Gore*, No. 00-949 (Dec. 12, 2000).

Petitioners also attack the grading of “essay” exams, pointing to a total lack of standards. While it is conceivably possible that essay exams are different, for purposes of this request for a preliminary injunction, the balance of irreparable injury is clearly in favor of petitioners. The delegitimizing effect of receiving a poor grade can not be corrected retroactively. Again, the conclusion follows *a fortiori* from *Bush v. Gore*. There, the

respondent Gore could at least make a plausible argument that a stay would in effect destroy his case completely. Here, in claiming irreparable injury, the respondent law school can only advance administrative convenience and an imagined need for students to receive grades. Moreover, getting things done on time is not a legitimate state interest for equal protection purposes. See *Bush v. Gore*, supra.

The writ of certiorari is granted, the judgment of the California Supreme Court is hereby reversed, and all grading at Hastings College of the Law is hereby stayed. Normally we would issue a temporary stay, but in view of the fact that it would be impossible to have the hearing on the merits and implement any needed reforms by the school's self-imposed grading deadline of January 7, we have no choice but to issue a permanent injunction.

It is so ordered.

Roger Park<sup>1</sup>

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